

POPULATION RESEARCH INSTITUTE



United Nations Human Rights Committee
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COMMENT

on Draft General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights – the Right to Life

Written submission of

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Introduction

The Population Research Institute (PRI) is grateful for the opportunity to submit to the Human Rights Committee (hereinafter “Committee”) a comment on the revised draft of General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights (ICCPR). The right to life is the first and most fundamental of all human rights, a right inherent to the human person and the “prerequisite for the enjoyment of all other human rights.”¹ As the Committee has correctly stated, the right to life is “the supreme right from which no derogation is permitted even in time of public emergency”² and a right which “cannot properly be understood in a restrictive manner.”³

¹ Human Rights Comm., 120th Sess., General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the Right to Life, Revised draft prepared by the Rapporteur.

² Human Rights Comm., General Comment No. 6: Article 6 (Right to life), April 30, 1982, ¶1, U.N. Doc. HRI/GEN/1/Rev.8.

³ *Id.* at ¶15.

The Population Research Institute is an educational non-profit, non-governmental organization that promotes human rights in the context of population issues and exposes the violation of human rights in population control programs. PRI President Steven W. Mosher is the first Western eyewitness of forced abortion practiced under the one-child policy as it was first made applicable to all provinces in the People's Republic of China in 1980.

Article 6 of the ICCPR recognizes the inherent right to life for every human being. This necessarily includes the right to life for the unborn child and the human person in all stages of development and at the end of life. As such,

- (a) building upon the wide consensus of nations with respect to the right to life as agreed to by states that have adopted the ICCPR;
- (b) reiterating the obligations of states and international institutional bodies under the norms of international law;
- (c) recognizing the universal interest in upholding and protecting the fundamental and inherent right to life for everyone;

we reiterate that there is no internationally recognized "right" to abortion or "right to die." We remind the Committee that abortion, assisted suicide and euthanasia are not mentioned in the ICCPR nor are they implicit anywhere in the treaty nor in the customary norms of international law. Abortion, assisted suicide, and euthanasia are grave violations of the right to life and are incompatible with article 6 of the Covenant. As such, paragraphs 9 and 10 of the Draft General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights are incompatible with the ICCPR and should be revised per the recommendations laid out in Section VI of this written submission.

Every year, approximately 56 million unborn children are terminated through induced abortion worldwide.⁴ While not all researchers agree on this number, as abortion statistics are notoriously difficult to estimate, it is the estimate that the World Health Organization (WHO) has most recently cited.⁵ If true, it would signify that abortion is, by far, the leading cause of death worldwide, more than all top 10 leading causes of death combined.⁶ In fact, the number of unborn children terminated through abortion annually, under this estimate, nearly equals the yearly total number of deaths from all other causes combined.⁷

Abortion is a grave threat to the fundamental right to life and any change in the Committee's interpretation of ICCPR article 6 should take into account the scale of the loss of life of unborn children.

⁴ Sedgh G, Bearak J, Singh S, Bankole A, Popinchalk A, Ganatra B, et al. Abortion incidence between 1990 and 2014: global, regional, and subregional levels and trends. *The Lancet* 2016 Jul 22;388(10041):258-67.

⁵ Ganatra B, Gerdts C, Rossier C, Johnson BR, Tunçalp Ö, Assifi A, et al. Global, regional, and subregional classification of abortions by safety, 2010–14: estimates from a Bayesian hierarchical model. *The Lancet* 2017 Sep 27.

⁶ World Health Organization, *The top 10 causes of death*, Fact sheet, <http://www.who.int/mediacentre/factsheets/fs310/en/> (last updated January 2017).

⁷ Sedgh, et al. (2016) *supra* note 4 estimates 56.3 million abortions (90% UI: 52.4-70.0) annually between 2010-2014. According to the World Health Organization *id.*, there were 56.4 million deaths worldwide in 2015.

I. What the International Covenant on Civil and Political Rights Says about Abortion

Abortion is not mentioned once in the ICCPR. While the ICCPR does not explicitly prohibit states from legalizing abortion, the ICCPR does not in any way establish or recognize a “right” to abortion under any circumstances. Neither can it be found in treaty’s provisions nor in the treaty’s *travaux préparatoires* (hereinafter “*travaux*”) nor in the customary norms of international law any authorization permitting states, international institutions, or the Human Rights Committee to interpret the treaty as providing an obligation on state parties to legalize abortion under any circumstances whatsoever.

On the contrary, the ICCPR recognizes the right to life for every human person:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.⁸

The Procedure for Valid Interpretation of Treaties under the Vienna Convention on the Law of Treaties

Article 31 of the Vienna Convention on the Law of Treaties (VCLT) stipulates that treaties must be interpreted “in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”⁹ The text of any bilateral or multilateral treaty under the VCLT must be interpreted according to the ordinary meaning of the text and the original intent of the states involved during the process of drawing the treaty.

The interpretation of a treaty lies solely with the state parties unless they agree to delegate this authority otherwise. A treaty can only be interpreted by the text of the treaty, along with its preambles and annexes, subsequent treaties or instruments created by state parties in connection with the treaty, or subsequent interpretations to provisions of the treaty or the setting up of interpretative authorities as agreed to by the state parties.¹⁰

Only if a provision of the treaty is “ambiguous” or “obscure” may state parties resort to “supplementary means of interpretation” which consist primarily of the *travaux* and the circumstances under which the treaty was agreed to.¹¹

More than three-fifths of the state parties to the ICCPR are bound to observe the VCLT. Other non-state parties are also bound by the customary norms of international law to observe provisions of the VCLT. The interpretation of treaties according to the ordinary meaning and intent of the text is a customary norm of international law binding on all states.

The ordinary meaning of art. 6(1) of the ICCPR is clear. “Every human being” means every person who is a member of the *homo sapiens* species. It is a self-evident, scientific fact that the unborn child, the fetus,

⁸ International Covenant on Civil and Political Rights (ICCPR), art. 6(1), December 16, 1966, 999 U.N.T.S. 171.

⁹ Vienna Convention on the Law of Treaties (VCLT), art. 31(1), May 23, 1969, 1155 U.N.T.S. 331.

¹⁰ *Id.*, VCLT, art. 31.

¹¹ VCLT, art. 32, *supra* note 9.

and the embryo are human beings.¹² The terms “potential life” and ‘the developing fetus that may become a life’ have no medical or scientific basis and are pure philosophical constructs that have no basis in reality.

“Inherent right to life” means that the fundamental right to life is inalienable and intrinsic to every human person. This right is inherent because it cannot be granted and it cannot be taken away but necessarily follows from his or her very existence. “This right shall be protected by law” means that the right to life ought to be protected and secured by the state through the force of law. “No one shall be arbitrarily deprived of his life” means that human life cannot be taken unless through the narrowly confined means permitted by law, in self-defense, or otherwise and this right cannot be contravened by either the state or by private individuals.¹³ As such, under the ICCPR, no one should be authorized to arbitrarily, at-will take the life of an unborn child who is a human being. The law ought to protect unborn life from such arbitrary and cruel deprivation of the right to life.

The *travaux* on article 6 of the Covenant further reveals that it was a principle view among states that the treaty would, by necessity, be interpreted according to the ordinary meaning and original intent of the text and would “not admit of progressive implementation of its provisions.”¹⁴ As a result, states took careful note to “define as precisely as possible the exact scope of the right [to life] and the limitations thereto in order that contracting States would be under no uncertainty about their obligations.”¹⁵

ICCPR Article 6(5)

ICCPR article 6(5) makes clear that the right to life recognized in article 6(1) applies specifically to the unborn child. Article 6(5) states:

*Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.*¹⁶

Article 6(5) does not primarily concern the care of pregnant women for the sake of protecting women during pregnancy or in expectation of protecting a potential life. Rather, article 6(5) seeks to protect the unborn child for its own sake. The Annotations of the Secretary-General on the draft of the ICCPR noted that state parties had included article 6(5) with the express intent of protecting the unborn child, saying this provision was “inspired by humanitarian considerations and by consideration for the interests of the unborn child.”¹⁷

Several delegations expressed the need for article 6(5) to protect the unborn child.¹⁸ The representative for Peru stated to the effect that “it was important to protect mothers in order to protect their

¹² “we begin our description of the developing human with the formation and differentiation of the male and female sex cells or gametes, which will unite at fertilisation to initiate the embryonic development of a new individual”: William J. Larsen, HUMAN EMBRYOLOGY, 1 (3rd ed. 2002).

¹³ U.N. Secretary-General, *Annotation*, Chapter VI, ¶¶1-10, U.N. Doc. A/2929 (July 1, 1955).

¹⁴ *Id.* at ¶2.

¹⁵ *Id.*

¹⁶ ICCPR, art. 6(5).

¹⁷ U.N. Doc. A/2929, ¶10 *supra* note 13.

¹⁸ U.N. Doc. A/C.3/SR.813, ¶36. See also Third Comm. Rapporteur, *Report of the Third Committee*, December 5, 1957, ¶118, U.N. Doc. A/3764. See also notes 14-16.

children.”¹⁹ At the 819th meeting of the Third Committee, the Israeli delegation asserted to the effect that “the authors of the original text had specified that sentence of death should not be carried out on a pregnant woman principally in order to save the life of an innocent unborn child.”²⁰ The Japanese delegation echoed this sentiment at the following meeting stating to the effect, “the main reason for inserting the provision concerning pregnant women was to avoid involving in the death penalty a person who was not connected with the crime.”²¹

It was proposed that article 6(5) should be extended to prohibit the death penalty on any pregnant woman after birth as well as before birth.²² This proposal was rejected by the drafting committee and circumscribed only to the period prior to birth.²³ Because article 6(5) does not protect women after birth, article 6(5) is taken to protect the right to life for the unborn child who, under the law, has committed no wrong. The preceding clause of article 6(5) prohibiting the death penalty on minors further provides evidence that the intent of article 6(5) as a whole concerns children primarily.

“From the moment of conception”

Many commentators before this Committee advocating for the invention of a “right” to abortion in the ICCPR have pointed out that the treaty drafting committee rejected an amendment (A/C.3/L.654)²⁴ protecting the right to life “from the moment of conception.” While it is true that this amendment was voted down, it is logically fallacious to conclude that a rejection of the right to life “from the moment of conception” thereby allows for a positive “right” to abortion at any stage of development.

In fact, the Commission on Human Rights during the drafting of the ICCPR openly rejected a provision making exceptions to the right to life for abortion in precisely the same cases the Committee is now attempting to exempt under article 6 through General Comment No. 36. The Working Party offered a draft proposal to exempt from the right to life abortion in cases of life, rape, and in cases to prevent the birth of a child with an “unsound mind” (logically analogous to “when the foetus suffers from fatal impairment”). This proposal was soundly rejected *in toto* by the Commission.²⁵ The Chilean delegation noted that these exceptions to the right to life were indistinguishable from laws promulgated under “the Hitler regime.”²⁶

A reading of the *travaux* reveals that states generally recognized the right to life prior to birth but were uncomfortable defining this at “the moment of conception.” Several delegations expressed opposition to amendment A/C.3/L.654 not because it protected the life of the unborn child but because it was believed that the amendment’s interpretation was unclear or impossible to enforce.²⁷ Elsewhere, in discussions apart from amendment A/C.3/L.654, states found a provision declaring a right to life “from the moment of conception” in the UDHR as laudatory but “would not be of much practical importance,

¹⁹ U.N. Doc. A/C.3/SR.810, ¶14.

²⁰ U.N. Doc. A/C.3/SR.819, ¶33.

²¹ U.N. Doc. A/C.3/SR.820, ¶6.

²² U.N. Doc. A/2929, Ch. VI, ¶10.

²³ *Id. See also* U.N. Doc. A/C.3/SR.809, ¶27.

²⁴ U.N. Doc. A/C.3/L.654.

²⁵ U.N. Doc. E/CN.4/SR.35, pg. 17.

²⁶ *Id.* at pg. 12.

²⁷ U.N. Doc. A/C.3/SR.818, ¶3; U.N. Doc. A/C.3/SR.819, ¶6; U.N. Doc. A/C.3/SR.817, ¶37.

since the penal codes of most countries strictly prohibited abortion.”²⁸ Other delegations were concerned that such a provision would contravene the ability of states to authorize abortion in cases necessary to save a woman’s life.²⁹ Moreover, the vast majority of states at the drafting of the ICCPR prohibited abortion entirely or permitted it only in very limited cases in the interest of saving a woman’s life³⁰ and had no intention of changing their laws with respect to abortion when they adopted the treaty. In any event, the vote on amendment A/C.3/L.654 was notably close. As most amendments during the drafting process were adopted by overwhelming majorities approaching unanimity, the vote on A/C.3/L.654 was relatively close with 31 votes against, 20 for and 17 abstentions.³¹

Other Provisions under the ICCPR

Abortion ought to be considered a violation under other various provisions of the ICCPR. Article 7 states:

*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*³²

Abortion submits the unborn child to the most cruel, inhuman and degrading treatment imaginable, arbitrarily depriving the child to the right to life through cruel and inhuman procedures that dismember, starve or obliterate the child. Dilation and evacuation surgical abortion procedures tear apart the unborn child limb by limb. Vacuum aspiration abortion crushes and pulps the unborn child into a mucus-like amalgamation of tissue and body parts.³³ Medical abortions block the action of progesterone necessary to sustain the unborn child.³⁴ Studies have also shown that unborn children are capable of experiencing pain by at least 20-22 weeks gestation,³⁵ if not sooner, signifying that unborn children terminated through abortion at this point would necessarily amount to torture. The inhuman treatment of the unborn child through abortion are punishments so severe that they would not even be permissible under international law for the execution of a death sentence.

²⁸ Summary of the statement of Mr. Omar Loutfi (Egypt), U.N. Doc. E/CN.4/AC.3/SR.1, pg. 5.

²⁹ See explanation at note 29 and below at Section III. See *id.* at summary of statement of Mr. H. Plaine (United States of America).

³⁰ At the time, abortion in limited circumstances may have been necessary to save a woman’s life; however, this is no longer the case. In the present day, abortion is never medically necessary to save a woman’s life. See Section III below.

³¹ U.N. Doc. A/C.3/SR.820, ¶9.

³² ICCPR, art. 7.

³³ EUROPEAN DIGNITY WATCH, THE FUNDING OF ABORTION THROUGH EU DEVELOPMENT AID: AN ANALYSIS OF EU’S SEXUAL AND REPRODUCTIVE HEALTH POLICY 34 (March 2012). WARNING: GRAPHIC CONTENT.

³⁴ Cadepond F, Ulmann A, Baulieu EE. RU486 (mifepristone): mechanisms of action and clinical uses. *Annual Review of Medicine* 1997;48:129. See also Baird DT. Mode of action of medical methods of abortion. *Journal of the American Medical Women’s Association* 2000;55(3 Suppl):121.

³⁵ Gupta R, Kilby M, Cooper G. Fetal surgery and anaesthetic implications. *Continuing Education in Anaesthesia, Critical Care & Pain* 2008;8(2):71-75. See also Myers LB, Bulich LA, Hess, P, Miller, NM. Fetal endoscopic surgery: indications and anaesthetic management. *Best Practice & Research Clinical Anaesthesiology* 2004;18(2):231-258. Fetus responds to noxious stimuli in manner to adults in a way most other authors would consider as evidence of patient experiencing pain: Derbyshire SW. Fetal Pain: Do We Know Enough to Do the Right Thing? *Reproductive Health Matters* 2008;16(31Suppl):117-126.

Recent assertions by the Committee that denying women access to abortion amounts to “cruel, inhuman or degrading treatment”³⁶ is patently absurd and unconvincing as this reasoning is not found anywhere in the ICCPR, its *travaux*, nor is it adequately substantiated in any jurisprudence related to the treaty. While it is difficult for couples to endure the pain and suffering associated with being informed that their unborn child has been diagnosed with a debilitating disability, under no circumstances can the healing process give way to the cruel, inhuman, and degrading termination of the life of the unborn child through abortion. The right to life for everyone, regardless of age, status or condition, is tantamount and cannot be superseded by non-life-threatening pain and suffering. Any dispute as to where to define the point of demarcation for the right to life must not be interpreted “in a restrictive manner”³⁷ and thereby must always err on the side of the right to life for the subject concerned.

Article 2(1) of the ICCPR further stipulates that the treaty applies to all individuals “without distinction of any kind” including by “birth or other status.”³⁸ Under article 4, no derogation from articles 6 or 7 are permitted even “in time of public emergency.”³⁹ Article 16 also guarantees the right to recognition before the law without distinction.⁴⁰

The Committee’s General Comments Nos. 6 and 14 are clear in stating that the correct interpretation of article 6 is “the supreme right from which no derogation is permitted”⁴¹ and “a right which should not be interpreted narrowly.”⁴² A correct interpretation of article 6 thus cannot exclude the unborn child by permitting them to be terminated through abortion. While states may differ as to the status of rights recognized for the unborn, article 6 clearly cannot be interpreted in such a way that positively denies the right to life for the unborn child. All the exceptions to article 6 permitted under paragraph 9 of the draft General Comment No. 36 deprive the unborn child of the right to life.

In regards to the exception to the right to life for abortion in cases of rape as enumerated in paragraph 9 of the draft General Comment No. 36, the Committee would benefit to be reminded that in its own decision in *LMR v. Argentina*, the Committee found the case of rape to be inadmissible under article 6 of the Covenant.⁴³

II. International Law and Abortion

There can be found no “right” to abortion in international law neither through international agreements nor through customary international law nor through documents of international consensus.

³⁶ Human Rights Committee, Views Adopted by the Committee under Article 5(4) of the Optional Protocol, Concerning Communication No. 2425/2014, ¶7.7, U.N. Doc. CCPR/C/119/D/2425/2014 (June 15, 2017). Also Human Rights Committee, Views Adopted by the Committee under Article 5(4) of the Optional Protocol, Concerning Communication No. 2324/2013, ¶7.6, U.N. Doc. CCPR/C/116/D/2324/2013 (November 17, 2016).

³⁷ General Comment No. 6, ¶1 *supra* note 2.

³⁸ ICCPR, art. 2(1).

³⁹ ICCPR, art. 4.

⁴⁰ ICCPR, art. 16.

⁴¹ General Comment No. 14, ¶1.

⁴² General Comment No. 6, ¶1 *supra* note 2.

⁴³ Human Rights Committee, Annex to the Views of the Human Rights Committee under Article 5, Paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights – One Hundredth and First Session – Concerning Communication No. 1608/2007, ¶8.6, U.N. Doc. CCPR/C/101/D/1608/2007 (April 28, 2011).

United Nations Charter

No right to abortion is implicit in the terms of the United Nations Charter. Rather, the Preamble of the U.N. Charter proclaims that state parties aspire to “reaffirm faith in fundamental human rights” and “in the dignity and worth of the human person.”⁴⁴ As set forth in article 1, the purpose of the United Nations is to “promot[e] and encourage[e] respect for human rights and for fundamental freedoms for all without distinction.”⁴⁵

Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) is not only the precursor of and inspiration for the ICCPR in the grand project to create a universal bill of human rights, it has also enjoyed a highly esteemed status in its own right, providing the inspiration for many laws and constitutional provisions in various states worldwide. Some states have legally bound themselves to the UDHR.

Article 3 of the UDHR proclaims “everyone has the right to life.”⁴⁶ Article 1 further declares “all human beings are born free and equal in dignity and rights.” The term “everyone” has no qualification and is thus recognized as a right that all human beings are entitled to.

Many commentators advocating before this Committee for the creation of abortion “rights” have attempted to make the case that use of the term “born” in article 1 disqualifies unborn children from article 3 rights. This is clearly incorrect as the *travaux* for UDHR article 1 shows.

The term “born” was included in article 1, not to exclude the unborn from the right to life, but rather to recall French Enlightenment-era political theory on the rights of man, particularly, the philosophical thought of Jean-Jacques Rousseau. Use of the term “born” in article 1 was used to signify the universality, inalienability and the inherent-ness of human rights, not to limit these rights to persons already born. As one commentator has said, use of the term “born” in the UDHR was interpreted “to indicate the normative character and pre-positive status of freedom and equal dignity.”⁴⁷

Several nations offered an amendment to strike the word “born” from article 1 under the fear that such a term could be used to deprive the unborn of rights. However, the word “born” was retained for the reasons mentioned in the preceding paragraph. Realizing the consensus among the delegates that the word “born” did not exclude the unborn child, several states that had initially supported removing the term elected to keep the term in the document.⁴⁸ The statements of the Chilean delegation provide a good summary of the general consensus of states on the use of the term “born” in article 1:

⁴⁴ U.N. Charter, Preamble.

⁴⁵ U.N. Charter, art. 1.

⁴⁶ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/2017(III).

⁴⁷ THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A COMMON STANDARD OF ACHIEVEMENT, 59 (Guðmundur S. Alfreðsson & Asbjørn Eide, eds. 1999).

⁴⁸ The Mexican delegation expressed support for striking the term “born” from article 1: “It also supported the Lebanese proposal (A/C.3/235) to substitute “are” for “are born”, since freedom and equality were of the very essence of mankind and did not depend upon the accident of birth.” Yet, the Mexican delegation at the same time encouraged states to possibly drop the amendment as it was desirable but unnecessary: “Those delegations who

Whether to use the words "are born" or the word "are" in the first sentence was not a question of any great importance, for the purpose in both cases was to proclaim that freedom and equality were essential attributes of human personality, regardless of whether or not those rights were always recognized.⁴⁹

It is also worth noting that not a single delegation made any statement to retain the word "born" on account of protecting access to abortion. The Syrian delegation opted to keep the word "born" because "it would exclude the idea of hereditary slavery."⁵⁰ The Iraqi delegation opposed use of the term "born" because it was too aspirational and that "born" should be changed to "should be" to more accurately reflect the fact that human rights are not always respected.⁵¹

Following the vote on the amendment (A/C.3/235) to strike the word "born" from article 1, the Third Committee voted on another amendment that proposed to add the term "and remain" after the word "born" in article 1 for fear that use of the term "born" would imply that human rights could be lost later after birth. The amendment, however, was rejected by a wider margin than the amendment striking the term "born." I do not believe that the Committee is prepared to assert that based on the rejection of the "and remain" amendment this implies that the ICCPR must be interpreted in such a way that rights can be lost due to political, social or economic circumstances later in life. It is clear, both then and now, that the UDHR does not anywhere imply that the rights recognized by the Declaration can somehow be lost later in life. As such, rejection of A/C.3/235 and "and remain" do not positively assert a denial of the rights for anyone.

In its Preamble, the UDHR recognizes the "inherent dignity" of every person and the "inalienable rights of all members of the human family."⁵² As unborn children are clearly human, their right to life ought to be respected. Respect for the inalienable rights of all is, as the Preamble affirms, is "the foundation of freedom, justice and peace in the world."⁵³

Article 5 of the UDHR declares, as article 7 of the ICCPR would subsequently, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."⁵⁴ This includes the cruel, inhuman and degrading treatment and torture the unborn child is submitted to in an abortion.

Article 6 declares that all persons deserve legal recognition and protection. Article 7 proclaims that unequal protection of any class of human beings, whether born or unborn, ought to be protected by law: "All are equal before the law and are entitled without any discrimination to equal protection of the law."⁵⁵

Perhaps the most direct acknowledgement of the right to life for the unborn child mentioned in the UDHR is article 25(2):

had wished to see the word "born" omitted might be willing to consider that point as being of minor importance." U.N. Doc. A/C.3/SR.99, pg. 121-122.

⁴⁹ U.N. Doc. A/C.3/SR.99, pg. 120.

⁵⁰ *Id.* at pg. 118.

⁵¹ U.N. Doc. A/C.3/SR.96, pg. 99-100.

⁵² UDHR, Preamble.

⁵³ *Id.*

⁵⁴ UDHR, art. 5.

⁵⁵ UDHR, art. 7.

*Motherhood and childhood are entitled to special care and assistance.*⁵⁶

It is significant to note that the word “motherhood” was explicitly changed from the word “mother” in the original draft of the Declaration with the express intent of protecting the life of the unborn child. The change was proposed by Representative Begtrup on behalf of the Commission on the Status of Women at the Eighth Meeting of the Working Group on the Declaration of Human Right. Mrs. Begtrup

*welcomed the separation of the provisions concerning mothers from those concerning children. She proposed that the word "Mothers" be replaced by the word "Motherhood", in order to cover the pre-natal state.*⁵⁷

As with the ICCPR, some delegates in the Working Group for the UDHR attempted to insert the phrase “from the moment of conception” into the document. In the end, the phrase was omitted but not because a majority of state parties wanted to secure abortion “rights” nor because states did not respect the right to life for the unborn. The phrase was offered by the Lebanese delegation but was later withdrawn both for the sake of brevity and because “they considered that the idea to be implied in the general terms of article 4 [what is now article 3].”⁵⁸ The Chinese delegation, which had opposed the inclusion of the phrase, responded in the affirmative saying to the effect “the wording of article 4 did not imply but actually contained the idea expressed by the Lebanese representative.”⁵⁹ The U.K. delegation conceded that the idea that everyone has the right to life “from the moment of conception” could be included in the interpretation of article 3 even if it did not necessarily follow.⁶⁰ The U.S. delegation stated that it believed the terms of article 3 were broad enough to encompass the notion of “from the moment of conception” and opted to exclude it for stylistic purposes in order to keep the wording concise and broad.⁶¹ Thus, while the UDHR does not explicitly state the right to life “from the moment of conception,” most states recognized the idea as a valid interpretation of article 3 and there is no basis for a categorical exclusion of this idea from article 3. Nor can it be concluded from a rejection of the phrase “from the moment of conception” that the unborn child does not possess the right to life at any point prior to birth.

Customary International Law

While the definition of what constitutes customary international law is a subject of much debate, most experts agree that customary international law is derived from a consistent and widely applied state practice implemented by a vast majority of states and states must follow this practice out of a sense of legal obligation.⁶²

While other sources contribute to the development of customary international law, state practice and the sense of legal obligation under which states act are far more important to the development of international law, and no customary norm can be established without them.

⁵⁶ UDHR, art. 25(2).

⁵⁷ U.N. Doc. E/CN.4/AC.2/SR.8, pg. 12.

⁵⁸ U.N. Doc. E/CN.4/AC.1/SR.35, pg. 5.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at pg.5-6.

⁶² Restatement of the Law Third, Foreign Relations Law of the United States §102 (American Law Institute 1987).

Paragraph 9 of the draft of General Comment No. 36 asserts the circumstances under which states “must” legalize abortion:

States parties must provide safe access to abortion to protect the life and health of pregnant women, and in situations in which carrying a pregnancy to term would cause the woman substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or when the foetus suffers from fatal impairment.⁶³

Yet currently, a majority of state parties to the ICCPR and a firm majority of U.N.-recognized states (56%) have not legalized abortion under even the minimum cases stipulated by the Human Rights Committee.⁶⁴ Far fewer states have legalized abortion out of sense of legal obligation. As a result, under these conditions, it is impossible to assert that access to “safe abortion”⁶⁵ under these circumstances is a customary norm under international law.

A significant number of states recognize the right to life from the moment of conception in their constitutions including Ecuador (article 45), Dominican Republic (article 37), Hungary (article II), El Salvador (article 1), Madagascar (Title 1, article 19), Philippines (article II, §12), Guatemala (article 3), and Paraguay (article 4). Other states including Chile (article 19(1)), Honduras (article 67), Ireland (article 40.3.3), Peru (article 2.1), and Slovakia (article 15(1)) have constitutional provisions recognizing the right to life for the unborn child. The Constitution of Nicaragua, borrowing the language from the ICCPR, recognizes the “inherent” right to life.⁶⁶ This provision is interpreted as guaranteeing the right to life for the unborn child. In Andorra, where abortion is illegal, the Andorra Constitution recognizes the right to life and “fully protects it in its different phases.”⁶⁷

Many states would consider the right to life for the unborn child to be a universal and inalienable right from which no derogation should be allowed. For many, the right to life for the unborn child is considered to have the character of *jus cogens*. It is thus incorrect, and in fact impossible, to meaningfully assert that abortion access is a “right” recognized under international law under any circumstances or that states have any obligation to legalize abortion under any circumstances.

In any event, customary norms of international law cannot supersede an international treaty agreement unless state parties agree to such. Unless customary international law was clearly established before the treaty was drafted or unless the treaty contravenes a peremptory norm, treaties supersede customary international law.⁶⁸

Convention on the Rights of the Child

⁶³ Human Rights Committee, General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, On the Right to Life, revised draft prepared by the rapporteur, ¶19.

⁶⁴ See also Jonathan Abbamonte, *United Nations Human Rights Committee Pressures Ireland to Legalize Abortion*, POPULATION RESEARCH INSTITUTE, June 30, 2017, <https://www.pop.org/united-nations-human-rights-committee-pressure-ireland-to-legalize-abortion/>.

⁶⁵ Abortion is never “safe” for the unborn child who dies as a result.

⁶⁶ Nicaragua Constitution of 1987, art. 23.

⁶⁷ Andorra Constitution of 1993, art. 8.

⁶⁸ Restatement of the Law Third, Foreign Relations Law of the United States §102 (American Law Institute 1987).

The Convention on the Rights of the Child (CRC) in its Preamble, echoing the 1959 Declaration of the Rights of the Child, declares

*the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.*⁶⁹

The ordinary language interpretation of this clause under the VCLT⁷⁰ acknowledges the right to life for the unborn child. While many commentators advocating for the creation of abortion “rights” have claimed this does not preclude the possibility of abortion as revealed in the Convention’s *travaux*, it certainly does not abrogate the right to life for the unborn. It would be incorrect from both a legal and a human rights perspective to take measures to positively deny the right to life to unborn children under certain circumstances per the Convention.

Article 6 recognizes that every child has “the inherent right to life.”⁷¹ Article 1 of the CRC defines the child as “every human being below the age of 18 years” thus establishing an upper limit for persons legally classified as a child but establishing no lower limit.⁷² In light of the preamble, we have no choice but to assume that the child “before as well as after birth” qualifies as a “child” under this definition.

Article 2 establishes that the rights recognized by the CRC should be respected “without discrimination of any kind” including “birth or other status.”⁷³ Article 3 declares that in all legal matters “the best interests of the child shall be a primary consideration” and that “States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being.”⁷⁴ Thus, the interests of women in family planning or sexual and reproductive health can never be cited as reasons to supersede the right to life for the unborn child.

International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the right to “the highest attainable standard of physical and mental health” for the unborn child.⁷⁵ Article 12(2)(a) specifically calls on state parties to take the necessary steps for:

*The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child.*⁷⁶

International Conference on Population and Development (1994)

⁶⁹ Convention on the Rights of the Child (CRC), Preamble, Nov. 20, 1989, 1577 U.N.T.S. 3.

⁷⁰ VCLT, art. 31.

⁷¹ CRC, art. 6, *supra* note 69.

⁷² CRC, art. 1.

⁷³ CRC, art. 2.

⁷⁴ CRC, art. 3(1) and 3(2).

⁷⁵ International Covenant on Economic, Social and Cultural Rights (ICESCR), art. 12, December 16, 1966, 993 U.N.T.S. 3.

⁷⁶ *Id.*, ICESCR, art. 12(1).

The Programme of Action from the International Conference on Population and Development in Cairo in 1994 (ICPD) is not customary international law and creates no legal obligation on states.

Nevertheless, the ICPD Programme of Action is widely cited as a landmark international agreement on the voluntary nature of population assistance and sexual and reproductive health. A total of 179 states agreed to the Programme of Action. The European Union has further bound itself legally to observe the ICPD Programme of Action for international development and cooperation assistance financed through the Development Cooperation Instrument (DCI)⁷⁷ and mentions having regard to major U.N. and other international conferences in the Preamble of the Cotonou Agreement which governs the European Development Fund (EDF).⁷⁸ As such, in some states, the Programme of Action has taken the force of law, but generally it serves as a document indicative of the international consensus on population assistance.

Paragraph 8.25 of the Programme of Action is very clear that the decision of whether or not to legalize abortion lies solely with states through voluntary legislative means:

Any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process.⁷⁹

The United Nations Charter binds all state parties and United Nations institutions to respect the autonomy of states on matters pertaining to the Charter that are proper to the jurisdiction of states:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.⁸⁰

Paragraph 8.25 also declares “In no case should abortion be promoted as a method of family planning.” Circumstances where “carrying a pregnancy to term would cause the woman substantial pain or suffering” are not defined and could include circumstances where abortion is used as a method of family planning. For instance, abortions in cases of fetal disability are clearly carried out for the purposes of family planning as the unborn child with a defective or undesirable attribute or health condition is terminated. This is clear as long as the unborn child is alive. Unborn children diagnosed with “fatal

⁷⁷ Regulation (EU) No 233/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for development cooperation for the period 2014-2020 (OJ L 77, 15.3.2014, p. 44–76), 44, 59, & 68.

⁷⁸ The original Cotonou Agreement directly referenced the ICPD at Cairo in its Preamble. See Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (OJ L 317, 15.12.2000, p. 3-286), 5. The Preamble was later revised to refer to “UN and other international conferences”: Agreement amending for the second time the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, as first amended in Luxembourg on 25 June 2005 (OJ L 287, 4.11.2010, p. 3-49), 11.

⁷⁹ International Conference on Population and Development, September 5-13, 1994, *Programme of Action of the International Conference on Population and Development*, ¶8.25, U.N. Doc. A/CONF.171/13/Rev.1, U.N. Sales No. 95.XIII.18 (1995).

⁸⁰ U.N. Charter, art. 2, para. 7.

impairments” such as anencephaly or Trisomy 18 (Edward’s Syndrome) often live days and even years after birth.^{81,82,83}

Below is a picture of Nickolas Coke who lived to be three years old with anencephaly. Legislation legalizing abortion in cases of “fatal impairment” would allow for the unjust and selective termination of precious lives such as Nickolas.



A high probability that an unborn child will not survive to birth or will likely perish soon thereafter is a fallacious argument that has no foundation in the ICCPR. The right to life is not qualified or accorded on the basis of how many days a person is projected to live. The probability of death following a prognosis has no bearing on whether persons are accorded the right to life under the ICCPR as the treaty recognizes this right “without distinction of any kind.”⁸⁴

Urging states to legalize abortion, particularly in cases where abortion is used as a method of family planning, violates the international consensus agreed to at the ICPD.

⁸¹ Jaywon Choe, ‘He Taught Us How to Be a Family’: Heartbreak for Parents as Boy Born without a Brain Dies After Three-Year ‘Miracle Life’, DAILY MAIL (Nov. 1, 2012), <http://www.dailymail.co.uk/news/article-2226647/Nickolas-Coke-Boy-born-brain-dies-3-year-miracle-life.html>.

⁸² Joy Orpen, *Against All Odds*, INDEPENDENT.IE (Mar. 1, 2009), <http://www.independent.ie/lifestyle/health/against-all-odds-26517562.html>.

⁸³ Sarah Zagorski, *Baby with Trisomy 13 Defies Odds After Parents Reject Abortion, She’s Now 7*, LIFENEWS (Sep. 29, 2014), <http://www.lifenews.com/2014/09/29/baby-with-trisomy-13-defies-odds-after-parents-reject-abortion-she-s-now-7/>. It is worth noting that Trisomy 13 (Patau Syndrome) is same condition that Siobhán Whelan’s unborn child was diagnosed with and the condition for which the Committee condemned Ireland for not allowing abortion for: U.N. Doc. CCPR/C/119/D/2425/2014 *supra* note 36.

⁸⁴ ICCPR, art. 2(1).

Doha Declaration

In response to General Assembly resolution 58/15 welcoming the Government of Qatar to host an international conference to celebrate the tenth anniversary of the International Year of the Family in 2004,⁸⁵ representatives of governments and civil society met in Doha from November 29-30, 2004 to adopt the Doha Declaration,⁸⁶ the outcome document of the conference. On December 6, 2004, the General Assembly adopted a resolution cosponsored by 149 member states, taking note of the outcome of the Doha Conference.⁸⁷

The Doha Declaration proclaimed that all persons, including the unborn child, have an inherent right to life that deserves special protection “before as well as after birth”:

*We recognize the inherent dignity of the human person and note that the child, by reason of his physical and mental immaturity, needs special safeguards and care before as well as after birth. Motherhood and childhood are entitled to special care and assistance. Everyone has the right to life, liberty and security of person.*⁸⁸

The Declaration further reiterated the need to protect the right to life through “all stages,” calling upon all governments to respect this right:

*Evaluate and reassess government policies to ensure that the inherent dignity of human beings is recognized and protected throughout all stages of life.*⁸⁹

III. Setting Straight Some Myths about Abortion

Abortion is Never Medically Necessary

Among treaty monitoring bodies, United Nations institutions, and non-governmental organizations, it is a pervasive and blindly held myth that abortion is necessary in limited circumstances to save a woman’s life. This belief, however, has no medical or scientific basis. Let it be made very clear: **induced abortion is never medically necessary to save a woman’s life.**

A statement published in the *Irish Times* by five leading gynecologists supports this assertion:

*We affirm that there are no medical circumstances justifying direct abortion, that is, no circumstances in which the life of a mother may only be saved by directly terminating the life of her unborn child.*⁹⁰

⁸⁵ G.A. Res. 58/15, ¶2, U.N. GAOR, 58th Sess., U.N. Doc. A/RES/58/15, at 2 (Dec. 15, 2003).

⁸⁶ Letter dated 2 December 2004 from the Chargé d’affaires a.i. of the Permanent Mission of Qatar to the United Nations addressed to the Secretary-General, U.N. Doc. A/59/592 (Dec. 3, 2004).

⁸⁷ G.A. Res. 59/111, ¶4, U.N. GAOR 59th Sess., U.N. Doc. A/RES/59/111, at 1 (Feb. 15, 2005).

⁸⁸ *Surpa* note 86 at ¶2 at 3.

⁸⁹ *Id.* at ¶5 at 4.

⁹⁰ Eamon O’Dwyer, David Jenkins, Kieran O’Driscoll, Julia Vaughan, & John Bonner, *Statement by Obstetricians*, THE IRISH TIMES (Apr. 1, 1992).

While pregnancy is certainly too frequently the cause of mortality and life-threatening morbidity, there are no circumstances or health conditions under which abortion is the only viable option. It is true that some life-threatening conditions such as pre-eclampsia, eclampsia, cancer and sepsis (to name a few) may in rare circumstances require that the unborn child be removed from the uterus in order to save a woman's life; however, abortion is not the only option, nor is it the best option in these circumstances.

The World Health Organization (WHO) recommends low-dose aspirin for the prevention of pre-eclampsia for at-risk women⁹¹ and magnesium sulfate for treatment of eclampsia and severe pre-eclampsia.⁹² A recent Cochrane review incorporating 6 trials involving 11,444 women found that magnesium sulfate treatment significantly reduces the risk of eclampsia (RR 0.41, 95% CI 0.29 – 0.58) and greatly reduces the risk of maternal mortality, though not statistically significant (RR 0.54, 95% CI 0.26 – 1.10).⁹³

Additionally, cancer treatment during pregnancy is possible. Studies have shown that chemotherapy during pregnancy generally does not significantly increase central nervous system, cardiac, or auditory morbidity later in life nor does it appreciably increase the incidence of congenital abnormalities.^{94,95,96} Generally, chemotherapy has been found to be less harmful to the health of the unborn child than early induced (iatrogenic) preterm delivery.⁹⁷ Oncological breast surgery is considered safe throughout pregnancy⁹⁸ and chemotherapy is believed to generally be safe after the first trimester.⁹⁹

According to Frédéric Amant, a leading figure in the field of cancer during pregnancy, "pregnant women with cancer can be treated just as effectively as non-pregnant women."¹⁰⁰ And in a book titled *The Case for Legalized Abortion Now*, edited by Alan Guttmacher who served as President of Planned Parenthood during the 1960s, the following claim was made:

*Today it is possible for almost any patient to be brought through pregnancy alive, unless she suffers from a fatal illness such as cancer or leukemia, and, if so, abortion would be unlikely to prolong, much less save life.*¹⁰¹

⁹¹ World Health Organization, WHO RECOMMENDATIONS FOR PREVENTION AND TREATMENT OF PRE-ECLAMPSIA AND ECLAMPSIA 14 (2011).

⁹² *Id.* at 20-23.

⁹³ Duley L, Gülmezoglu AM, Henderson-Smart DJ, Chou D. Magnesium sulphate and other anticonvulsants for women with pre-eclampsia. *Cochrane Database Syst Rev* 2010 Nov 10;(11):CD000025. doi: 10.1002/14651858.CD000025.pub2.

⁹⁴ Amant F, Van Calsteren K, Halaska MJ, Gziri MM, Hui W, Lagae L, et al. Long-term cognitive and cardiac outcomes after prenatal exposure to chemotherapy in children aged 18 months or older: an observational study. *The Lancet Oncology* 2012;13(3):256-264. doi: [http://dx.doi.org/10.1016/S1470-2045\(11\)70363-1](http://dx.doi.org/10.1016/S1470-2045(11)70363-1).

⁹⁵ Cardonick E, Iacobucci A. Use of chemotherapy during human pregnancy. *The Lancet Oncology* 2004 May;5(5):283-91.

⁹⁶ Shapira T, Pereg D, Lishner M. How I treat acute and chronic leukemia in pregnancy. *Blood Reviews* 2008 Sep 30;22(5):247-59.

⁹⁷ Amant et al. (2012) & Cardonick (2004), *supra* notes 94 & 95.

⁹⁸ Amant F, Loibl S, Neven P, Van Calsteren K. Breast cancer in pregnancy. *The Lancet* 2012 Feb 1;379(9815):570-9.

⁹⁹ Cardonick et al. (2004), *supra* note 95.

¹⁰⁰ Frédéric Amant, *Cancer in pregnancy*, International Network on Cancer, Infertility and Pregnancy (INCIPI), <http://cancerinpregnancy.org/>.

¹⁰¹ THE CASE FOR LEGALIZED ABORTION Now, 9 (Alan Frank Guttmacher ed. 1967).

Legalization of abortion is entirely unnecessary for the treatment of life-threatening ectopic pregnancies. In no country on earth is the treatment of an ectopic pregnancy illegal.

In the exceptionally rare circumstances where uterine evacuation is absolutely unavoidable, a physician may need to induce an early delivery, even if this results in the death of the unborn child. This is done not to terminate the life of the unborn child but rather to save the life of the mother. Every effort is made to save *both* the life of the mother *and* the unborn child.

As many medical experts agree, early induced labor is fundamentally different from an abortion which directly kills the unborn child whether through surgical dismemberment, vacuum aspiration, lethal injection, starvation or by other means. In 2000, Professor John Bonnar, then-Chairman of the Institute of Obstetricians and Gynaecologists, testified before an Oireachtas committee of the Irish Government:

It would never cross an obstetrician's mind that intervening in a case of pre-eclampsia, cancer of the cervix or ectopic pregnancy is abortion. They are not abortion as far as the professional is concerned, these are medical treatments that are essential to save the life of the mother.¹⁰²

Early induced labor should only be used if no other intervention is possible. But if resorted to, the procedure respects the life of both the unborn child and the mother. Every effort ought to be given in securing the health and survival of both the mother and her infant as the right to life is tantamount for "every human being."¹⁰³ There is no appreciable medical advantage to performing a surgical abortion over inducing labor or performing a preterm Caesarean section. And with improving medical technology and practice, premature infants born at earlier gestations, even as early as 20 weeks,¹⁰⁴ are surviving and thriving more than ever before.

Even in low-resource settings, it is never admissible or preferable to perform an abortion to save a woman's life. In rare circumstances when early induced labor is necessary to save a woman's life, the drugs that would be utilized for this purpose are no more expensive or hard to come by than those that would be used for an induced abortion in the same low-resource settings.

Abortion is not a human right

Abortion is not recognized as a human right by any international treaty and is certainly not considered a right under customary international law. Neither the ICPD Programme of Action nor the Platform for Action from the Fourth World Conference on Women in Beijing in 1995 assert a "right" to abortion. Rather, the Cairo and Beijing conferences affirmed women's right to voluntary family planning and sexual and reproductive health. As the ICPD Programme of Action makes clear, "Any measures or

¹⁰² An Bille um an gCúigíú Leasú is Fiche ar an mBunreacht (Beatha Dhaonna le linn Toirchis a Chosaint), 2001: An Dara Céim. Twenty-fifth Amendment of the Constitution (Protection of Human Life in Pregnancy) Bill, 2001: Second Stage, (Dec. 7, 2001),

<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/seanad2001120700005>.

¹⁰³ ICCPR, art. 6(1).

¹⁰⁴ Monica Burke, *To Prevent Painful Suffering for Children, Late-Term Abortion Should Be Banned*, The DAILY SIGNAL (Oct. 2, 2017), <http://dailysignal.com/2017/10/02/to-prevent-painful-suffering-for-children-late-term-abortion-should-be-banned/>.

changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process.”¹⁰⁵

Abortion is not health care

Because abortion is never medically necessary, abortion cannot properly be considered a health care intervention. Rather, abortion directly kills the life of the unborn child. Moreover, abortion is harmful to

¹⁰⁵ ICPD, ¶8.25 *supra* note 79.

women's physical, psychological, and emotional health.^{106,107,108,109,110,111,112,113,114,115,116,117,118,119,120,121,122,123}

Making abortion illegal does not “force” anyone to undergo “unsafe abortion”

The legal status of abortion does not force anyone to resort to “unsafe abortion.”¹²⁴ A woman’s decision to undertake an “unsafe abortion” is not caused by positive law designed to protect the life of the

¹⁰⁶ Le DC, Kubo T, Fujino Y, Sokal DC, Vach TH, Pham TM, Matsuda S. Reproductive factors in relation to ovarian cancer: a case-control study in Northern Vietnam. *Contraception* 2012 Nov 30;86(5):494-9.

¹⁰⁷ Scholten BL, Page-Christiaens GC, Franx A, Hukkelhoven CW, Koster MP. The influence of pregnancy termination on the outcome of subsequent pregnancies: a retrospective cohort study. *BMJ Open* 2013 Jan 1;3(5):e002803.

¹⁰⁸ Coleman PK, Coyle CT, Shuping M, Rue VM. Induced abortion and anxiety, mood, and substance abuse disorders: Isolating the effects of abortion in the national comorbidity survey. *Journal of Psychiatric Research* 2009 May 31;43(8):770-6.

¹⁰⁹ Cougle JR, Reardon DC, Coleman PK. Depression associated with abortion and childbirth: a long-term analysis of the NLSY cohort. *Med Sci Monit* 2003 Apr;9(4):CR105-12.

¹¹⁰ Cougle JR, Reardon DC, Coleman PK. Generalized anxiety following unintended pregnancies resolved through childbirth and abortion: a cohort study of the 1995 National Survey of Family Growth. *J Anxiety Disord* 2005;19(1):137-42.

¹¹¹ Broen AN, Moum T, Bödtker AS, Ekeberg O. Psychological impact on women of miscarriage versus induced abortion: a 2-year follow-up study. *Psychosom Med* 2004 Mar-Apr;66(2):265-71.

¹¹² Fergusson DM, Horwood LJ, Boden JM. Reactions to abortion and subsequent mental health. *Br J Psychiatry* 2009 Nov;195(5):420-6. doi: 10.1192/bjp.bp.109.066068.

¹¹³ Fergusson DM, Horwood LJ, Ridder EM. Abortion in young women and subsequent mental health. *J Child Psychol Psychiatry* 2006 Jan;47(1):16-24.

¹¹⁴ Mota NP, Burnett M, Sareen J. Associations between abortion, mental disorders, and suicidal behaviour in a nationally representative sample. *Can J Psychiatry* 2010 Apr;55(4):239-47.

¹¹⁵ Reardon DC, Cougle JR, Rue VM, Shuping MW, Coleman PK, Ney PG. Psychiatric admissions of low-income women following abortion and childbirth. *CMAJ* 2003 May 13;168(10):1253-6.

¹¹⁶ Brind J, Chinchilli VM, Severs WB, Summy-Long J. Induced abortion as an independent risk factor for breast cancer: a comprehensive review and meta-analysis. *Journal of Epidemiology & Community Health* 1996 Oct 1;50(5):481-96.

¹¹⁷ Coleman PK, Reardon DC, Rue VM, Cougle J. State-funded abortions versus deliveries: a comparison of outpatient mental health claims over 4 years. *Am J Orthopsychiatry* 2002 Jan;72(1):141-52.

¹¹⁸ Selena Ewing, *Women and Abortion: An Evidence Based Review*, WOMEN’S FORUM AUSTRALIA (2005).

¹¹⁹ Huang Y, Zhang X, Li W, Song F, Dai H, Wang J, Gao Y, Liu X, Chen C, Yan Y, Wang Y. A meta-analysis of the association between induced abortion and breast cancer risk among Chinese females. *Cancer Causes & Control* 2014 Feb;25(2):227.

¹²⁰ Bhadaria A S, Kapil U, Sareen N, Singh P. Reproductive factors and breast cancer: A case-control study in tertiary care hospital of North India. *Indian J Cancer* 2013;50:316-21.

¹²¹ Jiang AR, Gao CM, Ding JH, Li SP, Liu YT, Cao HX, Wu JZ, Tang JH, Qian Y, Tajima K. Abortions and breast cancer risk in premenopausal and postmenopausal women in Jiangsu Province of China. *Asian Pacific Journal of Cancer Prevention* 2012;13(1):33-5.

¹²² Coleman PK, Reardon DC, Cougle JR. Substance use among pregnant women in the context of previous reproductive loss and desire for current pregnancy. *British Journal of Health Psychology* 2005 May 1;10(2):255-68.

¹²³ Coleman PK. Abortion and mental health: quantitative synthesis and analysis of research published 1995-2009. *The British Journal of Psychiatry* 2011; 199: 180-186.

¹²⁴ “unsafe abortion” placed in scare quotes because abortion is always unsafe for the unborn child who is selectively terminated as a result.

unborn child any more than laws prohibiting stealing “force” unscrupulous actors to undertake “unsafe” activities to take ownership of capital that they are not legally entitled to.

There is no logical necessity between an unwanted pregnancy and a “need” for an abortion. Studies have shown that the intendedness of a pregnancy is a poor predictor of a woman’s decision to have an abortion.¹²⁵ Many unwanted pregnancies subsequently become wanted later in pregnancy.¹²⁶ In any event, however, the ‘wantedness’ of an unborn child or the ‘wantedness’ of any human being for that matter has no bearing or implication on a person’s worth or a person’s right to life. The ICCPR recognizes the right to life for all “without distinction of any kind.”¹²⁷

No Association Exists Between Legalized Abortion and Lower Abortion-Related Maternal Mortality

Statistical analysis of African and Latin American countries has also shown that legalized abortion does not correlate with lower maternal mortality due to “unsafe abortion.”¹²⁸

A recent study of vital statistics in Mexican states over a ten year period showed that the permissiveness of abortion laws had no statistically significant effect on either the maternal mortality ratio (MMR) or the maternal mortality ratio due to induced abortion; in fact, MMR and MMR due to induced abortion were found to be significantly lower in states with less permissive abortion laws than in states with more permissive abortion laws.¹²⁹

IV. “Termination of Life” Impermissible under Article 6

Paragraph 10 of the draft revision of General Comment No. 36 before the Committee is incompatible with the recognition of the right to life for “every human being”¹³⁰ “without distinction of any kind.”¹³¹ “No derogation” from article 6 is permissible¹³² and states have an obligation to protect this right by law.¹³³ This right must be protected through law regardless of the status of the aggressor by which this

¹²⁵ Santelli JS, Speizer IS, Avery A, Kendall C. An exploration of the dimensions of pregnancy intentions among women choosing to terminate pregnancy or to initiate prenatal care in New Orleans, Louisiana. *American Journal of Public Health* 2006 Nov;96(11):2009-15.

¹²⁶ See Coleman et al. (2008), *supra* note 108. See also Rebecca Oas, *From Unwanted Pregnancy to Wanted Child*, CENTER FOR FAMILY & HUMAN RIGHTS (Apr. 9, 2015), <https://c-fam.org/flyer/from-unwanted-pregnancy-to-wanted-child/>.

¹²⁷ ICCPR, art. 2(1).

¹²⁸ Stefano Gennarini & Rebecca Oas, SECURING A BETTER FUTURE FOR MOTHERS IN THE POST-2015 DEVELOPMENT AGENDA: EVALUATING THE ICPD OPERATIONAL REVIEW, INTERNATIONAL ORGANIZATIONS RESEARCH GROUP (IORG), Briefing Paper No. 11, 5-6 (Mar. 28, 2014).

¹²⁹ Koch E, Chireau M, Pliego F, Stanford J, Haddad S, Calhoun B, et al. Abortion legislation, maternal healthcare, fertility, female literacy, sanitation, violence against women and maternal deaths: a natural experiment in 32 Mexican states. *BMJ Open* 2015 Feb 1;5(2):e006013.

¹³⁰ ICCPR, art. 6(1).

¹³¹ ICCPR, art. 2(1).

¹³² ICCPR, art. 4(2).

¹³³ ICCPR, art. 6(1).

right is threatened, that is, regardless of whether the right to life is threatened by “public authorities” or “by private persons.”¹³⁴ This includes the threat an individual may pose to him- or herself.¹³⁵

Article 25 of the UDHR recognizes the right everyone has to health, well-being and security in the event of sickness or in the event of other circumstances beyond his control.¹³⁶ As assisted suicide and euthanasia is never in the interest of the health and well-being of the individual but rather aims at their death, article 25 is applicable.

The Convention on the Rights of Persons with Disabilities (CRPD) recognizes the right to life for persons with disabilities on an equal basis with non-disabled individuals and obligates state parties to take “all necessary measures to ensure its effective enjoyment.”¹³⁷

Article 25 of the CRPD guarantees the “right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability.”¹³⁸ As assisted suicide and euthanasia do not secure health for an individual but rather death, a purported “right to die” is an affront to the CRPD. The CRPD prohibits euthanasia on the basis of disability, obligating state parties to:

*Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.*¹³⁹

Assisted suicide and euthanasia are grave offenses against the dignity of the human person. The CRPD recognizes that everyone has a right not to be subjected to inhuman or degrading treatment.¹⁴⁰

Article 17 of the CRPD guarantees for persons with disabilities “a right to respect for his or her physical and mental integrity.”¹⁴¹

V. The Committee’s Obligations

The Human Rights Committee has no authority and no right to recommend that state parties legalize abortion under any circumstances or any conditions.

While the ICCPR does not explicitly prohibit abortion, the treaty does not in any way provide for the possibility that state parties are obligated to legalize abortion under any circumstance. The treaty very clearly recognizes the right to life for “every human being” and the *travaux* of the ICCPR clearly shows that most, if not all, state parties interpreted the treaty, specifically article 6, as allowing for the protection of the right to life for the unborn child.

¹³⁴ U.N. Doc. A/2929, Chapter VI, para. 4.

¹³⁵ At the time of the drafting of the ICCPR, a “right” to assisted suicide or euthanasia was unthinkable and thus never discussed in the treaty’s *travaux*. Nevertheless, it can be understood that the intent and purpose of the article 6(1) categorically excludes any “right to die.” See text and footnotes in the following paragraphs.

¹³⁶ UDHR, art. 25.

¹³⁷ Convention on the Rights of Persons with Disabilities (CRPD), art. 10, December 13, 2006, 2515 U.N.T.S. 3.

¹³⁸ CRPD, art. 25.

¹³⁹ CRPD, art. 25(f).

¹⁴⁰ CRPD, art. 15.

¹⁴¹ CRPD, art. 17.

The ICCPR grants the Human Rights Committee the right to study reports on the progress state parties have made in securing the rights recognized in the treaty.¹⁴² The Human Rights Committee may also offer “general comments as it may consider appropriate,” may request reports from state parties, and may transmit their comments on state party reports to the Economic and Social Council.¹⁴³

The Committee has no right to urge state parties to adopt measures on topics not related to or contrary to the state parties’ obligations under the ICCPR. The Committee also has no right to place pressure on state parties accept an interpretation of the treaty not agreed to by state parties. The Committee may not attempt to have state parties to the VCLT accept an interpretation of the ICCPR that does not accord with articles 31, 32, or 33 of the VCLT. The Committee also has no right to urge state parties to the ICCPR to accept an interpretation of the treaty contrary to the ordinary meaning of the text in the context of its intent and purpose.

As such, the Human Rights Committee has no right or authority to issue a general comment interpreting article 6 of the ICCPR as placing an obligation on state parties to make abortion, assisted suicide, or euthanasia available under any circumstances whatsoever.

Therefore, we make the following recommendations for amending the revised draft for General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life:

VI. Recommendations

- Strike out Paragraph 9 from General Comment No. 36 entirely.
- Strike out the following from Paragraph 10: “[While” and “of personal autonomy” and “, without violating their other Covenant obligations,” and “At the same time, States parties [may allow] [should not prevent] medical professionals to provide medical treatment or the medical means in order to facilitate the termination of life of [catastrophically] afflicted adults, such as the mortally wounded or terminally ill, who experience severe physical or mental pain and suffering and wish to die with dignity.²² In such cases, States parties must ensure the existence of robust legal and institutional safeguards to verify that medical professionals are complying with the free, informed, explicit and, unambiguous decision of their patients, with a view to protecting patients from pressure and abuse.²³” Change the first “to” in the first sentence to “of.” Leave the rest of paragraph 10 as it stands.
- Replace paragraph 9 with the following: “The right to life is inherent to every human being.¹⁴⁴ While not all state parties ban the practice of abortion, a significant proportion of state parties recognize

¹⁴² International Covenant on Civil and Political Rights (ICCPR), art. 40(1).

¹⁴³ *Id.* and ICCPR, art. 40(4).

¹⁴⁴ ICCPR, art. 6(1).

the right to life prior to birth¹⁴⁵ and have afforded, through law, protection for the child before as well as after birth.¹⁴⁶ All state parties have at least some restrictions on the availability of abortion. The Covenant should not be interpreted in such a way to deny state parties the right to limit abortion through regulation or law as they see necessary to fulfil their obligations under article 6¹⁴⁷ and the right to life in general.¹⁴⁸ State parties may not interpret article 6 in such a way that permits abortion to be used to selectively eliminate the child prior to birth by reason of his or her race, colour, sex, national or social origin.¹⁴⁹ Forced abortion is never justified and state parties should take steps to ensure that the practice of forced abortion is eradicated.¹⁵⁰ State parties should also take steps to reduce the incidence of unsafe abortion through education about the harms of unsafe abortion and research to identify what factors make women more likely to choose an unsafe abortion.¹⁵¹ State parties should also take positive measures to provide quality care and financial support for women with crisis pregnancies and for their child before as well as after birth.¹⁵² States parties must also ensure the availability of adequate prenatal and postnatal health care for pregnant women.¹⁵³ State parties must take tangible steps to eliminate the incidence of rape and incest by identifying the root causes of these crimes (including gender inequality, cultural bias, mental illness, and the collapse of family structures), by addressing the root causes through appropriate policies, and by putting in place and enforcing through law and government policies adequate measures to punish and deter the crimes of rape and incest.

Respectfully submitted,

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¹⁴⁵ Commission on Human Rights, 2nd Sess., Summary Record on the First Meeting of the Working Group on Convention on Human Rights, Summary of the statements of Mr. Omar Loutfi (Egypt) and Dr. Charles Malik (Lebanon), U.N. Doc. E/CN.4/AC.3/SR.1, pg. 5.

¹⁴⁶ Convention on the Rights of the Child (CRC), Preamble.

¹⁴⁷ Article 6(5) was included with the intention of respecting “the interests of the unborn child.” See U.N. Secretary-General, *Annotation*, Chapter VI, ¶10, U.N. Doc. A/2929 (July 1, 1955).

¹⁴⁸ The Working Group for the Universal Declaration of Human Rights considered the terms of article 3 to be broad enough to encompass the notion that the right to life is recognized “from the moment of conception.” See Commission on Human Rights, 2nd Sess., Summary Record of the Thirty-Fifth Meeting of the Drafting Committee, Summary of statements of Mr. Charles Malik (Lebanon), Mr. T. Y. Wu (China), Mr. G. Wilson (United Kingdom), and Mrs. Franklin D. Roosevelt (United States), U.N. Doc. E/CN.4/AC.1/SR.35, pg. 5-6.

¹⁴⁹ ICCPR, art. 2(1).

¹⁵⁰ General Comment No. 28, para. 11.

¹⁵¹ International Conference on Population and Development, September 5-13, 1994, *Programme of Action of the International Conference on Population and Development*, ¶¶8.20(a) and 12.17, U.N. Doc. A/CONF.171/13/Rev.1 (1995).

¹⁵² See CRC, art. 3. See also Universal Declaration of Human Rights, art. 25.

¹⁵³ ICESCR, art. 12, para. 2(a). CRC, art. 24, para. 2(d).