



# **THE UN HUMAN RIGHTS COMMITTEE'S PROPOSED GENERAL COMMENT ON ARTICLE 6 (THE RIGHT TO LIFE) OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

**Preliminary observations from the International Humanist and Ethical  
Union ahead of the general discussion on the 'right to life'**

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The International Humanist and Ethical Union (IHEU) is the sole global umbrella organisation embracing humanist, atheist, rationalist, secularist, sceptic, laique, ethical cultural, freethought and similar organisations worldwide. It has over 100 Member Organisations across 40 countries. The IHEU's human rights advocacy mainly concentrates on the right to Freedom of Religion or Belief, Freedom of Expression, the Rights of Women, LGBT Rights and the Rights of the Child. We have ECOSOC special consultative status at the United Nations and have representatives at the UN in Geneva and New York, UNESCO, the African Union and at the European Council.

We are pleased to be able to submit some comments to the Human Rights Committee ahead of its half-day meeting for a general discussion in preparation for a General Comment on Article 6 (Right to Life) of the International Covenant on Civil and Political Rights (ICCPR).

In the below submission we outline some core issues of concern to us, with regard to the right to life - namely start and end of life issues.

### **1. Start of life Issues: No prenatal right to life**

One of our main concerns is that “the right to life” should not be extended to the prenatal stage, as has been advocated by some. We argue that not only would this be incompatible with the language and inferences of the ICCPR itself and other international human rights instruments, but also incompatible with the other human rights of women.

The ICCPR rejects the proposition that the right to life, protected in Article 6(1), applies before birth<sup>1</sup>. During the negotiations of the Covenant, an amendment (proposed by Belgium, Brazil, El Salvador, Mexico and Morocco) that stated, “the right to life is inherent in the human person from the moment of conception, this right shall be protected by law” was rejected.<sup>2</sup> Article 6, which has no reference to conception, was adopted by 55 votes to 0, with 17 abstentions.<sup>3</sup>

Likewise, the Convention on the Rights of the Child (CRC) does not recognise the right to life until birth. Some have argued that paragraph 9 of the preamble to the CRC - which states, “Bearing in mind that, as indicated in the Declaration of the Rights of the Child, ‘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’”<sup>4</sup> – gives rise to a pre-natal right to life. The reference to protection “before as well as after birth” was not contained in the Convention as originally drafted - although the language had been used in the earlier Declaration on the Rights of the Child. The phrase came about from a proposal led by the Holy

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<sup>1</sup> For full discussion of this, see: Copelona, R., Zampasb, C., deVorec, E.B.J. 2005. “Human Rights Begin at Birth:

<sup>2</sup> UN General Assembly Official Records Annex, 12th Session, (Agenda Item 33), §96, A/C.3/L.654. See, Ramchara, B.G. (ed.), *The Right to Life in International Law*, 1985. p48

<sup>3</sup> UN General Assembly Official Records, 12th Session, (Agenda Item 33), §119 (q), A/3764, (1957).

<sup>4</sup> Convention on the Rights of the Child, GA Res. 44/25, Annex, UN GAOR 44th Session, Suppl. No.49 at 166, UN Doc. A/44/49 (1989) (entered into force Sept. 2, 1990).

See which also “stated that the purpose of the amendment *was not to preclude the possibility of an abortion*” (emphasis added).<sup>5</sup> The limited purpose of the phrase “before or after birth” was reinforced by the statement that “the Working Group does not intend to prejudice the interpretation of Article 1 or any other provision of the Convention by States Parties.”<sup>6</sup> The reference is to the definition of “a child.” Article 1 states: “For the purposes of the present Convention a child means every human being below the age of 18 years [...]”

Likewise, the Committee on the Rights of the Child has not recognized a right to life for the foetus. In its Concluding Observations on various State reports, the Committee has framed safe abortion as part of adolescent girls' right to adequate health under Article 24,<sup>7</sup> and has stated the need for States “to provide access to sexual and reproductive health services, including [...] safe abortion services.”<sup>8</sup> In summary, the definition of “a child” for purposes of the Convention on the Rights of the Child is post-natal.

It is also worth noting that Article 1 of the Universal Declaration of Human Rights states that, “All human beings *are born* free and equal in dignity and rights” (emphasis added). The implication being that human rights expressly apply to human beings in the post-natal state.

The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo protocol) includes provisions on abortion. Article 14 (2) (c) of the Protocol states that all appropriate measures must be taken to protect the reproductive health of women, including through the authorization of abortions in the following circumstances: sexual assault, rape and incest, and where the continued pregnancy endangers the mental and physical health of the mother<sup>9</sup>. Interestingly, the prioritisation of a woman’s health can only infer an absence of a pre-natal right to life, for the right to life, if genuine, cannot be inconsistently measured against the right to health of another.

It is clear that international human rights law does not support a pre-natal right to life. Moreover, there are a number of human rights that can be understood to support a woman’s

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<sup>5</sup> UN Commission on Human Rights, Question of a Convention on the Rights of a Child: Report of the Working Group, 36th Session, UN Doc. E/CN.4/L/1542 (1980).

<sup>6</sup> UN Commission on Human Rights, Report of the Working Group on a Draft Convention on the Rights of the Child, 45th Session, E/CN.4/1989/48 at p.10 (1989), quoted in Jude Ibegbu, *Rights of the Unborn in International Law* 145 (2000); LJ LeBlanc, *The Convention on the Rights of the Child: United Nations Lawmaking on Human Rights*, University of Nebraska Press, London (1995), p. 69; J Ibegbu, *Rights of the Unborn Child in International Law*, E Mellen Press, Lewiston NY (2000), pp. 146–147.

<sup>7</sup> Concluding Observations of the Committee on the Rights of the Child: Guatemala, 9/7/2001, UN Committee on the Rights of the Child, 27th Session, p.40, UN Doc. CRC/C/15/Add.154; Concluding Observations of the Committee on the Rights of the Child: Chad, 24/8/1999, UN GAOR, Committee on the Rights of the Child, 21st Session, 557th mtg. §30. CRC/C/15/Add.107; Concluding Observations of the Committee on the Rights of the Child: Nicaragua, 24/8/1999, UN GAOR, Committee on the Rights of the Child, 21st Session, 557th mtg. §35, UN Doc. CRC/C/15/Add.108.

<sup>8</sup> Committee on the Rights of the Child, General Comment No.4: Adolescent health and development in the context of the Convention on the Rights of the Child (33rd Session 2003) §31, reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, 12/05/2004, UN Doc. HRI/GEN/Rev.7.

<sup>9</sup> A/HRC/29/27, §17

right to decide independently in matters related to abortion, without interference from the state or third parties.<sup>10</sup>

### *Right to health*

The right to health, as determined in Article 13 of the International Covenant on Economic, Social and Cultural Rights, is the first of such rights. General Comment 14 of the Committee on Economic, Social and Cultural Rights (CESCR) explains that the right to life includes “the right to control one’s health and body, including sexual and reproductive freedom,” which assumes “the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.”<sup>11</sup> The CESCR’s concluding observations have addressed risks to women’s health resulting from restrictive abortion laws, and have recommended improving medical and sanitary conditions for carrying out abortions.<sup>12</sup>

General Recommendation 24 of the Committee on the Elimination of Discrimination against Women (CEDAW) on women and health affirms a State’s obligation to respect women’s access to reproductive health services and to “refrain from obstructing action taken by women in pursuit of their health goals.”<sup>13</sup> It highlights criminalisation of abortion as a barrier to the realisation of a woman’s access to appropriate health care.<sup>14</sup>

### *Right to security of person*

The “liberty and security of person” as guaranteed by Article 9(1) of the ICCPR can also be understood to give rise to a person’s right to freely choose and determine their own decisions within the context of physical integrity. The capacity of a woman to determine what happens to her own body is central to giving meaning to this right. A legal requirement to continue an unwanted pregnancy constitutes an intrusion upon a woman’s body in violation of this right.

### *Right to privacy*

Decisions about one’s reproductive capacity lie within the private and personal arena and accordingly, constitute precisely the type of interest that a right to privacy, as determined by Article 17(1) of the ICCPR (where, “No one shall be subjected to arbitrary or unlawful

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<sup>10</sup> We are grateful for the background briefing on “International Human Rights Law and Abortion in Latin America” by Human Rights Watch from which much of the information set out here was obtained.

<sup>11</sup> CESCR, General Comment 14, The Right to the Highest Attainable Standard of Health, E/C.12/2000/4 (2000) (hereinafter General Comment 14), §8.

<sup>12</sup> See, e.g., the CESCR’s concluding observations on Azerbaijan, E/C.12/1/Add.104 (2004), §56; Chile, E/C.12/1/Add.105 (2004), §25; Kuwait, E/C.12/1/Add.98 (2004), §43; Poland, E/C.12/1/Add.82, (2002), §29; and Russia, E/C.12/1/Add.94 (2003), §63.

<sup>13</sup> CEDAW Committee, General Recommendation 24, Women and Health (Article 12), A/54/38/Rev.1 (1999) (hereinafter General Recommendation 24), §14.

<sup>14</sup> CEDAW Committee, General Recommendation 24, Women and Health (Article 12), A/54/38/Rev.1 (1999) (hereinafter General Recommendation 24), §14.

interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation”) should protect.

#### *Right to spacing of children*

Article 16(1) of CEDAW provides, “States Parties shall [...] ensure, on a basis of equality of men and women [...] (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.”

#### *Right to enjoy the benefits of scientific progress and its applications*

The right of everyone to enjoy the benefits of scientific progress and its applications, as determined by Article 15(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), can be interpreted to apply to reproductive and sexual rights.

#### *The right to freedom of thought, conscience and religion*

At the core of the IHEU’s concerns is the respect for the right to freedom of religion or belief. We note its protection of those without religious belief. As CCPR General Comment No. 22 notes: “The right to freedom of thought, conscience and religion in article 18.1 [...] encompasses freedom of thought on all matters [...] Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms ‘belief’ and ‘religion’ are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions”<sup>15</sup>. Thus, it is not necessary to describe atheism as a religion, or as analogous to religion, to guarantee atheists (those who do not believe in any god) and humanists (those who embrace a morality centred on human welfare and human flourishing that does not appeal to any supernatural source) the same protection as religious believers. On the contrary, atheism and theism are protected equally as manifestations of the fundamental right to freedom of thought and conscience.

Whilst the right to freedom of religion or belief and conscientious objection is guaranteed by the human rights framework there are limits to it. We are concerned that it should be invoked by health practitioners opposed to abortion. The withholding of medical treatment can come as a direct result of practitioners refusing a reproductive health service on the basis of religious belief or conscience. The human rights framework determines that States must organize their health systems to ensure that women are not prevented from accessing health services by professionals exercising their conscientious objection. Indeed, the Human Rights Committee has expressed its concern regarding “the lack of information on the use of the conscientious

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<sup>15</sup> <http://www.refworld.org/docid/453883fb22.html>

objection clause by medical practitioners who refuse to carry out legal abortions.”<sup>16</sup> We would be very grateful if the Committee could reaffirm this as well as outline the limits, in the context of Article 6, to the manifestation of one’s religion or belief.

These concerns have been reflected by the CEDAW Committee in its concluding observations. It has criticised the limitations on women’s access to abortions due the conscientious objection of doctors, noting the infringement of women’s human rights where hospitals refuse to provide abortions.<sup>17</sup> In 2007, it called specifically for research on the scope, causes and consequences of illegal abortion to include research on how access to legal abortions was limited “by the use of the conscientious objection clause.”<sup>18</sup>

Indeed, CEDAW Committee has often criticized religious influences as impediments to women’s health care and to their access to reproductive health services and information. Likewise, the UN Special Rapporteur on Violence against Women, Rashida Manjoo, has highlighted the fact that, in Africa for example, cultural, religious and other moral arguments against the termination of pregnancies challenge the effective realization of the right to abortion (as set out by the Maputo Protocol)<sup>19</sup>. The reality of this is of significant concern given the high maternal mortality rates on the continent, and across the globe more widely.

#### Right to Life in respect of maternal mortality

Every day, approximately 800 women die from preventable causes related to pregnancy and childbirth.<sup>20</sup> Many of these women could have their right to life respected if laws were changed guaranteeing them access to safe abortion services.<sup>21</sup>

This view has been supported by the Human Rights Committee in its General Comment 6 on Article 6, when it notes that, “the right to life has been too often narrowly interpreted. The expression “inherent right to life” cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”<sup>22</sup> With reference to the principle of equality between the sexes, as protected by Article 3 of the ICCPR, the Committee has also emphasised the states’

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<sup>16</sup> UN Human Rights Committee, Concluding Observations on Poland, CCPR/C/SR.2251, §8.

<sup>17</sup> UN Committee on the Elimination of Discrimination against Women, Concluding Comments on Croatia, A/53/38, Part I (1998), §109 and Italy, A/52/38/Rev.1, Part II (1997), §353.

<sup>18</sup> UN Committee on the Elimination of Discrimination against Women, Concluding Comments on Poland, UN Doc. CEDAW/C/POL/CO/6, §25.

<sup>19</sup> A/HRC/29/27, §17

<sup>20</sup> <http://www.who.int/mediacentre/factsheets/fs348/en/>

<sup>21</sup> [http://apps.who.int/iris/bitstream/10665/75173/1/WHO\\_RHR\\_12.01\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/75173/1/WHO_RHR_12.01_eng.pdf)

<sup>22</sup> Human Rights Committee, General Comment 6, Article 6 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, HRI\GEN\1\Rev.1 at 6 (1994).

responsibility to eliminate women's mortality from clandestine abortion and recognised that such criminal laws could violate women's right to life.<sup>23</sup>

In summary, authoritative interpretations of international law recognize that abortion is vitally important to women's exercise of their human rights and that restrictive or punitive abortion laws and practices undermine such rights, which include the right to life. Notably, there is no pre-natal right to life, as determined by the ICCPR (and its background), the CRC and the Human Rights Committee's comments relating to the issue. Of course, along with abortion, this also has positive ramifications for the legality of embryonic stem cell research.

## **2. End of life issues: Suicide and assisted suicide**

Notably, the right to life should not be understood to represent any sort of *obligation* to maintain life for the rights bearer. Rights are there to be exercised freely. We argue therefore, that nothing in Article 6 precludes a person choosing to end their life.

The European Court of Human Rights has found that a "right to die" cannot be derived from the right to life (as determined by Article 2 of the European Convention on Human Rights).<sup>24</sup> However, seeking to establish the existence of a right to die from the right to life is unnecessary for determining a right to end one's life or assist someone to end one's life; the right to do so can be located and in a number of other rights of the ICCPR. For example, Article 1 determines that "All peoples have the right of self-determination" and that, "All state parties [...] shall promote the realization of the right of self-determination." Self-determination is the basis of human dignity and the originator of most of the other rights outlined in the ICCPR. Self-determination necessarily includes the right to determine one's own life, including its end. Also, denying someone to will their own death could constitute degrading treatment, or even torture in circumstances when severe physical or psychological pain is involved. This is prohibited by Article 7 of the ICCPR.

The indignity suffered by those prevented from ending their own lives at a time of their choosing, being forced to live in pain or deep unhappiness, being patronised and infantilised, works in diametric opposition to the foundation of human rights. It goes against the inherent dignity of the human person, a dignity recognised in the preamble of the ICCPR.

None of the rights giving rise to a right to suicide – such as self-determination, dignity, freedom from degrading treatment or torture - undermine Article 6 in any way.

## **3. Conclusions and Recommendations**

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<sup>23</sup> Human Rights Commission, General Comment 28: Equality of Rights Between Men and Women (68th Session 2000) §10, reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, 12/05/2004, UN Doc. HRI/GEN/Rev.7.

<sup>24</sup> Pretty vs. UK, 2002, §40

We see it as imperative that human rights language, including that which pertains to the right to life, remains secular. Interpretation of the right to life cannot be grounded on a religious perception or reverence for the moment of conception or death; this has neither legal, nor philosophical, support. Instead we argue that the universality of human rights must be maintained through secular reasoning.

Notably, we reject framing the issue of abortion or suicide in the context of *exceptions to the right to life*, as suggested in CCPR/C/GC/R.36. On the contrary, both issues work in conjunction with the right to life: abortion does not affect the right to life since that right begins at birth; and suicide is complementary to that right insofar as it represents a life of autonomy and choice, and emphasises human-determined dignity. We believe it is important that these issues pertaining to human choice and self-determination are clearly understood as not representing anything counter to the right to life or exceptions of it.

Stemming from the points raised above, we have two overarching recommendations for the Committee to consider when drafting its General Comments on Article 6 of the ICCPR:

- a) **We recommend that the Committee specifically uses language that makes explicit that Article 6 applies to all human beings *after* they have been born and that they is no pre-natal right to life.**
- b) **We recommend that the Committee makes explicit that making suicide or assisted suicide permissible does not contradict any element of Article 6.**