**International Organization for the Family**

**Statement regarding:**

 Draft of General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life

*ICCPR, Article 6(1): Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

*ICCPR, Article 6(5): Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.*[[1]](#endnote-1)

Pregnant women and their unborn children have historically been given special consideration in law and policy. The Universal Declaration of Human Rights (UDHR) speaks in its Preamble of the “equal and inalienable rights of all members of the human family,” and states in Article 3 that “Everyone has the right to life…” Article 6 adds that “Everyone has the right to recognition everywhere as a person before the law,” while Article 7 declares that “All are equal before the law and are entitled without any discrimination to every protection of the law.”

Hence, although the UDHR does not expressly mention protection of the unborn, it does imply it, according to Patrick J. Flood: “Abortion was not a major political or legal issue in 1948 [at the adoption of the UDHR], and very few countries allowed it on any but the most serious grounds, notably when necessary to prevent the death of the mother. Although the drafters of the Declaration decided not to deal directly with the unborn, they opted for the broadest and most inclusive language possible to describe the subjects of human rights.”[[2]](#endnote-2)

The International Covenant on Civil and Political Rights (“ICCPR”) implies even more forcefully that unborn children are among the human beings who, as stated in its Article 6(1), have “the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” The scope of who is entitled to this protection is illuminated by what soon follows in Article 6(5) regarding the protection of pregnant women who, save for their pregnancy, would not be so protected: “Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.”

This immutable provision— no derogation from which is permitted even “in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed,” says Article 4— is reflected nearly ubiquitously in national laws. As noted by the Cornell Center on the Death Penalty Worldwide, “In almost every country in the world, it is illegal to execute a pregnant woman. Of the 92 countries that retain the death penalty, 83 have passed laws prohibiting the execution of pregnant women.”[[3]](#endnote-3)

The rationale for ICCPR’s special exemption of pregnant women from the death penalty is not difficult to discern. Protecting these women is the only way of protecting their innocent unborn children, observes Patrick J. Flood. “The [ICCPR] ban on execution of a pregnant woman, which is unqualified and without exception, can have only one foundation, namely, to spare the life of an innocent human being, her child. Moreover, it is only the fact that the woman is carrying an innocent child that exempts her from being put to death. She need not file any appeal or take other action to gain this exemption. The basis of all systems of criminal justice is that the guilty shall be punished and the innocent shall not, and international human rights instruments reflect this logic.”[[4]](#endnote-4)

This rationale for protecting the unborn children of condemned mothers by means of the ICCPR ban is corroborated by the record of the discussion that produced the ban, as noted by Professor William Schabas, distinguished international human rights scholar. “With respect to the [ICCPR] exclusion of pregnant women, the Secretary-General’s Annotations suggest that the provision was added out of ‘consideration for the interests of the unborn child.’ The drafters of the Covenant studiously avoided pronouncing themselves on the difficult issue of when the right to life begins. The Covenant does, however, protect the unborn child, something that is completely compatible with provisions in the International Covenant on Economic, Social and Cultural Rights.”[[5]](#endnote-5)

The necessary implication of the ICCPR exemption of pregnant women from execution is clear. *If an unborn child living in the womb of a woman sentenced to death has an independent claim to legal protection, then all unborn children necessarily have that same claim.* As a result, if States Parties to ICCPR are obligated to protect unborn children under Article 6(5), they are equally obligated to protect *all* unborn children in their “inherent right to life” under Article 6(1).

When the United States ratified ICCPR, one of the reservations it filed was the following. “The United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age.”[[6]](#endnote-6) It is noteworthy that in insisting on its own national criteria for the administration of capital punishment, for which the United States was roundly criticized by no less than 11 countries,[[7]](#endnote-7) it kept the exemption for pregnant mothers.

The protection and care of pregnant women and their unborn children is reflected in additional provisions of United Nations documents.

* “Motherhood and childhood are entitled to special care and assistance.” (UDHR, 25(2).)
* “Special protection should be accorded to mothers during a reasonable period before and after childbirth.” (International Covenant on Economic, Social and Cultural Rights, 10-2.)
* “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.” (Convention on the Rights of the Child, preamble.)
* “Particular attention should be given to the provision of pre-natal care to ensure healthy babies.” (Agenda 21, 6.21.)
* “The right of access to appropriate health-care services… will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.” (International Conference on Population and Development, 7.2; Beijing Declaration and the Platform for Action, 94, 97; Five-year review of Beijing Declaration (23rd special session of the General Assembly), 72-i.)
* “The reduction of maternal and neonatal morbidity and mortality is a health sector priority.” (A World Fit for Children, 37-l.)

In conclusion, the International Organization for the Family respectfully points out the irreconcilable contradiction in General Comment 36 of including language protecting pregnant women from the death sentence while calling for legal access to abortion. We also call for a return of the General Comment 36 language acknowledging the inherent right to life of unborn children. We urge the Human Rights Committee to faithfully implement the foregoing United Nations consensus provisions safeguarding pregnant women and the inherent right to life of their unborn children.

1. International Covenant on Civil and Political Rights, General Assembly resolution 2200A (XXI), 16 December 1966. [↑](#endnote-ref-1)
2. Patrick J. Flood, “Does International Law Protect the Unborn Child?”, *Life and Learning XVI*, 6, <http://www.uffl.org/vol16/flood06.pdf>. [↑](#endnote-ref-2)
3. Cornell Center on the Death Penalty Worldwide, Cornell Law Center, <http://www.deathpenaltyworldwide.org/women.cfm>. [↑](#endnote-ref-3)
4. Flood, 7-8. [↑](#endnote-ref-4)
5. William A. Schabas, *The Abolition of the Death Penalty in International Law,* 2nd ed.(Cambridge: Cambridge University Press, 1997),122-123. [↑](#endnote-ref-5)
6. United States of America, reservations, <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#EndDec>. The United States Department of Homeland Security has shown even more deference to pregnant women by exempting them from electronic control devices and restraints. See 2011 Report and Appendix 18 in the “United States Responses to Questions from the United Nations Human Rights Committee Concerning the Fourth Periodic Report of the United States on the International Covenant on Civil and Political Rights.” [↑](#endnote-ref-6)
7. See Kristina Ash, “U.S. Reservations to the International Covenant on Civil and Political Rights: Credibility Maximization and Global Influence,” *Northwestern University Journal of International Human Rights*, vol. 3 (Spring 2005), paras. 17-20, <http://scholarlycommons.law.northwestern.edu/njihr/vol3/iss1/7>. [↑](#endnote-ref-7)