**Stephen L. Mikochik**

17 N. Jacob St.

Mt. Joy, PA 17552

stephen.mikochik@temple.edu

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Office of the United Nations High Commissioner

For Human Rights

Palais Wilson

52 rue des Pâquis

CH-1201 Geneva, Switzerland.

Re: Human Rights Committee Revised Draft of General Comment 36

Dear High Commissioner Zeid:

My name is Stephen L. Mikochik. I am a Professor Emeritus at Temple University School of Law in Philadelphia, and a Visiting Professor at Ave Maria School of Law in Naples, Florida. Before joining the Temple faculty, I was an attorney with the Civil Rights Division, U.S. Department of Justice, where I worked to enforce laws prohibiting discrimination against people with disabilities. I have written extensively on the threat euthanasia and assisted suicide present to disabled people. If adopted, the Human Rights Committee Draft will intensify that threat.

The Draft interprets Article 6 of the International Covenant on Civil and Political Rights (ICCPR). Article 6 recognizes that “every human being has the inherent right to life.”[[1]](#footnote-1) It is guaranteed for all people “without distinction”.[[2]](#footnote-2) Though the Right to Life “is not absolute”[[3]](#footnote-3), Article 6 affirms that “no one shall be arbitrarily deprived of his life“.[[4]](#footnote-4) The draft affirms that “any deprivation of life based on discrimination in law or fact is *ipso facto* arbitrary in nature”[[5]](#footnote-5).  It specifically recognizes that “the right to life must be respected and ensured without distinction …based on disability”[[6]](#footnote-6), and that people with disabilities are “entitled to special measures of protection so as to ensure their effective enjoyment of the right to life on an equal basis with others”.[[7]](#footnote-7) In sanctioning euthanasia and assisted suicide for disabled people while requiring suicide protection for others, the draft ignores its own prescriptions.

It is important first to understand what the Draft authorizes. Paragraph 10 provides that “States parties may allow medical professionals to provide medical treatment or the medical means in order to facilitate the termination of life of 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”.[[8]](#footnote-8) By allowing professionals to either “provide medical treatment or the medical means to end life”, the Draft authorizes both euthanasia and assisted suicide. Next, since mortal wounds and terminal illness are merely illustrative, the Draft allows euthanasia and assisted suicide for “afflicted adults,” a class broad enough to include people with disabling conditions. Thus, it legitimates the laws of those States Parties that have legalized euthanasia and assisted suicide for non-terminal conditions, and makes it the more likely that others considering end-of-life legislation will do the same.[[9]](#footnote-9)

Even if the Draft is limited to terminal conditions, however, once euthanasia and assisted suicide are held consistent with the ICCPR, they will quickly extend to people with disabilities: If patients with only six months to live can end such distress, why not those who face it for a lifetime?

Finally, severe “mental” pain and suffering are sufficient grounds for people with disabilities to request assistance in dying under the Draft.[[10]](#footnote-10) At bottom, all this requires is such patients’ insistence that they cannot bear living the way they are. Adding safeguards “to verify that medical professionals are complying with the free, informed, explicit and, unambiguous decision of their patients”.[[11]](#footnote-11) At best ensures that, before assisting them to die, physicians are convinced that, in the eyes of their patients, there is no other acceptable solution; and nothing prevents patients from shopping for physicians willing to be convinced.

Yet, “research indicates … that many people who request physician-assisted suicide withdraw that request if their depression and pain are treated”.[[12]](#footnote-12) Nothing in the Draft, however, requires physicians to refer patients for clinical evaluation and treatment before aid in dying is given.

Notwithstanding the Draft’s attempt at interpretation, there is no basis in Article 6 for what Paragraph 10 proposes. To read a right to death into the Right to Life simply turns summersaults with the language of that provision. Reliance on Article 7 would prove no more successful. To claim that people with disabilities are subject to cruel and inhuman treatment if denied euthanasia or assisted suicide must assume that living with a disability is degrading. Yet, the many States Parties that have also ratified the Convention on the Rights of Persons with Disabilities (CRPD) have pledged “to promote respect for … the inherent dignity of all such persons”.[[13]](#footnote-13)

They have further guaranteed to ensure the Right to Life of persons with disabilities “on an equal basis with others”.[[14]](#footnote-14) Though recognizing a like obligation under Article 6,[[15]](#footnote-15) the Draft nonetheless sanctions aid in dying for disabled persons while requiring States Parties to “take adequate measures… to prevent suicides, especially among individuals in other particularly vulnerable situations”.[[16]](#footnote-16) The Draft thus flaunts its own rules that States Parties should ensure the Right to Life without distinction based on disability, [[17]](#footnote-17)and should provide special measures so that people with disabilities can enjoy the right to life on an equal basis with others.[[18]](#footnote-18) Judged by its own standards, the Draft’s discriminatory approval of euthanasia and assisted suicide is “*ipso facto* arbitrary in nature”.[[19]](#footnote-19)

Equal Protection of the Laws means, at the very least, that government not discriminate in its defense of the Right to Life. In sanctioning euthanasia and assisted suicide for people with disabilities while securing the lives of others, the Draft affords disabled people neither equality nor protection. I therefore urge the Committee to strike Paragraph 10 from the Draft.

Respectfully submitted,

Stephen L. Mikochik

1. *ICCPR*, Art. 6 (1) (Right to Life), http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx. [↑](#footnote-ref-1)
2. *Draft*, para. 4, http://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx. [↑](#footnote-ref-2)
3. *Ibid.*, para. 16. [↑](#footnote-ref-3)
4. *ICCPR*, Art. 6(1). [↑](#footnote-ref-4)
5. *Draft*, para. 64 (footnote omitted). [↑](#footnote-ref-5)
6. *Ibid.* [↑](#footnote-ref-6)
7. *Ibid.*, para. 28 (footnote omitted). [↑](#footnote-ref-7)
8. *Ibid.*, para. 10 (footnote omitted). [↑](#footnote-ref-8)
9. In Europe, Belgium, Luxembourg, and the Netherlands have all legalized euthanasia and assisted suicide without the need to show the condition is terminal. Euthanasia- ProCon.org, https://euthanasia.procon.org/view.resource.php?resourceID=000136. By requiring only that “natural death has become reasonably foreseeable,” Canada has in effect done the same. R.S.C. 1985, c. C-46, § 242.2(2) (d). [↑](#footnote-ref-9)
10. Significantly, over the nineteen year history of the Oregon “Death with Dignity” Act, concern about pain-management was not a major reason why patients sought assistance in dying. Ore. Health Auth.: Ann. Reports: Year 19- 2016, http://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Pages/ar-index.aspx#main. [↑](#footnote-ref-10)
11. *Draft*, para. 10 (footnote omitted). [↑](#footnote-ref-11)
12. *Washington v. Glucksberg*, 521 U.S. 702, 730 (U.S. Sup. Ct. 1997) (citations omitted). [↑](#footnote-ref-12)
13. CRPD, Art. 1 (Purpose), https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-1-purpose.html. Thus far, 174 countries have ratified the Convention. CRPD| United Nations Enable, https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html#content. [↑](#footnote-ref-13)
14. *CRPD*, Art. 10 (Right to Life), https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-10-right-to-life.html;*Draft*, para. 28. [↑](#footnote-ref-14)
15. *Draft*, para. 10. [↑](#footnote-ref-15)
16. *Ibid.* (footnote omitted). The “vulnerable situations” the Draft references concern reactions of certain adolescent girls to unwanted pregnancies. *Ibid.*, n. 23 (citing Concluding Observations: Ecuador (1998), para. 11). [↑](#footnote-ref-16)
17. *Ibid.*, para. 64. [↑](#footnote-ref-17)
18. Ibid., para. 28. [↑](#footnote-ref-18)
19. Ibid., para. 64 (footnote omitted). [↑](#footnote-ref-19)