Submission on the Draft General Comment of the Human Rights Committee on the Right to Life

**Minnesota Citizens Concerned for Life Education Fund**

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The Minnesota Citizens Concerned for Life Education Fund welcomes the opportunity to comment on the Human Rights Committee’s draft General Comment (No. 36) on Article 6 of the International Covenant on Civil and Political Rights (ICCPR), which protects the right to life. We wish to express deep concern regarding paragraphs 9 and 10.

**Paragraph 9**

Paragraph 9 of the General Comment asserts that abortion must be legal in broad and loosely

defined circumstances, such as when the pregnant woman experiences “physical or mental pain or suffering.” But that was not the view held by the drafters of the ICCPR. In 1947, early in the process of drafting the treaty, a proposal to allow legalized abortion in a few rare cases was rejected.[[1]](#footnote-1) Indeed, a right to abortion has never been established in international law. No United Nations treaty can plausibly be interpreted as creating such a right.[[2]](#footnote-2)

The General Comment implies that allowing abortion may be necessary to prevent maternal deaths from illegal abortions. Decisive empirical evidence, however, shows that the incidence of maternal mortality depends on the quality of maternal health care rather than on the legal status or availability of abortion.[[3]](#footnote-3) Some nations, for example, have firm laws against abortion and very low levels of maternal mortality; some nations have dramatically improved the health of women while also prohibiting abortion.[[4]](#footnote-4) Laws against abortion are demonstrably compatible with good health outcomes.

A correct application of Article 6, therefore, does not require legalized abortion, but it does provide support for legal protection *against* abortion. The General Comment correctly notes that Article 6 “recognizes and protects the right to life of all human beings,” which is “the entitlement of individuals to be free from acts and omissions intended or expected to cause their unnatural or premature death.” The General Comment affirms that this right “should not be interpreted narrowly” and that it belongs to all humans “without distinction of any kind.” Indeed, the right to life is “a fundamental right” that “inheres in every human being.”

Human embryos and fetuses, however, are living organisms of the species *Homo sapiens* at the embryonic or fetal stages of their lives. This is a fact of biology.[[5]](#footnote-5) So if the right to life “inheres in every human being,” then it inheres in unborn human beings. If the right to life applies to humans “without distinction of any kind,” then it applies to humans without distinction of age, size, ability, stage of development, or state of dependency on others. It belongs to humans both in the womb and out.

This conclusion is compatible with the *travaux préparatoires* (record of negotiations) of the ICCPR.[[6]](#footnote-6) It is also consistent with Article 6.5 of the ICCPR itself, which acknowledges the value of the unborn child by prohibiting use of the death penalty on pregnant women. Other international human rights instruments, moreover, explicitly recognize the right to life of the unborn child. The Convention on the Rights of the Child, for example, calls for legal protection for children “before as well as after birth” (preamble). The American Convention on Human Rights protects the right to life “from the moment of conception” (Article 4.1).

The General Comment, by contrast, assumes that some living members of the human species (those who have not been born) do not have a right to life. But it offers no justification for this assumption. It provides no criteria for determining which human beings lack a right to life, and no explanation of why such criteria would be legally relevant. Ironically, the General Comment warns against arbitrary deprivations of life, yet the Comment itself arbitrarily (with no justification given) seeks to deprive an entire class of human beings of protection of their human rights.

The Human Rights Committee should not interpret the right to life narrowly and exclusively. The right to life belongs to all human beings “without distinction of any kind.” At the very least, paragraph 9 of the General Comment should be revised so that it does not falsely claim that nations are bound to permit the intentional killing of human beings *in utero*. States must be free to safeguard the right to life of both pregnant women and unborn children.

**Paragraph 10**

Although paragraph 10 of the General Comment urges states to “take adequate measures … to prevent suicides,” it also sanctions the euthanasia or assisted suicide of patients “who experience severe physical or mental pain and suffering and wish to die with dignity.” Article 6 of the ICCPR, however, contains no right to euthanasia or “right to die.” Nor does any United Nations treaty. Indeed, the European Court of Human Rights (in a ruling concerning Article 2 of the European Convention on Human Rights) noted that the right to life “cannot, without a distortion of language, be interpreted as conferring the diametrically opposite right, namely a right to die.”[[7]](#footnote-7)

Article 6 protects not the right to death but the right to life, which the General Comment describes as “the entitlement of individuals to be free from acts and omissions intended or expected to cause their unnatural or premature death, as well as to enjoy a life with dignity.” This entitlement applies to people “without distinction of any kind, such as … disability … and age.” Euthanasia involves the intentional killing of a patient. It is a straightforward violation of the right to life.

Moreover, the legalization of euthanasia has, in practice, led to the killing of some patients who are influenced by pressure, coercion, and mental illness,[[8]](#footnote-8) and some patients who have made no explicit request for death at all.[[9]](#footnote-9) The Human Rights Committee itself has criticized the Netherlands for its euthanasia practices. It wrote that it “remains concerned at the extent of euthanasia and assisted suicides” and expressed worry that “a physician can terminate a patient’s life without any independent review by a judge or magistrate to guarantee that this decision was not the subject of undue influence or misapprehension.” The Committee urged that the Dutch law “be reviewed in light of the [ICCPR’s] recognition of the right to life.”[[10]](#footnote-10) The Committee has also criticized Switzerland, which permits assisted suicide, for a “lack of independent or judicial oversight to determine that a person seeking assistance to commit suicide is operating with full free and informed consent.”[[11]](#footnote-11)

The right *not to be* killed doesn’t encompass a right *to be* killed. Paragraph 10 of the General Comment should allow states to protect their citizens—especially those who are elderly, sick, or disabled—from euthanasia and its dangers. Everyone has a right to life.



*Minnesota Citizens Concerned for Life Global Outreach (MCCL GO), a program of the Minnesota Citizens Concerned for Life Education Fund, is an international non-governmental organization working to secure full human rights for all human beings from conception to natural death. MCCL has consulted and advised like-minded non-profit organizations in nearly 60 countries. MCCL enjoys consultative status with the United Nations Economic and Social Council and is a civil society organization registered with the Organization of American States.*

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1. Thomas Finegan, “International Human Rights Law and the ‘Unborn’: Texts and *Travaux Préparatories*,” *Tulane Journal of International & Comparative Law*, Vol. 25, No. 1 (Winter 2016). [↑](#footnote-ref-1)
2. See the San Jose Articles (http://www.sanjosearticles.com). [↑](#footnote-ref-2)
3. See, e.g., Elard Koch 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*, Vol. 5, No. 2 (February 23, 2015); Koch et al., “Women’s Education Level, Maternal Health Facilities, Abortion Legislation and Maternal Deaths: A Natural Experiment in Chile from 1957 to 2007,” *PLoS ONE*, Vol. 7, No. 5 (May 4, 2012). [↑](#footnote-ref-3)
4. For example, Ireland, Poland, Malta, Chile, Kuwait, Libya, and the United Arab Emirates ban most or all abortions and have very low maternal mortality ratios (maternal deaths per 100,000 live births). World Health Organization et al., *Trends in Maternal Mortality: 1990 to 2015*, November 2015. [↑](#footnote-ref-4)
5. It is affirmed, for example, by embryology textbooks: "Human development begins at fertilization when a sperm fuses with an oocyte to form a single cell, a zygote. This highly specialized, totipotent cell marks the beginning of each of us as a unique individual." Keith L. Moore et al., *The Developing Human: Clinically Oriented Embryology*, 9th ed. (Philadelphia: Saunders, 2013), p. 13; “The development of a human begins with fertilization, a process by which the spermatozoon from the male and the oocyte from the female unite to give rise to a new organism.” T.W. Sadler, *Langman’s Medical Embryology*, 7th ed. (Baltimore: Williams & Wilkins, 1995), p. 3. [↑](#footnote-ref-5)
6. Finegan, “International Human Rights Law and the ‘Unborn’: Texts and *Travaux Préparatories*.” [↑](#footnote-ref-6)
7. European Court of Human Rights, *Pretty v. the United Kingdom*, Application No. 2346/02, 2002. [↑](#footnote-ref-7)
8. See, e.g., Scott Y. H. Kim et al., “Euthanasia and Assisted Suicide of Patients with Psychiatric Disorders in the Netherlands 2011 to 2014,” *JAMA Psychiatry*, Vol. 73, No. 4 (April 2016), pp. 362-68. [↑](#footnote-ref-8)
9. See, e.g., Bregje D. Onwuteaka-Philipsen et al., “Trends in End-of-Life Practices Before and After the Enactment of the Euthanasia Law in the Netherlands from 1990 to 2010: A Repeated Cross-Sectional Survey,” *The Lancet*, Vol. 380, No. 9845 (September 8, 2012), pp. 908–15. [↑](#footnote-ref-9)
10. U.N. Human Rights Committee, “Concluding Observations of the Human Rights Committee, The Netherlands,” U.N. doc CCPR/C/NLD/CO/4, August 25, 2009. [↑](#footnote-ref-10)
11. U.N. Human Rights Committee, “Concluding Observations of the Human Rights Committee, Switzerland,” U.N. doc CCPR/C/CHE/CO/3, November 3, 2009. [↑](#footnote-ref-11)