# **GENERAL OBSERVATION No. 36**

# **Draft General Comment on Article 6 of the International Covenant on Civil and Political Rights**

# About the Institution.

Law in Action is a Peruvian civil society organization with special interest in the study of International Human Rights Law and in the legal defense of the most vulnerable. For this reason, Human Right Committee's call to participate in the drafting of General Comment No. 36 is a valuable opportunity to ensure the effective guarantee and protection of Article 6 of the International Convention on Civil and Political Rights (ICCPR) and promote tolerance and non-discrimination with respect to the religious convictions that inspire the defense of human life and its dignity, under any circumstances.

# General remarks.

After a careful review of the General Comment No. 36, we congratulate the Human Rights Committee on the effort to generate a document that seeks the effectiveness of the Right to Life, according to the content of Article 6 of the ICPR.

At the same time, we note with concern that, despite the progress in guaranteeing certain edges of the right to life, there are some others that remain unprotected and can be even violated according to the content proposed by the General Observation Draft No. 36.

It is therefore of the utmost importance that the General Comment No. 36 include in its text explicit references to the following points, consistent with the mission entrusted through the signing and ratification of the ICCPR to the Human Rights Committee:

1. According to Article 6 of the ICCPR, it is recognized that human life is a valuable good in itself; and therefore deserves the highest level of legal protection. The right to life is a fundamental right and necessary for the exercise of any other right; so that the protection of any other human right cannot be preached without first ensuring respect for the right to life.
2. The protection of the right to life does not admit any kind of discrimination. This precision is especially important in the treatment and protection of unborn human life in any of its stages (in vivo or in vitro); that is, since the embryonic state. It has been vastly proven that the human embryo is already a human being; and, therefore, not only deserves the protection stated on Article 6 of the ICCPR; but it is also due to special protection based on its singular circumstance of defenselessness and vulnerability because of the biological stage in which it is.
3. The protection of the unborn human life is a coherent requirement to promote respect and progress in the protection of human life after birth. This interpretation is consistent not only with what is stated in Article 6 but also with the *pro-debilis* and *pro-homine* principles, both a source of inspiration in the drafting of the Treaty and considered in its Preamble[[1]](#footnote-1) .
4. Abortion cannot be justified as the best way to protect the life, health, and interests of pregnant women, it directly affects the protection of the life of the unborn as it necessarily causes its death.

Besides, the increase of unwanted pregnancies, including teenage pregnancies and those result of rape are a general concern, however, there are insufficient grounds for the Human Rights Committee to promote, among ICCPR member states, the legalization of abortion as a form of assistance to pregnant women. This is not only contradictory to their mission of protecting human rights for all human beings (including the unborn) but violates one of the basic principles of International Human Rights Law and the Law of Treaties: the principle of *pacta sunt servanda*. It is intended to force States Parties to implement abortion policies and laws according to further and deviated interpretations (such as General Comment No. 36) but not according to the real content of the Treaty signed and ratified by the State parties.

1. The protection of the right to life of the unborn is a cross-cutting content in the drafting of Article 6. Paragraph 5 of that article reinforces that protection by stipulating that the death penalty cannot be imposed as punishment for a pregnant woman. The above, because when the child is housed in the womb, he needs this to subsist and continue developing; therefore, if the mother dies, the child in her womb also dies, and he is clearly innocent of the guilt for which the mother was punished with capital punishment.

According to Article 32 of the Vienna Convention, the considerations made in the preparatory work of the pact in question have the characteristic of complementary means of interpretation of the Covenant. In that regard, these considerations indicated that the reasons for which the death penalty was considered inapplicable to a pregnant woman were: (a) to protect the life of the unborn child who was innocent[[2]](#footnote-2); and (b) humanitarian reasons for consideration of the interests of the unborn child[[3]](#footnote-3).

The Covenant, therefore, protects the unborn human being by recognizing his inherent right to life and by forcing States Parties to respect it, even in the context of the death penalty on his mother. This consideration could not be otherwise, since it is the same Treaty that prohibits any kind of discrimination and considers that not providing the unborn human being the legal protection that it deserves would involve discrimination by: the environment where he lives (maternal belly), the status of birth (in this case, not yet born), by her age (months of gestation of the mother) and in the case of paragraph 5, by the situation of her parents (mother sentenced to death).

1. It is paradoxical to promote the elimination of the death penalty and, if necessary, to accept it only for very specific cases. While, on another hand, it is allowed the imposition of a variant of the "death penalty" to unborn humans through abortion; an unjust, arbitrary and unrestricted sanction since an unborn human being could not be imputable to any offense, in this context, any hostile action would result from arbitrary criteria and should never be backed by law. Also, it is unrestricted, because, in many countries, the permissibility of abortion is very broad and is even considered a right, in contradiction with the true meaning of this term.
2. Finally, and taking into account the provisions of Article 7 of the Covenant, which rejects any form of torture or inhumane practice towards other human beings; we must reaffirm that the unborn child is a human being who deserves the same and even - due to its special situation of vulnerability - greater legal protection; any practice that attempts to circumvent the health or life of the unborn must be considered as a form of torture or inhumane practice. Since, by not being able to defend himself and depend for his prenatal development in his mother's womb, any type of action that tries to arbitrarily deprive him of that environment, submit him to surgical or pharmacological treatments that would end his life or would aggravate their health at any stage of their development, constitute a form of torture or inhumane practice.

For this reason, to arbitrarily paralyze embryonic development as in the case of the use of reproductive technologies and the cryopreservation of embryos, it is indefinitely suspending the normal development that a zygote must follow; that is to say, the cryopreservation of embryos paralyzes their development and with it, they suspend their life, the life of a human being, the life that according to the Covenant we must guard, protect and defend. And by subjecting it to unnecessary scientific practices, its dignity is violated as a human person and could lead to very serious consequences for its health and subsequent prenatal and postnatal development.

The situation of torture or inhumane practice could be aggravated if we take into account cases of abortion, which are aimed at killing the embryo or fetus within the womb. It is well known that at the time of pregnancy is advanced, the child's suffering in the womb at the time of abortion also increases.

From what has been stated *ad supra*, it may be pointed out that given the protective spirit of all human life, which inspired the wording of the Covenant, under no context this text should be interpreted abandoning of the unborn human life as much as the cryopreserved embryos, as well as those already implanted.

1. The promotion of erroneous content for the effective implementation of Article 6 in ICCPR States Parties not only entails harmful consequences for the protection of the unborn children life. But it also encourages an attitude of rejection through the domestic legislation and policies who seek to defend human life, in the terms set forth in this document. Therefore, with the misinterpretation of Article 6, not only the right to the unborn life is violated but also, it is promoted (mainly) intolerance and restriction of the freedom of expression of those who seek respect for the dignity of every human being

# III. Conclusions.

Given the arguments presented in this document, it is undeniable the protective spirit of the lives of all human beings that inspired the wording of Article 6 and in merit compliance with the principle *pacta sunt servanda* that legally obliges us to respect the content of the commitments contracted, it is only possible to interpret this Article in the way that it protects the lives of all human beings in a more proper and broader way.

Thus, the General Comment No. 36 is an opportunity to defend the content protected in Article 6 of the ICCPR, to urge States Parties to be consistent with it; and, therefore, to exclude from its legislation all those acts that despise the value of human life and unprotected the most defenseless human beings, such as unborn children.

Therefore, the most consistent with the mission of the Human Rights Committee, as the ultimate body to protect the rights enshrined in the ICCPR, is to promote the protection of the right to life of all human beings, without exception: from conception until natural death.

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1. “Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world," [↑](#footnote-ref-1)
2. Report to the Third Committee for the Twelfth Session of the General Assembly, December 5, 1957. [↑](#footnote-ref-2)
3. Report to the General Secretariat for the 10th Session of the General Assembly, July 1, 1955. [↑](#footnote-ref-3)