Advocates for Youth

Written Contribution to the General Discussion on the Preparation for a General Comment (36) on Article 6 (Right to Life) of the International Covenant on Civil and Political Rights (ICCPR)

Advocates for Youth is grateful for the opportunity to submit a written contribution to the Human Rights Committee ahead of its general discussion in order to prepare a General Comment on Article 6 of the International Covenant on Civil and Political Rights (the Covenant). Advocates is a nonprofit organization that believes that young people have the right to accurate and complete sexual health information, confidential reproductive and sexual health services, and a secure stake in the future.

Advocates recognizes the fundamental nature of the human right to life, the exercise of which is essential for the exercise of all other rights. There are over 1.8 billion young people (aged 10-24) in the world today, the largest generation ever.[[1]](#footnote-1) They deserve to live in a world free from violence and discrimination and have the right to the highest attainable standard of health. Failure to provide comprehensive sexual and reproductive health information and services is a violation of the right to health and the right to life, and this violation leads to thousands of preventable deaths every year.

As the Committee discusses the preparation of a new General Comment on Article 6 of the Covenant, it is critical to recall General Comment 6, which requires that State parties take all positive measures to increase life expectancy.[[2]](#footnote-2) Over the years, the Committee has noted in numerous General Comments that the right to life and the right to health are intrinsically linked, as are State parties’ duties to ensure those rights.

In order to contribute to the Committee’s consideration of the nature and scope of state parties’ obligations to respect, protect and fulfill the right to life under Article 6, this submission focuses on three particular areas of concern contained within paragraph 1:

1. The importance of reaffirming that the protections afforded by Article 6 begin at birth
2. The relationship of the right to life to other articles of the Covenant that protect human life and the human person
3. The relationship of the right to life to other international human rights instruments
4. ***International and regional human rights treaties do not recognize the right to life before birth***

* **The Universal Declaration on Human Rights (1948)** provides in Article 1, “All human beings are *born* free and equal in dignity and rights.”[[3]](#footnote-3) The language of the treaty was specifically chosen to apply rightsto persons once they are born. As the language of the treaty was being negotiated, an amendment wasproposed to include the right to life before birth but the amendment was overwhelmingly rejected.[[4]](#footnote-4)
* As noted above, **the International Covenant on Civil and Political Rights (1976)** protects the right to life in Article 6. As with negotiations on the language of the Universal Declaration on Human Rights, an amendment to protect life before birth was offered and rejected. The Committee overseeing the treaty has recognized the right to abortion and linked it with the right to life of a pregnant woman.
* **The Convention on the Rights of the Child (1990)** protects the right to life of children *after birth* under Article 6 which recognizes “that every child has the inherent right to life.”[[5]](#footnote-5) The preamble of the treaty states “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, ” which includes support for pregnant women but not legal protections for fetuses.[[6]](#footnote-6) That the treaty does not protect life before birth is supported by the Committee on the Rights of the Child’s interpretation of the treaty to include the right to safe abortion. In General Comment 4, the Committee urges states parties “to develop and implement programmes that provide access to sexual and reproductive health services, including family planning, contraception and safe abortion services …”[[7]](#footnote-7) In reviewing states’ compliance with the treaty, the Committee has expressed concern with high rates of unsafe abortion and has asked governments to review restrictive abortion laws.
* **Regional human rights instruments** likewise protect the right to life only after birth. The **European Convention on the Protection of Human Rights** bases its protection for the right to life on the Universal Declaration on Human Rights. The European Court of Human Right, in its jurisprudence, has repeatedly denied the right to life of fetuses.[[8]](#footnote-8)
* **The American Convention on Human Rights** is the only international human rights instrument to mention the right to life before birth, protecting the right to life “*in general*, from the moment of conception.” The InterAmerican Commission on Human Rights has refused to afford the right to life to a fetus, referring to the American Declaration on the Rights and Duties of Man, which, like the UDHR, protects rights after birth and emphasizing the clause, “in general” to be a limit on the right to life before birth.[[9]](#footnote-9)
* **The African Charter on Human and People’s Rights** does not afford rights before birth and the Protocol on the Rights of Women in Africa explicitly protects the right to abortion. Article 14 of the Protocol requires states parties to “protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.”[[10]](#footnote-10)

1. ***The relationship of the right to life to other articles in the Covenant that protect human life and the human person***

The Covenant enshrines the rights of *all* people to non-discrimination and equality before the law.

* Article 2 and Article 26 of the Covenant require that each State party respect, protect and fulfill the rights of all persons *without distinction of any kind*.[[11]](#footnote-11) Equal protection under the law and equal enjoyment of fundamental human rights are basic cornerstones of the realization of the right to life. For far too many young people, especially those with diverse sexual orientations and gender identities and expressions, the right to life is hindered by States parties failing to protect the basic tenets of non-discrimination and equal treatment under the law. Whether due to their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, young people are disproportionately affected by the violation of this right.

Globally, approximately 76 countries currently criminalize same-sex relations and at least five countries impose the death penalty on people caught engaging in same-sex activities. In every region of the world, transgender individuals face significant human rights violations. Lack of legal protection around sexual orientation and/or gender identity creates a climate of fear and legitimizes harassment and violence perpetrated by state actors.

Homophobic and transphobic violence is witnessed in every region of the world and tends to be crueler than other forms of violence, including “beatings, torture, mutilation, castration and sexual assault.”[[12]](#footnote-12) Culture and religion are often used to defend anti-LGBT sentiments.

General Comment 18 clarified that Article 26 “not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground.”[[13]](#footnote-13)

Discriminatory laws, combined with culture and religion, can lead to extremely dangerous outcomes, such as bullying and violence, lack of access to education and job opportunities, harassment from the police and other institutions, homelessness, violence, and death. Moreover, in every region of the world, young gay men are at increased risk for HIV due to stigma and lack of access to healthcare and/or protection and are often left out of research, policy and programs. Stable housing and income are important components of HIV prevention. Unfortunately, many young gay men are dependent on family that may not understand or accept their sexuality. As a result, they face greater risk of losing housing and/or financial support and are thus more likely to engage in risky behaviors that further expose them to HIV. The lack of housing and income are strong predictors of HIV infection.[[14]](#footnote-14)

While the Covenant does not explicitly refer to sexual orientation or gender identity and expression, the Committee has found that the treaty does include an obligation to prevent discrimination on the basis of sexual orientation, under articles 2 and 26. While the *travaux préparatoires* do not provide specific guidance on this question, the Committee has reaffirmed in General Comments and in its jurisprudence under these provisions that “without distinction of any kind, such as” and “on any ground such as” support an inclusive, rather than an exhaustive interpretation. In *Toonen v. Australia,* the Committee held that the Covenant’s reference to ‘sex’ in Articles 2 and 26 “is to be taken as including sexual orientation.”[[15]](#footnote-15)

On May 13th of this year, a group of international human rights experts – including the UN Committee on the Rights of the Child, the Inter-American Commission on Human Rights, the Special Rapporteur on Human Rights Defenders of the African Commission on Human and Peoples’ Rights, and the Commissioner for the Human Rights Council of Europe – called for an end to discrimination against young people on the basis of their sexual orientation or gender identity or expression. Speaking ahead of the International Day against Homophobia, Biphobia and Transphobia, the group of experts urged States to “protect these young people and children from violence and discrimination, and to integrate their views on policies and laws that affect their rights.”[[16]](#footnote-16)

The Covenant makes clear the equality between men and women is essential for the enjoyment of the right to life.

* There are over 600 million girls (aged 10 to 19) in the world today. Adolescent girls and young women face a tremendous number of challenges as they develop into adult members of society, especially in the area of their sexual and reproductive health. Gender inequality persists throughout the world, marginalizing adolescent girls, violating their human rights, and hindering their opportunities for a better present and future. Young, unmarried women around the world who need reproductive health services face greater barriers than do older, married women. More than half of young married and unmarried women ages 15-19 who are sexually active and want to avoid pregnancy have an unmet need for modern contraception.[[17]](#footnote-17) Girls (aged 15-19) account for eleven percent of all births and around fourteen percent of all maternal deaths, with around 50,000 girls dying from maternal causes annually.[[18]](#footnote-18) Complications during pregnancy and childbirth are the second leading cause of death for 15-19 year-old girls globally, suicide being the leading cause of death for this age group.[[19]](#footnote-19) Yet young women facing an unwanted pregnancy often must navigate considerable social, economic, logistic, policy, and health-system barriers to access safe abortion services. These barriers lead many young women to resort to unsafe abortion, causing thousands of deaths and millions of injuries per year.[[20]](#footnote-20)
* While Article 3 of the Covenant requires States Parties to take measures to ensure the equal right of men and women to enjoy all of the rights within, girls continue to lag behind their male counterparts in education and health outcomes. In 2013, almost 60% of all new HIV infections among young people occurred among adolescent girls and young women.[[21]](#footnote-21) In sub-Saharan Africa, 76 percent of the young people aged 15-24 living with HIV are female.[[22]](#footnote-22) In General Comment 28, the Committee affirmed that this duty includes taking steps to remove obstacles to the enjoyment of these rights, including educating the policymakers and the general population on human rights and removing legal barriers to achieving said rights.[[23]](#footnote-23) Child, early, and forced marriage remains a reality in many parts of the world, denying girls their fundamental human rights and often leading to poor sexual and reproductive health outcomes. One third of the world’s girls are married before the age of 18 and one in nine are married before the age of 15.[[24]](#footnote-24) Child marriage too often means early sexual activity for girls, and in most cases, early childbearing. Of the seven million girls below the age of 18 (2 million of which are under the age of 14) that give birth each year, 90% of these births occur within marriage.
* In General Comment 28, this Committee also noted that States parties “must not only adopt measures of protection, but also positive measures in all areas so as to achieve the effective and equal empowerment of women.” The Committee called on State parties to “give information on any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undergo life-threatening clandestine abortions.”[[25]](#footnote-25) The Committee has also criticized legislation that criminalizes or severely restricts access to abortion in several sets of concluding observations.[[26]](#footnote-26)
* This Committee has specifically recommended to several State parties that they review or amend legislation criminalizing abortion, often referring to such legislation as violating the right to life.3 The Committee has also acknowledged that restrictive abortion laws have a discriminatory and disproportionate impact on poor, rural women.4 In reviewing a report submitted by the government of Peru, this Committee addressed the inhuman and degrading nature of maternal death from unskilled abortion, as well as the inherent discrimination of criminalization of abortion, since men could request medical care for life- or health- endangering conditions without fear of criminal investigation or prosecution.[[27]](#footnote-27)
* Where abortion is restricted, women who wish to terminate a pregnancy face a threat to their physical, mental, and social well-being. A woman who turns to an untrained provider or attempts to self-induce can experience devastating life-long effects on her physical health, including infertility, injury, or even death. Article 2(1) of the Covenant requires State Parties to undertake to respect and ensure to all individuals the rights of the Covenant without distinction, including by sex. Abortion restrictions discriminate against women by criminalizing a health care procedure that only women need, and the impact of these restrictions are primarily felt by women who must carry the burden of an unwanted pregnancy or else risk her life and health by seeking an unsafe abortion.

1. ***The relationship between the right to life and other international human rights instruments***

As stated by the Office of The High Commissioner for Human Rights, “the right to health is a fundamental part of our human rights and of our understanding of a life in dignity.”[[28]](#footnote-28)

* First articulated in the **Constitution of the World Health Organization (1946)**,[[29]](#footnote-29) as “the right to the enjoyment of the highest attainable standard of physical and mental health” is not new. Article 25 of the **Universal Declaration of Human Rights (1948)** also cited health as integral to realizing the right to an adequate standard of living.[[30]](#footnote-30) The right to health was reaffirmed as a human right in the **International Covenant on Economic, Social and Cultural Rights (1966).**[[31]](#footnote-31)
* Today, millions of adolescents and youth face the prospect of early marriage, early childbearing, incomplete education and the threat of HIV and AIDS. Increasing youth's knowledge, improving services for young people, and encouraging youth's participation in programme decisions will help all young people to lead healthier and more productive lives. As stated above, **The Convention on the Rights of the Child (1990)** protects the right to life of children *after birth* under Article 6 which recognizes “that every child has the inherent right to life.”[[32]](#footnote-32) In General Comment 4, the Committee urges states parties “to develop and implement programmes that provide access to sexual and reproductive health services, including family planning, contraception and safe abortion services …”[[33]](#footnote-33) In reviewing states’ compliance with the treaty, the Committee has expressed concern with high rates of unsafe abortion and has asked governments to review restrictive abortion laws.
* The preamble of the **Convention on the Elimination of All Forms of Discrimination Against Women (1981)**, notes the UDHR proclamation that “are born free and equal in dignity and rights.” The Committee overseeing the treaty has also recognized that women’s rights include access to safe abortion. General Recommendation 24 on Health states, “When possible, legislation criminalizing abortion should be amended, in order to withdraw punitive measures imposed on women who undergo abortion” and the Committee has repeatedly recommended that states that are party to the treaty take measures to increase access to safe abortion.[[34]](#footnote-34)

1. United Nations Population Fund. 2014. *State of the World’s Population Report 2014*. New York. [↑](#footnote-ref-1)
2. Human Rights Committee, *General Comment 6: Art. 6* (16th Sess., 1982), *in* Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies, at 114, par. 5, U.N. Doc. HRI/GEN/1/Rev.5 (2001). [↑](#footnote-ref-2)
3. UN General Assembly. 1948. Universal Declaration of Human Rights. Resolution 217A (III), U.N. Doc A/810 at 71. [↑](#footnote-ref-3)
4. Copelon R, Zampas C, Brusie E, deVore J. 2006. Human rights begin at birth: International law and the claim of fetal rights. *Reproductive Health Matters*, 13(26): 120-129. [↑](#footnote-ref-4)
5. UN Convention on the Rights of the Child. 1989. *United Nations, Treaty Series*1577 (1989) p. 3. [↑](#footnote-ref-5)
6. Copelon R, Zampas C, Brusie E, deVore J. 2006. Human rights begin at birth: international law and the claim of fetal rights. *Reproductive Health Matters*.,13(26): 120-129. [↑](#footnote-ref-6)
7. UN Committee on the Rights of the Child. 2003. General Comment No. 4, Adolescent heath and development in the context of the Convention on the Rights of the Child, U.N. Doc. CRC/GC/2003/4,para. 31. [↑](#footnote-ref-7)
8. Copelon R, Zampas C, Brusie E, deVore J. 2006. Human rights begin at birth: International law and the claim of fetal rights. *Reproductive Health Matters*, 13(26): 120-129. [↑](#footnote-ref-8)
9. Copelon R, Zampas C, Brusie E, deVore J. 2006. Human rights begin at birth: international law and the claim of fetal rights. *Reproductive Health Matters*,13(26): 120-129; Baby Boy. 1981. Case 2141, Inter-American Convention on Human Rights 25/OEA/ser. L./V.II.54, Doc 9 Rev.1. [↑](#footnote-ref-9)
10. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. 2000. Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6, art. 14. [↑](#footnote-ref-10)
11. 9 International Covenant on Civil and Political Rights, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, Mar. 23,1976 [hereafter ICCPR]. [↑](#footnote-ref-11)
12. USAID. 2013. *Testing the Waters: LGBT People in the E&E Region*. EE/DGST: Washington, D.C. [↑](#footnote-ref-12)
13. Human Rights Committee. *General Comment No. 18: Non-discrimination* (37th Sess., 1989) [↑](#footnote-ref-13)
14. UNAIDS. 2014. *The Gap Report*. Geneva. [↑](#footnote-ref-14)
15. Human Rights Committee, *Toonen v Australia*, Communication No. 488/1992, UN Doc CCPR/C/50/D/488/92 (1992). [↑](#footnote-ref-15)
16. Office of the High Commissioner for Human Rights. 2015. *Discriminated and made vulnerable: Young LGBT and intersex people need recognition and protection of their rights International Day against Homophobia, Biphobia and Transphobia - Sunday 17 May 2015*. Geneva. Accessed at: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15941&LangID=E#sthash.kVGFHoU3.dpuf [↑](#footnote-ref-16)
17. Guttmacher Institute. (2014). Adding it up: The costs and benefits of investing in sexual and reproductive health 2014. New York, NY: Guttmacher Institute [↑](#footnote-ref-17)
18. The United Nations Children’s Fund. Progress for Children, a report card on Adolescents.<http://www.unicef.org/publications/files/Progress_for_Children_-_No._10_EN_04232012.pdf.>  April 2012. Accessed October 17, 2014. [↑](#footnote-ref-18)
19. WHO calls for stronger focus on adolescent health. World Health Organization Web site. <http://www.who.int/mediacentre/news/releases/2014/focus-adolescent-health/en/> May 14, 2014. Accessed October 24.  [↑](#footnote-ref-19)
20. Guttmacher Institute. (2014). Adding it up: The costs and benefits of investing in sexual and reproductive health 2014. New York, NY: Guttmacher Institute [↑](#footnote-ref-20)
21. UNAIDS. 2014. *The Gap Report*. Geneva. [↑](#footnote-ref-21)
22. Promoting Gender Equity: The Gender Dimensions of the AIDS Epidemic. United Nations Population Fund Website. <http://www.unfpa.org/gender/aids.htm> Assessed October 24, 2014. [↑](#footnote-ref-22)
23. Human Rights Committee, *General Comment 28: Art. 3* (68th Sess., 2000), *in* Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies, at 228, U.N. Doc. HRI/GEN/1/Rev. 9 (2008). [↑](#footnote-ref-23)
24. United Nations Children’s Fund, Ending Child Marriage: Progress and prospects, UNICEF, New York, 2014. [↑](#footnote-ref-24)
25. Human Rights Committee, *General Comment 28: Art. 3* (68th Sess., 2000), *in* Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies, at 228, U.N. Doc. HRI/GEN/1/Rev. 9 (2008). [↑](#footnote-ref-25)
26. *See e.g.,* **Argentina**, 03/11/2000, U.N. Doc. CCPR/CO/70/ARG, par. 14; **Bolivia**, 01/04/97, U.N. Doc.

    CCPR/C/79/Add. 74, par. 22; **Chile**, 30/03/99, U.N. Doc. CCPR/C/79/Add. 104, par. 15; **Peru**, 15/11/2000, U.N. Doc. CCPR/CO/70/PER, par. 20; **Poland**, 29/07/99, U.N. Doc. CCPR/C/79/Add. 110, par. 11; **Senegal**, 19/11/97, U.N. Doc. CCPR/C/79/Add. 82, par. 12; **Venezuela**, 26/04/2001, U.N. Doc. CCPR/CO/71/VEN, par. 19.3 *See e.g.,* **Argentina**, 03/11/2000, U.N. Doc. CCPR/CO/70/ARG, par. 14; **Chile**, 30/03/99, U.N. Doc. CCPR/C/79/Add. 104, par. 15; **Peru**, 15/11/2000, U.N. Doc. CCPR/CO/70/PER, par. 20. [↑](#footnote-ref-26)
27. UN, Human Rights Committee, *Concluding Observations on Peru* (New York: UN, 1996), UN Doc. CCPR/C/79/Add.72, par. 15.; *See also* K.L. v. Peru. 2005. Comm. No. 1153/2003: Peru. 22/11/2005, U.N. Doc.CCPR/C/85/D/1153/2003. [↑](#footnote-ref-27)
28. Office of the United Nations High Commissioner for Human Rights. 2008. *Human Rights Fact Sheet No. 31: The Right to Health.* Geneva. [↑](#footnote-ref-28)
29. The Constitution was adopted by the International Health Conference held in New York from 19 June to 22 July 1946, signed on 22 July 1946 by the representatives of 61 States (Off. Rec. Wld Hlth Org., 2, 100), and entered into force on 7 April 1948. [↑](#footnote-ref-29)
30. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948). [↑](#footnote-ref-30)
31. International Covenant on Economic, Social and Cultural Rights. 1966. G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976. [↑](#footnote-ref-31)
32. UN Convention on the Rights of the Child. 1989. *United Nations, Treaty Series*1577 (1989) p. 3. [↑](#footnote-ref-32)
33. UN Committee on the Rights of the Child. 2003. General Comment No. 4, Adolescent heath and development in the context of the Convention on the Rights of the Child, U.N. Doc. CRC/GC/2003/4,para. 31. [↑](#footnote-ref-33)
34. UN Committee on the Elimination of Discrimination Against Women. 1999. General Recommendation 24: Women and Health (20th Session) para. 31(c). [↑](#footnote-ref-34)