

CASE NOTE

ESTABLISHING PARENTAL EQUALITY IN PERU – FATHER’S RIGHTS IN CHILD REGISTRATION WITHOUT MATERNAL DETAILS

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I INTRODUCTION

In a landmark ruling in September 2023, the Peruvian Constitutional Tribunal (‘Tribunal’)¹ ordered the National Registry of Identification and Civil Status (‘National Registry’)² to register twins under their father’s surnames³ and grant them Peruvian citizenship.⁴ The Tribunal also urged the Congress of Peru (‘Congress’) to amend the *Peruvian Civil Code of 1984* (‘*Civil Code*’),⁵ as it discriminates against single, unmarried fathers by requiring the inclusion of the mother’s surnames for the issuance of a birth certificate — a requirement not imposed on mothers.⁶ This ruling is significant for several reasons. First, it highlights a little discussed form of sex-based discrimination, namely the unequal treatment of single, unmarried fathers in birth registration. Most of the time, it is

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¹ Tribunal Constitucional. All translations in this case note were made by the Author.

² Registro Nacional de Identificación y Estado Civil (‘RENIEC’).

³ Most Latin American countries adopt the Spanish naming custom, assigning children two surnames: typically, the father’s surname followed by the mother’s surname. For the Peruvian context, see *Ley N° 23403 ‘Código Civil’* [Law No 23403 ‘Civil Code’] (1984), *Decreto Legislativo N° 295* [Legislative Decree No 295] (1984) art 1 (‘*Civil Code*’), as amended by *Ley N° 28720 ‘Ley que modifica los artículos 20 y 21 del Código Civil’* [Law No 28720 ‘Law amending Articles 20 and 21 of the Civil Code’] (25 April 2006), art 1 (Peru) (‘*Civil Code Amendment*’).

⁴ *Morán Vargas v Registro Nacional de Identificación y Estado Civil* [Morán Vargas v National Registry of Identification and Civil Status] (Constitutional Tribunal, No 00882-2023-PA/TC, 26 September 2023) (*Orders*) [1]–[2] (‘Constitutional Tribunal: *Morán Vargas v RENIEC*’).

⁵ *Civil Code* (n 3).

⁶ Constitutional Tribunal: *Morán Vargas v RENIEC* (n 4) (*Orders*) [3]. See also *Civil Code Amendment* (n 3).

mothers who encounter discrimination in registration procedures.⁷ Second, it underscores a broader challenge across countries' national legislations to recognise equal parental rights, irrespective of a parent's sex or civil status.⁸ Third, in Peru's gradually evolving family landscape, the ruling exposes the *Civil Code's* incompatibility with contemporary realities, and signals the need for broader legislative and policy reforms that shift from a traditional family model to more diverse family structures.⁹ A gap pointed out by this case is the lack of legal regulation concerning surrogacy.¹⁰ Beyond establishing parental equality, the ruling reinforces Peru's international obligation to ensure that a child's rights to birth registration, identity and citizenship are protected. This obligation is particularly critical for children of single, unmarried or gay biological fathers when the mother's identity is not revealed, as this could result in the child's lack of legal identity in the country as demonstrated in this case, or other additional inequalities.¹¹

⁷ United Nations High Commissioner for Refugees ('UNHCR') and United Nations International Children's Emergency Fund ('UNICEF'), *Background Note on Sex Discrimination in Birth Registration* (Report, 2021) <<https://www.refworld.org/policy/opguidance/unhcr/2021/en/123888>>, archived at <perma.cc/33DJ-AVZB>. For emphasis on migrant women, see Allison J Petrozziello, 'Gaps and Challenges for Ensuring Universal Birth Registration for Children Born to Migrants and Multiply Marginalised Mothers' (PhD Thesis, Toronto Metropolitan University, 2024).

⁸ See, eg, *Centre for Child Law v Director General: Department of Home Affairs* [2021] ZACC 31, 4–5 [5] (Victor AJ) (Constitutional Court of South Africa) ('*Centre for Child Law v Director General: Department of Home Affairs*').

⁹ Emily Maite Castillejo Pulido and Melitsen Abigail Portilla Cortez, 'La Evolución del Derecho de Familia en el Caso: "Hijos de Ricardo Morán"' [The Evolution of Family Law in the Case: 'Children of Ricardo Morán'] (2023) 1(2) *Chornancap Revista Jurídica* 211, 221. For the lack of material equality in Peru's constitutional law concerning women's and LGBTQIA+ rights, see Cristina Valega Chipoco and Ximena Benavides Reverditto, 'The Ambivalent and Hetero-Cis-Normative Peruvian Constitutional Jurisprudence of the Twenty-First Century' in Francisca Pou Giménez, Ruth Rubio Marín and Verónica Undurraga Valdés (eds), *Women, Gender, and Constitutionalism in Latin America* (Routledge 2024) 199; Liam Davis, 'The Evolution of Birth Registration in England and Wales and its Place in Contemporary Law and Society' (2024) 87(2) *Modern Law Review* 317, 327, 338. At the time of writing, two proposed amendments to the *Civil Code* (n 3) were still pending discussion in the Congress of Peru. The first is *Proyecto de Ley No 6183/2023-CR* [Bill No 6183/2023-CR], see 'Padres podrían inscribir a hijos con sus apellidos sin necesidad de revelar el nombre del otro progenitor' [Fathers could register their children with their last names without having to reveal the name of the other parent] *El Peruano* (online, 19 October 2023) <<https://www.elperuano.pe/noticia/225744-padres-podrian-inscribir-a-hijos-con-sus-apellidos-sin-necesidad-de-revelar-el-nombre-del-otro-progenitor>>, archived at <perma.cc/P2W9-SGK2>. The second is *Proyecto de Ley No 7114/2023-CR* [Bill No 7114/2023-CR], see *Ley N° 7114 'Ley que modifica el Código Civil y equipara el derecho del padre a inscribir a sus hijos con sus apellidos, sin develar el nombre de la madre, salvaguardando el derecho a la identidad del menor'* [Law No 7114 'Law to modify the Civil Code and equalise the right of fathers to register his children with his last names, without disclosing the name of the mother, safeguarding the child's right to identity'] (23 February 2024) (Peru).

¹⁰ *Morán Vargas v Registro Nacional de Identificación y Estado Civil, Resolución No. Cinco* [Morán Vargas v National Registry of Identification and Civil Status, Resolution No Five] (Ninth Constitutional Court, No 06323-2021-0-1801-JR-DC-09, 18 July 2022) [10] ('Ninth Constitutional Court: *Morán Vargas v RENIEC*'). See, eg, Castillejo Pulido and Portilla Cortez (n 9) 217. See also Gianina Iris Granados Flores, 'Derecho a la identidad en la maternidad subrogada en la legislación peruana' [Right to identity in surrogate pregnancies in Peruvian legislation] (Thesis, César Vallejo University, 2022) 23, 26.

¹¹ See, eg, Granados Flores (n 10) 26. See also Páraic Kerrigan and Amber Cushing, "'Our story with the state": Birth certificates, data structures and gay and lesbian families' (2024) 7(3) *Sexualities* 610, 611, 624; Debra Ladner, Erik G Jensen and Samuel E Saunders, 'A Critical Assessment of Legal Identity: What It Promises and What It Delivers' (2014) 6(1) *Hague Journal on the Rule of Law* 47, 59–60.

II FACTS

The male plaintiff, a Peruvian citizen, became a father to twins in 2019. Due to legal restrictions on parenthood for single gay men in the country, he pursued surrogacy in the United States of America ('US') where the process is legally recognised.¹² A Civil Court in California granted him sole parental rights over the children.¹³ The children were issued birth certificates with the father's surnames following his instructions, and acquired US citizenship in line with US birthright (*jus soli*).¹⁴

In Peru in March 2021, however, the National Registry in Lima refused to issue birth certificates to the twins with only the father's surnames, citing arts 20 and 21 of the *Civil Code* which require both the father's and the mother's first surnames.¹⁵ This decision effectively denied the children Peruvian citizenship. The plaintiff's appeals to the National Registry were dismissed.¹⁶

Against this backdrop, the father filed an action under the *amparo* process¹⁷ — which asks the courts to consider whether a law has contravened the children's constitutional rights — to the Ninth Constitutional Court of Lima ('Court')¹⁸ to protect the children's rights to a name, identity, nationality, equality, due process and judicial protection.¹⁹ He requested: first, the annulment of the National Registry's denials; second, the registration of the twins in Peru with his surnames;

¹² *Morán Vargas v Registro Nacional de Identificación y Estado Civil, Resolución No. Cuatro* [Morán Vargas v National Registry of Identification and Civil Status, Resolution No Four] (Superior Court of Justice of Lima, Exp 6323-2021-0-1801-JR-DC-09, 23 November 2022) 8 [4(a)] ('Superior Court of Justice: *Morán Vargas v RENIEC*'). For socio-political and legal restrictions of LBTQIA+ community members in Peru, see, eg, Flávia Biroli and Stéphanie Rousseau, 'The effects of anti-gender activism on Latin American democracies: a comparison of Brazil and Peru' (2025) 34(5) *Journal of Gender Studies* 669; Pedro Alexandre Costa and Fernando Salinas-Quiroz, 'Attitudes Toward LGBTQ+ People and LGBTQ+ Rights in Continental American-Hispanic Nations' in Normanda Araujo de Morais, Fabio Scorsolini-Comin and Elder Cerqueira-Santos (eds), *Parenting and Couple Relationships Among LGBTQ+ People in Diverse Contexts* (Springer 2021) 25–39; Gustavo Carlos Córdova Morillo, 'Gestación subrogada y trato desigual por orientación sexual: retos normativos en la familia peruana' [Surrogacy and unequal treatment based on sexual orientation: normative challenges in the Peruvian family] (2025) 6(1) *Revista InveCom* 1. On single gay and straight father-families and surrogacy in the United States of America ('US'), see Henrique Pereira and Colleen Beatriz, 'Promoting Social Visibility for Single-Father Families Created by Surrogacy' (2023) 104(2) *Families in Society: The Journal of Contemporary Social Services* 234, 234–5.

¹³ *Morán Vargas v Nelson* (Cal Civ Ct LA, File No 19STPT00660, 12 March 2019), cited in Ninth Constitutional Court: *Morán Vargas v RENIEC* (n 10) 2.

¹⁴ Superior Court of Justice: *Morán Vargas v RENIEC* (n 12) 15 [5]; Constitutional Tribunal: *Morán Vargas v RENIEC* (n 4) [2] (Magistrate Domínguez Haro).

¹⁵ Registration Resolutions No 109-2021-ORSBORJ-JR10LIM-GOR/RENIEC and No 110-2021-ORSBORJ-JR10LM-GOR/RENIEC, cited in Ninth Constitutional Court: *Morán Vargas v RENIEC* (n 10) 2; Constitutional Tribunal: *Morán Vargas v RENIEC* (n 4) (*Issues*) [5]–[6]; *Civil Code Amendment* (n 3).

¹⁶ Ninth Constitutional Court: *Morán Vargas v RENIEC* (n 10) 2.

¹⁷ The *recurso de amparo* [writ of protection] is a judicial action designed to protect a person against acts or omissions by authorities that violate the human rights and constitutional guarantees enshrined mainly in Ibero-Latin American legal systems. See also José María Serna de la Garza, 'Amparo' in Rainer Grote, Frauke Lachenmann and Rüdiger Wolfrum (eds), *Max Planck Encyclopedia of Comparative Constitutional Law* (Oxford University Press 2016) [1], [4], [6], [13]–[14], [25]–[26].

¹⁸ Noveno Juzgado Constitucional de Lima.

¹⁹ Ninth Constitutional Court: *Morán Vargas v RENIEC* (n 10) 1.

and third, the application of a conventionality control²⁰ to arts 20 and 21 of the *Civil Code*. The latter would also impact *Directive 415-GRC/032 of 2017* ('*Directive 415-GRC/03*'), as it additionally concerns the registration of extramarital children by fathers.²¹

The appeal referred to the rights to nationality, equality and non-discrimination under the *American Convention on Human Rights* ('*ACHR*')²² and the *Political Constitution of Peru* ('*Constitution*').²³ The National Registry, the defendant, sought a dismissal, citing a lack of jurisdiction over *Civil Code* matters and the National Registry's regulated scope of registration procedures.²⁴ The defendant further stressed that the disputed articles did safeguard the children's identity rights and asserted there was no violation of the right to nationality and no risk of statelessness given the children's US citizenships. The Court, in turn, noted that the plaintiff's arguments failed to demonstrate a violation of the right to equality and non-discrimination, as it lacked an analysis of arts 20 and 21 of the *Civil Code* regarding the principles of suitability, necessity and proportionality. Furthermore, it noted that foreign judicial orders held no domestic validity unless they had been subjected to the *exequatur* procedure, a process of judicial recognition.²⁵ As a result, the Court rejected the plaintiff's requests in July 2022.²⁶

Thus, the father appealed to the Superior Chamber of the Superior Court of Justice of Lima ('*Superior Court*'),²⁷ reiterating his arguments and requesting the

²⁰ The doctrine of conventionality control was introduced into the Inter-American System of Human Rights in the 2006 case of *Almonacid Arellano et al v Chile* (Inter-American Court of Human Rights ('*IACtHR*'), Series C No 154, 26 September 2006). Its purpose is to assure *the effective application of international instruments*, preventing them from being reduced or nullified by the application of domestic laws and practices that conflict with the object and purpose of the *American Convention on Human Rights*, opened for signature 22 November 1967, OAS Treaty Series No 36 (entered into force 18 July 1978) ('*American Convention on Human Rights*'). Conventionality control serves as a tool to identify and clarify instances where national provisions, judicial interpretations or omissions in domestic law may be inconsistent with international obligations: *Heliodoro Portugal v Panama* (IACtHR, Series C No 1986, 12 August 2008) [180]; *Dismissed Congressional Employees (Aguado-Alfaro et al) v Peru* (IACtHR, Series C No 158, 24 November 2006) [128]; Natalia Torres Zúñiga, *El control de convencionalidad: deber complementario del juez Constitucional peruano y el juez interamericano (similitudes, diferencias y convergencias)* (Editorial académica Española 2013), cited in Natalia Torres Zúñiga, 'Conventionality control in the Inter-American system of human rights and its reception in the Peruvian legal order' in Helmut P Aust, Heike Krieger and Felix Lange (eds), *Research Handbook on International Law and Domestic Legal Systems* (Edward Elgar Publishing 2024) 239.

²¹ Ninth Constitutional Court: *Morán Vargas v RENIEC* (n 10) 1–2. See *Civil Code Amendment* (n 3); Resolución Secretarial N° 49-2017: Procedimientos Registrales para la Inscripción de Hechos Vitales y Actos Modificatorios del Estado Civil ante Oficinas Autorizadas [Secretarial Resolution No 49-2017: Registry Procedures for the Registration of Vital Records and Civil Status Modifications before Authorised Offices] *Directiva 415-GRC/032*, 18–20 [6.1.1.2(c)(2)] ('*Directive 415-GRC/032*').

²² *American Convention on Human Rights* (n 20).

²³ Ninth Constitutional Court: *Morán Vargas v RENIEC* (n 10) 3. See *American Convention on Human Rights* (n 20) arts 20, 24, quoted in Secretariat of the Inter-American Court of Human Rights, *Basic Documents Pertaining to Human Rights in the Inter-American System* (2012) 38–39. See also *Constitución Política del Perú* [Political Constitution of Peru], arts 2(2), 2(21) ('*Constitution*'). Article 2(2) states: '[e]quality before the law. No one should be discriminated against based on origin, race, sex, language, religion, opinion, economic status, or any other reason': *ibid.* Article 2(21) states: '[o]n their nationality. No one shall be deprived of it. Nor shall they be deprived of the right to obtain or renew their passport within or outside the territory of the Republic': *ibid.*

²⁴ Constitutional Tribunal: *Morán Vargas v RENIEC* (n 4) 3.

²⁵ *ibid.*

²⁶ Ninth Constitutional Court: *Morán Vargas v RENIEC* (n 10) (*Ruling*).

²⁷ Sala Superior de la Corte Superior de Justicia de Lima.

Superior Court to invoke their right to declare any legislation unconstitutional. The appeal alleged violations of regional and international treaties, including art 25 of the *ACHR* and art 7 of the *Convention on the Rights of the Child* ('*CRC*').²⁸ The plaintiff's arguments emphasised Peru's obligation to comply with the rulings of the Inter-American Court of Human Rights ('*IACtHR*'), even in unrelated cases. The discrimination was also framed as a breach of the *Constitution's* primacy over other legal norms, as the *Constitution* recognises the children's right to Peruvian nationality.²⁹

Referring to the *International Convention on the Elimination of All Forms of Racial Discrimination* and the *Committee on the Elimination of Discrimination against Women*, the appeal defined the discrimination suffered as distinctions based on sex and birth, among others, which impaired the children's equal rights.³⁰ It contended that the plaintiff's children were denied fundamental rights due to the mother's absence and that the father faced unjust discrimination, as no 'objective or reasonable grounds' prevented him from registering the minors under his surnames.³¹ The appeal further argued that the National Registry's distinction between parents based on their sex amounted to indirect discrimination.³² Drawing on decisions by both the Inter-American Commission on Human Rights and the *IACtHR*, the appeal underscored that seemingly neutral laws can be discriminatory.³³ It also referenced the United Nations Committee on the Rights of the Child's recognition that diverse family models deserve equal protection.³⁴ Finally, the plaintiff condemned the judgment by the lower Court for violating the children's best interests and right to non-discrimination,³⁵ imposing arbitrary legal barriers (ie requiring judicial approval of the California judgment despite the presentation of apostilled birth certificates)³⁶ and disregarding Peru's binding

²⁸ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 7 ('*CRC*');

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

cited in Superior Court of Justice: *Morán Vargas v RENIEC* (n 12) 2 [2(i)], 10–11 [5].

²⁹ Superior Court of Justice: *Morán Vargas v RENIEC* (n 12) 2 [2(i)]; *Constitution* (n 23) arts 51–52.

³⁰ Superior Court of Justice: *Morán Vargas v RENIEC* (n 12) 2–3 [2(iii)]. See *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969) art 1(1); See also *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 1.

³¹ Superior Court of Justice: *Morán Vargas v RENIEC* (n 12) 3 [2].

³² *ibid* 4 [2].

³³ *ibid* 3 [2(iv)]. See, eg, *Fecundación in vitro (Artavia Murillo vs Costa Rica)* (*IACtHR*, Series C No 257, 28 November 2012) 12 [27], cited in *ibid* 4.

³⁴ United Nations Committee on the Rights of the Child ('*UN CRC*'), *General Comment No 7 (2005): Implementing child rights in early childhood*, UN Doc CRC/C/GC/7 (1 November 2005) 7 [15], quoted in Superior Court of Justice: *Morán Vargas v RENIEC* (n 12) 4.

³⁵ UN CRC, *General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art 3, para 1)**, UN Doc CRC/C/GC/14 (29 May 2013) 11 [41], quoted in Superior Court of Justice: *Morán Vargas v RENIEC* (n 12) 5.

³⁶ Superior Court of Justice: *Morán Vargas v RENIEC* (n 12) 24 [10].

international treaty obligations.³⁷ The Superior Court ruled that the appeal should evaluate constitutional rights rather than enforce a foreign decision on parental authority or birth registration in Peru, which is not judicable in constitutional proceedings.³⁸ The claim was also considered unfounded due to the lack of national surrogacy laws.³⁹ The case was dismissed in November 2022.⁴⁰

Consequently, in 2023, the plaintiff requested the Tribunal in Lima to conduct a proportionality test of arts 20 and 21 of the *Civil Code* given the National Registry's refusals to register the children.⁴¹ The appeal further challenged the constitutionality of the previous decisions in light of the principles of effectiveness and the best interests of the minors, alongside their rights to birth registration, identity and nationality. One such issue is regarding their fundamental right to Peruvian citizenship as 'children born abroad to a Peruvian father or mother' under the *Constitution*.⁴²

III ISSUES

The case concerns the revision of arts 20 and 21 of the *Civil Code*, as modified by *Law No 28720 of 25 April 2006* ('*Civil Code Amendment*').⁴³

Art 20 states that '[t]he child is given the father's first surname and the mother's first surname'.⁴⁴

Art 21 states:

Birth Registration. When the father or mother separately registers the birth of a child born outside of marriage, they shall reveal the name of the person with whom they had the child. In this case, the child will bear the surname of the father or mother who registered the child, as well as that of the presumed progenitor; in the latter case, no filiation is established. [...] If the mother does not reveal the identity of the father, she shall register her child with her surnames.⁴⁵

The dispute also concerns r 6.1.1.2(c)(2) of *Directive 415-GRC/032*, which is based on the *Civil Code Amendment*: '[i]f the father is the only declarant, he must indicate as the holder's surnames, his first surname and the mother's first surname.'⁴⁶

IV HOLDING

In its preliminary considerations, the Tribunal saw the need to review constitutional principles, including the children's best interests and their rights to identity and nationality alongside the principle of equality and

³⁷ *ibid* 2 [2(ii)]; *American Convention on Human Rights* (n 20) art 25. Cf *Constitution* (n 23) art 139(3).

³⁸ Superior Court of Justice: *Morán Vargas v RENIEC* (n 12) 25 [11].

³⁹ Constitutional Tribunal: *Morán Vargas v RENIEC* (n 4) 3.

⁴⁰ Superior Court of Justice: *Morán Vargas v RENIEC* (n 12) 1.

⁴¹ Constitutional Tribunal: *Morán Vargas v RENIEC* (n 4) (*Issues*) [1].

⁴² *ibid*. See *Constitution* (n 23) art 52.

⁴³ *Civil Code Amendment* (n 3).

⁴⁴ *ibid*.

⁴⁵ *ibid*.

⁴⁶ *Directive 415-GRC/032* (n 21); Constitutional Tribunal: *Morán Vargas v RENIEC* (n 4) (*Issues*) [42].

non-discrimination.⁴⁷ It clarified that constitutional processes protect rights but do not grant *exequatur*, although foreign decisions' effects are considered. The children's registration in the US allowed them to establish US citizenship, recognise their Peruvian father and travel between the US and Peru.⁴⁸ The Tribunal further held that administrative bodies like the National Registry must follow national legislation and cannot declare legislation unconstitutional. Its denials of registration were based on laws that conflict with constitutional mandates.⁴⁹

The Tribunal applied the principle of proportionality to evaluate whether the provision, which prevented fathers who withhold the mother's identity from registering a child, violated the principle of equality.⁵⁰ Unlike the previous instances, the Tribunal explicitly considered the children's best interests during this process. Its review led to the following conclusions:

- i) The legislature's *intervention prohibiting discrimination* through the amendment of art 21 of the *Civil Code* created unequal treatment. Mothers may register a child with only their surnames if the father is absent, but fathers cannot do the same without revealing the mother. This discrepancy violates principles of equality and non-discrimination by arbitrarily preventing fathers from enjoying the same rights as mothers, which leads to an imbalance in legal protections.⁵¹
- ii) The case involves 'severe' legislative *intervention on equality*, stemming from sex-based discrimination prohibited by the *Constitution*.⁵² Consequently, the children were deprived of their rights to birth registration, a name and Peruvian citizenship.⁵³
- iii) The review of the *purpose of differentiated treatment against its objective by the legislator and intended legal aim* recognised that the *Civil Code Amendment*, which amended arts 20 and 21 of the *Civil Code*, sought to facilitate child registration in Peru, particularly for single mothers who wanted to register their child without disclosing the father's identity.⁵⁴ Prior to this amendment, single mothers often struggled to register newborns with the father's surname, causing approximately 550,490 minors between 2000 and 2004 to be unregistered which subsequently led to their exclusion from essential State programmes.⁵⁵ To address this pressing issue, the 2006 amendment also forced fathers to reveal the mother's identity. This

⁴⁷ *Constitution* (n 23) art 139(8); Constitutional Tribunal: *Morán Vargas v RENIEC* (n 4) (*Issues*) [3].

⁴⁸ Constitutional Tribunal: *Morán Vargas v RENIEC* (n 4) (*Issues*) [4].

⁴⁹ *ibid* (*Issues*) [2].

⁵⁰ *ibid* (*Issues*) [25].

⁵¹ *ibid* (*Issues*) [29].

⁵² *Constitution* (n 23) art 2(2).

⁵³ Constitutional Tribunal: *Morán Vargas v RENIEC* (n 4) (*Issues*) [30].

⁵⁴ *ibid* (*Issues*) [31]–[34]. The Court reviewed the arguments leading to the *Civil Code Amendment* (n 3), which amended arts 20 and 21 of the *Civil Code* (n 3) and considered Bills 02412, 03471, 03421, 06683 and 07478, opinions, and session transcripts from Committees on Women and Social Development, Justice and Human Rights, as well as Health, Population, Family and Persons with Disabilities: *ibid* (*Issues*) [32].

⁵⁵ This exclusion denied them access to social programmes and other benefits provided by the State. Statistics indicated that 18% of births (110,000 children) remained unregistered at the time of the debates, with 550,490 cases recorded between 2000 and 2004, resulting in approximately three million people lacking documentation: *ibid* (*Issues*) [33].

legislation was intended to protect and prioritise the child's rights to a name, identity and knowledge of both parents.⁵⁶

- iv) The existing regulation aligns with the *suitability* objective of ensuring timely birth registration and access to basic services (eg healthcare, education), as well as the child's rights to a name and identity. It also supports a child's awareness of both parents. Fathers are then effectively required or even pressured to show the mother's surname for registration — if they do not, their child will not have access to these services or rights.⁵⁷ The suitability review, though, did not address whether this is the most effective measure to safeguard rights.⁵⁸
- v) The Tribunal declared the contested provisions as unconstitutional, because they failed the *necessity* and *proportionality* tests: they inadequately protected a child's rights to a name, identity and knowledge of their parents' identities.⁵⁹ Similarly, r 6.1.1.2(c)(2) of *Directive 415-GRC/032* was also deemed unconstitutional.⁶⁰ When examining legislative alternatives to assess the *necessity* of the current legislation, the Tribunal emphasised that a suitable alternative must meet the same objective without violating equality.⁶¹ One such alternative would allow either parent to register a child with their surnames without communicating the other parent's identity.⁶² This approach would uphold timely birth registration for citizenship and essential services while preserving equality, as it avoids sex-based discrimination.⁶³

In conclusion, the Tribunal declared the disputed provisions of arts 20 and 21 of the *Civil Code* unconstitutional as they contradicted the *Constitution* and the *CRC*. Thus, the National Registry's decisions were found to be invalid and revoked. The Tribunal mandated the immediate registration of the children with their father's surnames and the granting of Peruvian citizenship.⁶⁴ Additionally, Congress was urged to ensure biological fathers have equal rights to register their children with their surnames without revealing the mother's identity and to create a confidential system or procedure for children to access information about the unrecorded parent if desired.⁶⁵ Finally, the Tribunal emphasised that minors born abroad to a Peruvian father or mother are considered citizens by mode of registration according to the *Constitution*.⁶⁶

⁵⁶ *ibid* (*Issues*) [35].

⁵⁷ *ibid* (*Issues*) [37].

⁵⁸ *ibid*.

⁵⁹ *ibid* (*Issues*) [42].

⁶⁰ *ibid*.

⁶¹ *ibid* (*Issues*) [38].

⁶² *ibid* (*Issues*) [40].

⁶³ *ibid* (*Issues*) [41].

⁶⁴ *ibid* (*Orders*) [1]–[3].

⁶⁵ *ibid* (*Issues*) [54], (*Orders*) [3].

⁶⁶ *ibid* (*Issues*) [18]. See *Constitution* (n 23) art 52. The Court referred to art 2(2) of the *Constitution* (n 23) and art 6 of the *Ley N° 27337 'Ley que aprueba el Nuevo Código de los Niños y Adolescentes'* [Law No 27337 'Law that approves the New Children and Adolescents Code'] (7 August 2000) ('*Children and Adolescents Code*'). Art 6 of the *Children and Adolescents Code*, which follows art 7 of the *CRC* (n 28), states: 'A child and an adolescent have the right to an identity, which includes the right to have a name, to acquire a nationality, and, to the extent possible, to know their parents and bear their surnames. They also have the right to the comprehensive development of their personality.'

V ANALYSIS

The case tackles three critical issues concerning birth registration. First, it underscores the need for reform in birth registration laws to guarantee equal rights for both biological parents when registering their child, regardless of their sex or civil status. Several countries still have legal and procedural barriers that prevent unmarried fathers from independently or jointly registering their children and appearing on the birth certificate.⁶⁷ For instance, in 2021, South Africa’s Constitutional Court found a provision in the *Births and Deaths Registration Act 51 of 1992* to be unconstitutional, as unlike married fathers, it prohibited unmarried fathers from registering their children’s births under their surname without the mother’s consent.⁶⁸ In Scotland, however, a similar regulation is still in place: unmarried fathers can only be listed on the birth certificate with the mother’s consent, either through joint registration or mutual declarations within a specified timeframe. If the mother disagrees, a court order is needed. Later re-registration is contingent again upon the mother or judicial approval. These obstacles can negatively impact children, especially if a mother is absent or suddenly deceased and the father or any third party cannot easily register the child.⁶⁹ Discriminatory provisions also undermine fathers’ parental rights and responsibilities, causing marginal fathering.⁷⁰ Thus, the Tribunal held that a child’s rights to a name and citizenship should not depend on the recognition of both parents, reinforcing the importance of birth registration as a fundamental right.

Second, it reinforces the Peruvian State’s international obligations under art 7 of the *CRC*: one, uphold a child’s rights to a name, identity and to know both parents’ identities to a maximally possible extent; two, facilitate the acquisition of citizenship; and lastly, secure their access to essential services in all circumstances. In this regard, the Tribunal emphasised the *Constitution’s*

⁶⁷ In Indonesia, for instance, children born out of wedlock are prohibited from having a legal relationship with their biological father. This is done by restricting him from registering his name on their birth certificates: E P Handayani et al, ‘Law analysis of birth registration based on the biological father’s recognition’ in Sukowiyono et al (eds), *Empowering Civil Society in the Industrial Revolution 4.0* (Routledge 2021) 23–24. Cf *Centre for Child Law v Director General: Department of Home Affairs* (n 8), 29 [71]–[72]. For barriers found in other countries, see also cases from England and Wales and Zimbabwe: Gary Clapton, ‘The birth certificate, “father unknown” and adoption’ (2014) 38(3) *Adoption and Fostering* 209, 213; Davis (n 9) 338, 343–4; Admire Chereni, ‘Underlying Dynamics of Child Birth Registration in Zimbabwe’ (2016) 24 *International Journal of Children’s Rights* 741, 745, 759–61. On other barriers, such as socio-economic barriers, see, eg, Masudah Paleker et al, ‘Closing the birth registration gap for every newborn facility birth: literature review and qualitative research’ (2023) 16(1) *Global Health Action* 1, 6–7.

⁶⁸ *Centre for Child Law v Director General: Department of Home Affairs* (n 8) 29 [71]–[72], 34–5 [88]–[89] (Victor AJ, with Jafta, Khampepe, Madlanga, Majiedt, Mhlantla, Theron and Tshiqi JJ agreeing); A E Boniface, ‘Without a Registration of Birth a Name Means Nothing: Unmarried Fathers May Give Notice of Their Child’s Birth - Centre for Child Law v Director-General Department of Home Affairs 2020 6 SA 199 (ECG)’ (2021) 84(1) *Tydskrif vir Hedendaagse Romeins-Hollandse Reg (Journal of Contemporary Roman-Dutch Law)* 131, 138–9.

⁶⁹ ‘Who can register a birth in Scotland?’, *mygovscot* (Web Page, 11 June 2021), <<https://www.mygov.scot/register-a-birth>>, archived at <perma.cc/4R53-4UCW>; Eildh McRitchie-Conacher, ‘Adding the father to the birth certificate: why do mothers get to decide?’, *Brodies* (Blog Post, 16 November 2021) <<https://brodies.com/insights/family-law/adding-the-father-to-the-birth-certificate-why-do-mothers-get-to-decide/>>, archived at <perma.cc/39NH-Z9D3>.

⁷⁰ Chereni (n 67) 760.

non-discriminatory article which safeguards equality before the law in terms of sex and origin.⁷¹ The ruling also pointed to the *Children and Adolescents Code* which implements the *CRC* at the national level.⁷² However, the Tribunal did not oblige the plaintiff and the National Registry to enlist the biological mother in the twins' birth certificates. Instead, it suggested the development of a confidential system or procedure for children to access information about the other parent if they wanted to learn more about their origin.⁷³

Third, the Tribunal's ruling has prompted broader discourse on regulating surrogacy practices in Peru in a manner that avoids discrimination, particularly as increasingly diverse family structures turn to such arrangements — either legally abroad or illegally in the country — for various reasons.⁷⁴ In this context, it appears to have been a missed opportunity for the Tribunal not to urge Congress to address the existing legal loopholes. This task would have provided protection for surrogates operating outside the law and offered support to all types of family structures, including members of the LGBTQIA+ community.⁷⁵

VI CONCLUSION

The ruling has sparked significant scholarly attention in Peru, particularly concerning surrogacy and evolving family structures, such as those involving same-sex parents.⁷⁶ Nevertheless, given the country's prevailing conservative social norms, the extent to which the Tribunal's ruling will catalyse change remains uncertain. Further research is required to understand its short- and long-term impact on birth registration practices, including potential increases in the registration of children recorded to single, unmarried fathers and to evaluate its broader implications for addressing the persistent issue of unregistered children in the country.

⁷¹ *Constitution* (n 23) art 2(2).

⁷² *Children and Adolescents Code* (n 66) art 6.

⁷³ Constitutional Tribunal: *Morán Vargas v RENIEC* (n 4) (*Issues*) [54].

⁷⁴ See, eg, Córdova Morillo (n 12); Pereira and Beatriz (n 12).

⁷⁵ See, eg, Carlos Marlon Reyes Contreras and Leddy Yomara Inga López, 'Razones que justifican la regulación normativa sobre la maternidad subrogada en el Perú' [Reasons justifying the regulatory framework for surrogacy in Peru] (Thesis, Continental University, 2025). Regarding the need to separate parental sex and gender in birth registration systems, including distinctions from birthing role, parental role and contribution to pregnancy, see, eg, Adary Zhang et al, 'Birth registration policies in the United States and their relevance to sexual and/or gender minority families: Identifying existing strengths and areas of improvement' (2022) 293(114633) *Social Science & Medicine* 1.

⁷⁶ See, eg, Castillejo Pulido and Portilla Cortez (n 9) 213.