****

**Draft General Comment on Article 6 – Right to Life**

**Introduction**

1. Christian Action Research & Education (CARE) is a well-established Christian social policy charity providing resources and helping to bring Christian insight and experience to matters of public policy and practical caring initiatives.
2. CARE demonstrates Christ’s compassion to people of all faiths and none believing that individuals are of immense value, not because of the circumstances of their birth, their behaviour or achievements, but because of their intrinsic worth as people. CARE is represented in the UK Parliaments and Assemblies.

**Paragraph 9 of the draft General Comment**

*‘any legal restrictions on the ability of women to seek abortion must not, inter alia, jeopardize their lives or subject them to physical or mental pain or suffering which violates article 7.’*

1. CARE is highly concerned about the reference to Article 7 of the ICCPR (the prohibition of torture or to cruel, inhuman or degrading treatment or punishment) in conjunction with the obligation to provide abortion.
2. The reference to Article 7 of the ICCPR suggests that placing legal restrictions on abortion may amount to ‘torture or to cruel, inhuman or degrading treatment or punishment.’ Torture is defined in Article 1 of the UN Convention Against Torture (UNCAT) as ‘*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.’*
3. It is questionable whether the fact that the provision of abortion is limited can cause pain and suffering reaching the threshold needed under Article 1 of the UNCAT. Even if it may be argued that the lack of provisions allowing abortion or law limiting the use of abortion may cause such pain and suffering, establishing the existence of specific intent to ‘intentionally inflict [pain and suffering] for such purposes as obtaining from him or a third party information or a confession, punishing…’ in such cases is highly problematic. Without this element of specific intent, the provision on torture would not be triggered.
4. Currently, there is no reliable and comprehensive medico-legal evidence to support the argument that the denial of abortion or limitations on the provision of abortion may cause the level of pain and suffering required under Article 1 of the UNCAT to amount to torture. As there is no evidence to substantiate the claim, the suggestion should be removed from the General Comment until such time as there is sufficient evidence to justify the recommendation.

*‘States parties must provide safe access to abortion to protect the life and health of pregnant women, and in situations in which carrying a pregnancy to term would cause the woman substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or when the foetus suffers from fatal impairment.’*

1. CARE is concerned about the recommendation as it shifts the burden from States’ obligation to care for pregnant women and unborn children to an obligation to provide abortion instead.
2. CARE stresses the need for States to protect the right to life of both pregnant women and unborn children. The protection of the right must be States’ primary consideration. In recognition of this, States should provide medical and psychological assistance to pregnant women who are at risk of health complications or are victims of rape or incest.

*‘States parties may not regulate pregnancy or abortion in a manner that runs contrary to their duty to ensure that women do not have to undertake unsafe abortions.*

1. This recommendation suggests that States do not have an obligation to protect the right to life of the unborn child and to prohibit or limit the provision of abortion. The recommendation is contrary to the spirit of Article 6 and is also opposed to States’ sovereignty.
2. First, the ordinary reading of Article 6 of the ICCPR suggests that the right to life of the unborn child is protected. This is clear from the prohibition of applying the death penalty to children, namely, persons under the age of 18 and pregnant women. In the case of children, while the upper limit of the provision is set at 18, the lower limit is not provided inviting an interpretation covering the right to life of unborn children. The right to life of unborn children is even more explicit in the case of the prohibition of the application of death penalty to pregnant women. This ban recognised that unborn children have a right to life that exists separately from the right to life of pregnant women. The reason a pregnant woman cannot be subjected to the death penalty is that her death would also mean terminating the life of the innocent unborn child.
3. Second, States can introduce their own provisions protecting the right to life which, as a minimum, should follow International standards. However, state sovereignty means that States can also introduce extra protections, for example, special protections of the right to life of vulnerable persons, including human beings in the most vulnerable stage, namely, unborn children.
4. CARE stresses that the recommendation should be amended to recognise States’ obligation to protect the right to life of all, including the protection of unborn children, and state sovereignty in determining whether to introduce extra protections of the right to life of vulnerable persons.

*‘they should not take measures such as […] applying criminal sanctions against women undergoing abortion or against physicians assisting them in doing so, when taking such measures is expected to significantly increase resort to unsafe abortions].’*

1. CARE stresses that placing the provision of abortion within a legal framework works to the benefit of women and unborn children by providing clear boundaries and safeguards for the operation of such a law as well as making clear the repercussions of circumventing the law.
2. CARE believes that the recommendation should be amended to recognise state sovereignty in protecting the right to life of all and legislating accordingly.

*‘Nor should States parties introduce humiliating or unreasonably burdensome requirements on women seeking to undergo abortion.’*

1. CARE emphasises that any restrictions placed on the provision of abortion aimed at protecting pregnant women and the unborn child and not harming them.
2. Abortion is nothing else but taking away the life of a human being in its most vulnerable stage. States that chose to allow abortion in some instances or after conducting safeguarding checks do so with a legitimate aim to protect pregnant women and unborn child. For example, the requirement to see medical professionals aims to ensure that the pregnant woman is provided with crucial medical advice and is fully aware of her options. Women have a right to be made fully aware of the potential risks associated with abortion including post-abortion trauma and pre-term births in subsequent pregnancies. The requirement also provides an opportunity for medical professionals to assess whether the decision of the pregnant woman is her own decision or whether she is being forced or otherwise coerced into the decision.
3. Decriminalising abortion does not make it safe. Abortion, of itself, is not benign and can result in several medical complications, including sepsis and intrauterine perforations. Furthermore, research conducted by the Guttmacher Institute ‘*Facts and Consequences: Legality, Incidence and Safety of Abortion Worldwide’* makes a clear case that changing the law to allow abortion does not mean that the practice of unsafe abortion would cease.
4. In countries where abortion is allowed, there must be clear and adequate safeguards to ensure that the provision of abortion is not abused. The medical needs of pregnant women must be addressed, pregnant women must be provided with appropriate information, and alternative options must be explained, including keeping the baby. Pregnant women must be protected from coercion to undergo an abortion.

*‘The duty to protect the lives of women against the health risks associated with unsafe abortions requires States parties to ensure access for women and men, and, in particular, adolescents, to information and education about reproductive options, and to a wide range of contraceptive methods.’*

1. Women and men should have access to reproductive health education. Such education may be provided to adolescents, as long as it is age appropriate and the content is agreed with their parents.

*‘States parties must also ensure the availability of adequate prenatal and post-abortion health care for pregnant women.’*

1. CARE stresses the need for States to ensure the availability of adequate and comprehensive prenatal health care for all pregnant women. The provision of such prenatal health care should be the primary consideration of States and not the regulation of abortion. The right to life of pregnant women and unborn children is neglected if such health care is not provided.
2. Furthermore, States must ensure that women are provided with adequate medical and psychological care post-abortion.

**Paragraph 10 of the draft Comment**

*‘States parties [may allow] [should not prevent] medical professionals to provide medical treatment or the medical means in order to facilitate the termination of life of [catastrophically] afflicted adults, such as the mortally wounded or terminally ill, who experience severe physical or mental pain and suffering and wish to die with dignity.’*

1. CARE is deeply concerned that the draft General Comment on the right to life recommends the provision of assisted suicide and euthanasia. Assisted suicide and euthanasia differentiate between life worthy of protection and life unworthy of protection based on physical or mental characteristics. The life that is designated as unworthy of protection by way of such differentiation is the life of most vulnerable persons, including the elderly, the physically or mentally disabled, those suffering from incurable diseases - individuals who require compassionate medical or palliative care and assistance.
2. States should protect the right to life of vulnerable persons, including mortally wounded and terminally ill persons, and should not seek to end their lives. Vulnerable individuals should be provided with adequate medical and psychological help.
3. CARE stresses the need to amend the recommendation to focus on assisting vulnerable individuals to live, not to die. CARE further emphasizes the need to respect state sovereignty. For example, the UK recently debated the issue at length and voted overwhelmingly against assisted suicide. Their decision must be respected.

*In such cases, States parties must ensure the existence of robust legal and institutional safeguards to verify that medical professionals are complying with the free, informed, explicit and, unambiguous decision of their patients, with a view to protecting patients from pressure and abuse.’*

1. The recommendation to introduce safeguards to the provision of assisted suicide and euthanasia are detached from the empirical reality. The empirical data indicates that once assisted suicide or euthanasia are legalised, any safeguards introduced to protect individuals or limit the use of the provision are redundant or irrelevant.
2. In both the Netherlands and Belgium, despite the fact that the law aimed to regulate the practice of euthanasia to prevent abuse of the procedure, this aim has not been achieved.
3. Despite the fact that the use of assisted suicide or euthanasia was meant for cases of incurable illnesses or excruciating pain and suffering, deaths under the law have included a woman suffering from a ‘fear of contamination’[[1]](#footnote-2), a single man in his 60s suffering from depression[[2]](#footnote-3), an autistic man in his 30s[[3]](#footnote-4), a dementia sufferer[[4]](#footnote-5), a partially paralysed woman post-stroke[[5]](#footnote-6), a middle age man suffering from tinnitus[[6]](#footnote-7), on request from her family - a mentally incompetent woman in her 80s unable to express her wishes.[[7]](#footnote-8)
4. The operation of assisted suicide or euthanasia laws shifts over time, irrespective of whether amendments are made to accommodate such a change in approach.
5. Once legalised, the use of euthanasia or assisted suicide cannot be limited and will ultimately be abused. The persons who eventually suffer are the most vulnerable individuals in society who instead require protection.

**Paragraph 27 of the draft Comment**

*‘The duty to protect the right to life requires States parties to take special measures of protection towards persons in situation of vulnerability whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence.’*

1. CARE commends the recommendation to protect persons in situation of vulnerability or those placed at risk of specific threats. However, CARE notes that specific groups of people were not explicitly included as being vulnerable, for example, persons with mental or physical disabilities or the unborn children. The protection of the two groups should be included in the recommendation. The right to life has always been intended to protect all people. However, vulnerable persons require a higher degree of protection to ensure that their vulnerabilities are not abused.

**Paragraph 28 of the draft Comment**

*‘Persons with disabilities, including psychosocial and intellectual disabilities, are entitled to special measures of protection so as to ensure their effective enjoyment of the right to life on equal basis with others.’*

1. CARE commends the recommendation to introduce special measures of protection ‘to ensure the effective enjoyment of the right to life [of disabled persons] on equal basis with others.’ However, CARE notes that this recommendation is contradicted in the body of the draft General Comment in paragraph 10 where States are recommended to facilitate the termination of life in some instances. Persons with disabilities will never achieve an effective enjoyment of the right to life on an equal footing with others if States decide which lives are worthy of unconditional protection and which lives can be terminated.

**Paragraph 52 of the draft Comment**

*‘Article 6, paragraph 5 prohibits the application of the death penalty for crimes committed by persons below the age of 18 and on pregnant women. The prohibition against imposing the death penalty on persons below the age of 18 at the time of the offence, necessarily implies that they can never face the death penalty for that offence, regardless of their age at the time of sentencing or at the time foreseen for carrying out the sentence. If there is no reliable and conclusive proof that the person was not below the age of 18 at the time in which the crime was committed, he or she will have the right to the benefit of the doubt and the death penalty cannot be imposed.’*

1. CARE commends the clarification of the prohibition to applying the death penalty to persons under the age of 18 and on pregnant women. However, CARE notes that this provision is contradicted in the body of the draft General Comment in paragraph 9 in placing an obligation on states to introduce arrangements accommodating the termination of life. The recommendations in paragraph 9 should be amended to ensure that they are faithful to the language of Article 6 of the ICCPR and plainly recognise the prohibition of the termination of life of persons under the age of 18 and of pregnant women and their unborn children.

**Paragraph 63 of the draft Comment**

*‘Article 24, paragraph 1, of the Covenant entitles every child “to such measures of protection as are required by his status as a minor on the part of his family, society and the State.” This article requires adoption of special measures designed to protect the life of every child, in addition to the general measures required by article 6 for protecting the lives of all individuals. When taking special measures of protection, States parties should be guided by the best interests of the child by the need to ensure the survival and development of all children, and their well-being.’*

1. CARE commends this explicit recognition and recommendation for States ‘to ensure the survival and development of all children, and their well-being.’ However, CARE notes that this proposal is contradicted in the body of the draft General Comment in paragraph 9 in placing an obligation on states to introduce provisions accommodating the termination of life. The survival and development of all children and their well-being cannot be achieved if States offer provisions allowing the termination of life.

**Paragraph 64 of the draft Comment**

*‘The right to life must be respected and ensured without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or any other status, including caste, sexual orientation and gender identity, disability albinism and age. Legal protections for the right to life must apply equally to all individuals and provide them with effective guarantees against all forms of discrimination. Any deprivation of life based on discrimination in law or fact is ipso facto arbitrary in nature. Femicide, which constitutes an extreme form of gender-based violence that is directed against girls and women, is a particularly grave form of assault on the right to life.’*

1. CARE commends the explicit prohibition of discrimination concerning the right to life. CARE agrees that the right to life of all, independent of their characteristics, must be protected by States and the protection must be applied equally. However, CARE notes that this provision is contradicted in the body of the draft General Comment in paragraphs 9 and 10.
2. The recommendation accommodating the provision of abortion in paragraph 9 of the draft General Comment, despite being framed as non-discriminatory, is detached from the empirical reality of the provision of abortion.
3. Similarly, the recommendation accommodating the termination of life of disabled persons is discriminatory in that it devalues life of disabled persons and presents the protection of the right to life as conditional upon the well-being of persons.

1. <http://www.nrc.nl/nieuws/2014/01/11/negen-keer-euthanasie-op-patient-psychiatrie> [↑](#footnote-ref-2)
2. Ibid. [↑](#footnote-ref-3)
3. https://www.washingtonpost.com/opinions/where-the-prescription-for-autism-can-be-death/2016/02/24/8a00ec4c-d980-11e5-81ae-7491b9b9e7df\_story.html?utm\_term=.4ef52c118b6d [↑](#footnote-ref-4)
4. <http://www.dutchnews.nl/features/2016/02/a-huppekeeeuthanasia/?utm_source=newsletter> [↑](#footnote-ref-5)
5. <http://www.dutchnews.nl/news/archives/2014/08/euthanasia_clinic_reprimanded> [↑](#footnote-ref-6)
6. <http://www.nltimes.nl/2015/01/19/clinic-reprimanded-tinnitus-euthanasia/> [↑](#footnote-ref-7)
7. <https://www.lifesitenews.com/news/court-allows-family-to-euthanize-incapacitated-80-year-old-woman-against-do> [↑](#footnote-ref-8)