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

June 26, 2015

This submission is intended to support the meeting for a General Discussion in preparation for a General Comment on Article 6 of the ICCPR scheduled by this Committee in July 2015. Ipas is a nonprofit organization that works around the world to increase women’s ability to exercise their sexual and reproductive rights, especially the right to safe abortion. We seek to eliminate unsafe abortion and the resulting deaths and injuries and to expand women’s access to comprehensive abortion care, including contraception and related reproductive health information and care. We strive to foster a legal, policy and social environment supportive of women’s rights to make their own sexual and reproductive health decisions freely and safely.

Every year approximately 47,000 women die as a result of complications from unsafe abortion; these deaths accounted for approximately 13 percent of all maternal deaths in 2008.[[1]](#footnote-1) Most are suffered by poor and otherwise marginalized women living in the global south. Ipas recognizes the fundamental nature of the human right to life, the exercise of which is essential for the exercise of all other rights. Ipas believes that the right to life requires access to the conditions and resources necessary to guarantee a dignified existence for all people. Failure to provide needed reproductive and sexual health services is a violation of the right to life, and this violation causes thousands of preventable deaths every year.

This Committee has recognized in General Comment 6 that the inherent right to life should not be understood in a restrictive manner. That Comment requires State parties to take positive measures, including all possible measures to increase life expectancy.[[2]](#footnote-2) In General Comment 28, this Committee has 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.”[[3]](#footnote-3) The Committee has also criticized legislation that criminalizes or severely restricts access to abortion in several sets of concluding observations.[[4]](#footnote-4) 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.[[5]](#footnote-5)

Where abortion is restricted, women who wish to terminate a pregnancy face a threat to their life as well as 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. Poor and socially marginalized women fare the worst.

International Human Rights and the Right to Life

International and regional human rights treaties do not recognize the right to life before birth. Below is a discussion of major human rights treaties and how they address the right to life.

**The Universal Declaration on Human Rights (1948)** provides in Article 1, “All human beings are *born* free and equal in dignity and rights.”[[6]](#footnote-6) 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.[[7]](#footnote-7)

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 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.[[8]](#footnote-8)

**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.”[[9]](#footnote-9) 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.[[10]](#footnote-10) 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 …”[[11]](#footnote-11) 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 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.[[12]](#footnote-12)

**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.[[13]](#footnote-13)

**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.”[[14]](#footnote-14)

In addition to the above international and regional human rights standards, we recommend this Committee review the below additional related materials as it deliberates on a new General Comment to Article 6 of the Covenant. We hope this information can be useful for your discussion on this topic in July.

Additional Resources

Skuster, Patty. 2011. *How to protect abortion access during constitutional reform,* *June 2011*. Chapel Hill, NC, Ipas. (available at: <http://www.ipas.org/~/media/Files/Ipas%20Publications/PRAADCRE11.ashx>)

Center for Reproductive Rights. 2014. *Whose Right to Life? Women’s Rights and Prenatal Protections under Human Rights and Comparative Law*. New York, NY. (available at: <http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/RTL_Updated_8.18.14.pdf>).

1. World Health Organization. (2011). *Unsafe abortion: Global and regional estimates of the incidence of unsafe abortion and trends during 1995-2008*. Geneva: WHO. [↑](#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. 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-3)
4. *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-4)
5. 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-5)
6. UN General Assembly. 1948. Universal Declaration of Human Rights.Resolution 217A (III), U.N. Doc A/810 at 71. [↑](#footnote-ref-6)
7. 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-7)
8. UN Committee on the Elimination of Discrimination Against Women. 1999. General Recommendation 24: Women and Health (20th Session) para. 31(c). [↑](#footnote-ref-8)
9. UN Convention on the Rights of the Child. 1989. *United Nations, Treaty Series*1577 (1989) p. 3. [↑](#footnote-ref-9)
10. 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-10)
11. 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-11)
12. 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-12)
13. 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-13)
14. 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-14)