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SEXUALITY, INFORMATION
REPRODUCTIVE HEALTH & RIGHTS

Irish Family Planning Association
Solomons House, 42a Pearse Street
Dublin 2, Ireland

T: +353 (1) 607 4456
F: +353 (1) 607 4486
E: post@ifpa.ie
www.ifpa.ie

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Written Contribution to the Human Rights Committee
Day of General Discussion: General Comment on Article 6 (Right to Life)

The Irish Family Planning Association (IFPA) is grateful for the opportunity to make a written contribution to the Human Rights Committee ahead of its half-day of general discussion on the preparation of a General Comment on Article 6 of the International Covenant on Civil and Political Rights (the Covenant).

The Irish Family Planning Association (IFPA) submits these remarks based on its experience in providing reproductive health care services to women and girls. Since 1969, the IFPA has worked to promote and protect basic human rights in relation to reproductive and sexual health, relationships and sexuality. The IFPA provides the highest quality reproductive health care at its two medical clinics in Dublin and eleven counselling centres across Ireland. Our services include non-directive pregnancy counselling, family planning and contraceptive services, medical training for doctors and nurses, free post-abortion medical check-ups and educational services. In 2014, the IFPA medical clinics provided sexual and reproductive health services to over 16,000 clients and provided information and support to 3,700 women and girls experiencing pregnancies that were unplanned, unwanted or that had developed into a crisis because of changed circumstances. On the basis of this track record, the IFPA is recognised as a respected source of expertise in the provision of sexual and reproductive health care services, advocacy and policy development.

The IFPA welcomed the Committee's concluding observations to Ireland in 2014[1] and its clarity about the primacy of the right to life of existing, living, breathing sentient women over state interest in prenatal life. The IFPA has also welcomes the recommendations of the Committee on the Elimination of Discrimination Against Women in 2005[2], of the Committee Against Torture in 2011[3] and the

[1] Human Rights Committee, *Concluding Observations: Ireland*, para. 9, U.N. Doc. CCPR/C/IRL/CO/4 (2014).
[2] UN Committee on the Elimination of Discrimination against Women, 33rd session, Concluding Comments: Ireland, UN Doc CEDAW/C/IRL/CO/4-5, 13 July 2005
[3] United Nations Committee against Torture, 46th session, 9 May - 3 June 2011 Concluding Observations: Ireland, UN Doc CAT/C/IRL/CO/1, 17 June 2011

Committee on Economic, Social and Cultural Rights in 2015[4]. The development of a general comment whereby the Committee will more fully examine the right to life, including in relation to principles of gender equality and non-discrimination, freedom from cruel, inhuman and degrading treatment, and can further elaborate on states' obligations to ensure the realization of women's right to life.

Women face inequalities in the enjoyment of their rights as a result of historical, traditional and cultural discrimination against them and their subordinate role in society The Committee has recognized that women face particular risks to their right to life, as a result both of women's biological reproductive role and the disproportionate levels of poverty experienced by women.[5] Patterns of discrimination and gender-based stereotypes expose women to threats to their lives, such as maternal mortality, unsafe abortion, female infanticide, widow burnings and dowry killings.[6] The gendered threats to the right to life that women experience are situated within the context of women's lower socioeconomic status as compared to men globally; their unique health risks, many of which remain neglected or underserved in public health planning and programming; and the prevalence of gender-based violence globally, including sexual and domestic violence.[7]

This submission focuses on three particular areas of concern:

- The principle that the protections afforded by Article 6 begin at birth (Section I).
- The extent to which women's enjoyment of their rights under the Covenant may permissibly be limited by states' interest in protecting prenatal life and the strict criteria which such limitations must meet in order to comply with the Covenant (Section II).
- State parties' obligations under the Covenant to address the particular risks that women face in their enjoyment of their Article 6 rights, including as a result of their childbearing capacities (Section III).

I. Article 6: protections of the right to life begin at birth

At times, states parties have asserted that a range of legal and policy measures, which seriously undermine women's enjoyment of their human rights, are necessary or justifiable because they are intended to protect a foetal right to life. This misapplication of the right to life prior to birth has profound implications for women's enjoyment of their Covenant rights, including their right to life under Article 6.

For example, some states parties' laws prohibit abortion in all instances, including where the life of a pregnant woman is at risk, which has resulted in the denial of potentially life-saving medical treatment in the name of protecting a "right to life of the unborn." In 2012, as a result of such laws, and in order to protect the "right to life of the unborn," El Salvador prohibited a 22-year-old woman from accessing abortion services even though she was pregnant with a non-viable foetus and suffered serious complications posing severe risks to her life and health.[8] In Nicaragua and the Dominican Republic,

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[4] United Nations Committee on Economic, Social and Cultural Rights, 55th session, 1 – 19 June 2015, Concluding Observations: Ireland, UN Doc E/C.12/IRL/CO/3, 19th June 2015.

[5] Human Rights Committee, *General Comment No. 28: Article 3 (The equality of rights between men and women)*, (68th Sess.), para. 10, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (2000) [hereinafter Human Rights Committee*, Gen. Comment No. 28*].

[6] *Id.*

[7] *See Gender-Based Violence*, UNITED NATIONS POPULATION FUND, http://www.unfpa.org/gender-based-violence (last visited June 9, 2015); UN WOMEN, WORLD SURVEY ON THE ROLE OF WOMEN IN DEVELOPMENT 2014: GENDER EQUALITY AND SUSTAINABLE DEVELOPMENT 11-14 (2014), *available at* http://www.unwomen.org/~/media/headquarters/attachments/sections/library/publications/2014/unwomen_surveyreport_advance_16oct.pdf. *See generally* Nancy E. Moss, *Gender Equity and Socioeconomic Inequality: A Framework for the Patterning of Women's Health*, 54 SOC. SCI. & MED. 649 (2002).

[8] Matter of B., Provisional Measures, Order of the Court, Inter-Am. Ct. H.R., para. 2(i)-(ii) (May 29, 2013), http://www.corteidh.or.cr/docs/medidas/B_se_01_ing.pdf; *see also* Press Release, Center for Reproductive

pregnant women have been denied cancer treatment because of the potential harm that this could cause to the foetus.[9]

Other states parties' laws provide that a foetus and a pregnant woman have an equal right to life. Although in principle these laws may allow for women's access to abortion services when their lives are at risk, they often inhibit access in practice. In 2014, as a result of such laws, a young suicidal asylum seeker in Ireland was denied access to abortion services. Instead, she was forced to undergo a caesarean section, in the name of protecting, "the right to life of the unborn."[10] Similarly, some states parties refuse to recognize a pregnant woman's end of life wishes and the wishes of her family to cease life support, instead giving precedence to a prenatal right to life and the best interests of the foetus.[11]

Additionally, the protection of a prenatal right to life has been invoked by states to justify prohibitions on certain types of contraception, such as emergency contraception and intrauterine devices.[12] While these prohibitions have profound implications for women in a range of circumstances, as the only effective forms of contraception following a forced sexual encounter, they are particularly harmful to survivors of sexual violence.

The grave nature of these violations of women's rights, and the ongoing attempts by states parties seeking to justify such laws, policies and practices with reference to Article 6 of the Covenant and a prenatal right to life, warrant reaffirmation by the Committee in General Comment No. 36 that the protection afforded under Article 6 of the Covenant begins at birth and does not extend to prenatal

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Rights, Inter-American Court of Human Rights Orders El Salvador Government to Allow Pregnant Woman with Critical Complications Access to Life-saving Health Care (May 30, 2013), http://www.reproductiverights.org/press-room/inter-american-court-of-human-rights-orders-el-salvador-government-to-allow-pregnant-woma.

[9] *See* "Amelia," Precautionary Measures MC 43-10, Inter-Am. Comm'n HR, (2010), http://www.oas.org/en/iachr/women/protection/precautionary.asp; *see e.g.*, Rafael Romo, *Pregnant Teen Dies After Abortion Ban Delays Her Chemo Treatment for Leukemia*, CNN, Aug. 18, 2012, http://www.cnn.com/2012/08/18/world/americas/dominican-republic-abortion/, *see also Anti-Abortion Law Kills Dominican Teenager*, CTR. FOR REPROD. RTS., http://www.reproductiverights.org/press-room/dominican-republic-teenager-dies-abortion-ban (last visited June 8, 2015).

[10] Taylor M., Women's right to health and Ireland's abortion laws, INT. J. GYNECOL. OBSTET. (2015), *available at* http://dx.doi.org/10.1016/j.ijgo.2015.04.020; Deirdre Duffy, *Opinion: Aside from the abortion question, Ms Y highlights serious flaws in Irish maternity care,* THE JOURNAL, Sep. 23, 2014, http://www.thejournal.ie/readme/ms-y-suicidal-abortion-maternity-care-1685650-Sep2014/; Amnesty International, SHE IS NOT A CRIMINAL: THE IMPACT OF IRELAND'S ABORTION LAW 40 (2015), available at http://www.amnesty.ie/sites/default/files/report/2015/06/EUR2915972015%20AMENDEDFINAL4JUNE.PDF;

[11] PP v. HSE (2014) IEHC 622 (26 December 2014), Judgment of Irish High Court, https://static.rasset.ie/documents/news/judgment.pdf; Enright M. PP v HSE: Practicability, Dignity and the Best Interests of the Unborn Child, *available at* http://humanrights.ie/gender-sexuality-and-the-law/pp-v-hse-futility-dignityand-the-best-interests-of-the-unborn-child/ (2014). Taylor M., Women's right to health and Ireland's abortion laws, INT. J. GYNECOL. OBSTET. (2015), *available at* http://dx.doi.org/10.1016/j.ijgo.2015.04.020; Enright M. PP v HSE: Practicability, Dignity and the Best Interests of the Unborn Child, *available at* http://humanrights.ie/gender-sexuality-and-the-law/pp-v-hse-futility-dignityand-the-best-interests-of-the-unborn-child/ (2014).

[12] For example, El Salvador's Constitution "recognizes as a human person every human being since the moment of conception," and in 1998, El Salvador enacted an absolute ban on abortion, including where pregnancy threatens the woman's life or health or results from rape or incest. *See* EL SALVADOR CONSTITUTION 1983 (revised 2003), Title I, art. 1; Penal Code (1997), Legislative Decree 1030, Apr. 26, 1997, Chapter II, arts. 133 – 137. Furthermore, in 2012, Honduras' Supreme Court upheld the country's ban on emergency contraception based on the belief that it can harm a fertilized embryo – which is a misunderstanding of emergency contraception's mechanism of action. Decision of the Supreme Court, Feb. 1, 2012 (Hond.) [Dictamen de la CSJ, 1 de feb. de 2012 (Hond.)]; Press Release, Center for Reproductive Rights, Honduras Supreme Court Upholds Absolute Ban on Emergency Contraception, Opens Door to Criminalize Women and Medical Professionals (Feb. 13, 2012), http://www.reproductiverights.org/press-room/honduras-supreme-court-upholds-absolute-ban-on-emergency-contraception-opens-door-to-crim.

life. Such a reaffirmation would serve to remind states parties that the drafters of the Covenant refused to extend the right to life prior to birth. It would enable the Committee to recall that the *travaux preparatoires* of the Covenant affirms that Article 6 does not apply prior to birth.[13] It would therefore underscore that states parties may not invoke a prenatal right to life under Article 6 as a legitimate basis for infringements of women's rights.

Indeed, consistent with this approach, no other universal human rights instrument or treaty monitoring body has provided that a right to life applies before birth or that a prenatal right to life is protected by the relevant instrument or treaty. For example the Universal Declaration of Human Rights states that "all human beings are born free and equal in dignity and rights,"[14] and the *travaux preparatoires* indicate that the word "born" was used intentionally to confirm that the rights set forth in the Declaration are "inherent from the moment of birth," and to firmly exclude a prenatal application of the rights protected in the Declaration.[15] Similarly, the Convention on the Rights of the Child defines "a child" as "every *human being* below the age of eighteen years."[16] Preparatory materials once again make it clear that a phrase concerning prenatal life in the preamble of the Convention do not extend the provisions of the Convention, particularly the right to life, to the "unborn child." It was agreed that this phrase would not determine the interpretation of the Convention and did not create any right to life before birth.[17] Subsequent practice of the Committee on the Rights of the Child confirms that the right to life under the Convention does not accrue before birth.[18]

Regional human rights instruments and their respective courts' jurisprudence support similar conclusions. For example, the European Court has declined to find a foetus enjoys the right to life under the European Convention,[19] and although the Court has addressed violations of women's rights due to the denial of abortion services, it has never addressed this in terms of whether a measure was aimed at protecting a prenatal right to life under the European Convention. Furthermore, even though the text of the American Convention protects the right to life "in general, from the moment of conception,"[20] the Inter-American Court of Human Rights has determined that embryos do not constitute persons under the convention, and may not be afforded an absolute right to life.[21] Finally, the drafters of the African Charter explicitly rejected language extending the right to life prior to birth

[13] U.N. GAOR Annex, 12th Sess., Agenda Item 33, at 113 U.N. Doc. A/C.3/L.654 (1957); U.N. GAOR, 12th Session, Agenda Item 33, at 199(q), U.N. Doc. A/3764 (1957). The proposed and rejected text read "the right to life is inherent in the human person from the moment of conception."
[14] Universal Declaration of Human Rights, adopted Dec. 10, 1948, G.A. Res.217a (III), Article 1, U.N. Doc. A/810 (1948).
[15] U.N. GAOR 3rd Comm., 99th mtg., paras. 110-124, U.N. Doc. A/PV/99 (1948).
[16] Convention on the Rights of the Child, *adopted* Nov. 20, 1989, art. 1, G.A. Res. 44/25, annex U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989)(*entered into force* Sept. 2, 1990) (emphasis added).
[17] Question of a Convention on the Rights of the Child: Rep. of the Working Group, U.N. Comm'n on Human Rights, 36th Sess., U.N. Doc. E/CN.4/L.1542 (1980). *See also* Rep. of the Working Group on a Draft Convention on the Rights of the Child, U.N. Comm'n on Human Rights, 45th Sess., at 11, U.N. Doc. E/CN.4/1989/48 (1989).
[18] See Committee on the Rights of the Child (CRC Committee), *General Comment No.4: Adolescent Health and Development in the Content of the Convention on the Rights of the Child* (33rd Sess., 2003), para. 31, U.N. Doc. CRC/GC/2003/4 (2003); CRC Committee, *General Comment No. 15: The right of the child to the enjoyment of the highest attainable standard of health*, (62nd Sess., 2013), *in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, para. 70, U.N. Doc. CRC/C/GC/15 (2013).
[19] Vo v. France, No. 53924/00 Eur. Ct. H. R., para. 82 (2004); X v. the United Kingdom, No. 7215/75 Eur. Ct. H. R. (1981); H. v. Norway, No. 17004/90 Eur. Ct. H. R. (1992); Boso v. Italy, No. 50490/99, Eur. Ct. H. R. (2002-VII).
[19] A, B and C v. Ireland, No. 25579/05 Eur. Ct. H. R., para. 227 (2010); Open Door and Dublin Well Woman v. Ireland, No. 14235/88 Eur. Ct. H.R., para. 68 (1992).
[20] American Convention on Human Rights, *adopted* Nov. 22, 1969, art. 4(1), O.A.S.T.S. No. 36, O.A.S. Off. Rec. OEA/Ser.L/V/II.23, doc. 21, rev. 6 (*entered into force* July 18, 1978).
[21] Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., series C, No. 257, paras. 264, 273 (Nov. 28, 2012).

and Maputo Protocol's recognition of a right to abortion in certain circumstances implicitly demonstrates that such a right does not exist prior to birth.

II. Measures to protect prenatal life must comply with the Covenant

As the Committee has reaffirmed on a number of occasions, not all Covenant rights are absolute, and state parties may place limitations on the enjoyment of certain rights, so long as such limitations meet strict criteria. In general they must be prescribed by law; must serve a legitimate aim and be necessary for achieving that aim and must be proportional. The requirement of proportionality means that a limitation must be appropriate to achieve its aim; it must be the least intrusive measure possible to achieve the desired result; it must be proportionate to the interest to be protected; and it must be consistent with the other rights guaranteed in the Covenant. Additionally, a limitation must not affect the essence of the right in question and must not enable the state party to exercise unfettered discretion.[22]

As noted previously, states parties to the Covenant often claim that laws and policies that limit or restrict women's enjoyment of their human rights constitute permissible limitations under the Covenant because they are intended to protect prenatal life. However, such measures routinely fail to comply with the terms of the Covenant and do not meet the strict criteria imposed on limitations on rights.

The serious implications which such measures can have on the lives, health and wellbeing of women warrants clarification by the Committee of when limitations on rights in the name of protecting prenatal life may be permitted under the Covenant and the strict criteria they must meet in order to comply with the Covenant.

A. *A state's interest in protecting prenatal life must be firmly distinguished from Article 6 and the right to life*

Since the right to life and the protections afforded by Article 6 do not apply before birth, laws and policies adopted by states parties which restrict women's enjoyment of Covenant rights, with the stated aim of protecting "developing life," should not be scrutinized in the context of state obligations under Article 6 or treated as relevant thereto. Measures that are put in place to protect developing life cannot be seen as intended to balance competing human rights or as relevant to the legitimate aim of protecting the "rights of others." Similarly women's entitlements in a range of circumstances to access reproductive health services, including abortion services or other medical treatment, should not be treated as exceptions to Article 6 protections.

B. *Measures to protect prenatal life may never infringe upon the enjoyment of absolute rights*

Although certain rights under the Covenant may at times be subject to permissible limitation, others are absolute and interference with these rights may never be justified. The absolute nature of the protection afforded by Article 7 is particularly unassailable. As a result of the absolute nature of the right to freedom from torture or cruel, inhuman or degrading treatment or punishment (ill treatment) enshrined in Article 7, a state party to the Covenant may never seek to justify ill treatment with reference to a need to balance the rights enshrined in Article 7 with other interests or rights.[23] As

[22] *See Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, supra* note 66. *See also* Human Rights Committee*, Gen. Comment No. 27, supra* note 117, paras. 11-18.
[23] *See, e.g.,* Human Rights Committee, *General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment)*, (44th Sess., 1992), *in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, at 200, para. 3, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008); Committee Against Torture (CAT Committee), *General Comment No. 2:*

such, a state may never invoke an interest in protecting prenatal life as a means to justify interference with a woman's right to freedom from ill treatment.

Despite the absolute nature of Article 7, state parties continue to attempt to justify conduct that subjects women to ill treatment based on the protection of prenatal life. For example, in order to protect prenatal life, states have denied pregnant women reproductive health information and services, including abortion services, prenatal testing, and reproductive health information in instances where women's pregnancies pose a serious risk to their lives and health, have fatal foetal impairments or result from sexual assault.

International and regional human rights bodies, including this Committee, have repeatedly recognized that denying women in certain situations access to reproductive health services, including abortion, can constitute ill-treatment.[24] For example, in *KL v. Peru* and *LMR v. Argentina*, this Committee recognized that denial of access to abortion services can result in cruel, inhuman and degrading treatment.[25] The Committee against Torture has also recognized that restrictive abortion laws may constitute violations of the right to be free from cruel, inhuman and degrading treatment.[26] Furthermore, the European Court of Human Rights has found that the denial of access to information and abortion services can result in violations of the right to be free from inhuman and degrading treatment.[27]

C. *Measures to protect prenatal life may not unduly curtail other human rights and must meet strict criteria under the Covenant*

International and regional human rights mechanisms, including this Committee, have consistently held that restricting women's rights to reproductive health services in the name of protecting prenatal life, including prohibiting and criminalizing abortion, constrain the right to privacy, and as such constitute an interference with this right.[28] Similarly they have held that the right to "seek, receive and impart

Implementation of article 2 by States Parties, (39th Sess., 2007), paras. 5-7, U.N. Doc. CAT/C/GC/2/CRP. 1/Rev.4 (2007); Caesar v. Trinidad and Tobago, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R., series C No. 123, para. 70 (Mar. 11, 2005); Human Rights Committee, *General Comment No. 29: Article 4 (States of Emergency)*, (72th Sess., 2001), para. 11, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001).

[24] *See, e.g.,* K.L. v. Peru, Human Rights Committee, Commc'n No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005); L.M.R. v. Argentina, Human Rights Committee, Commc'n No. 1608/2007, U.N. Doc. CCPR/C/101/D/1608/2007 (2011); L.C. v. Peru, Committee on the Elimination of Discrimination against Women (CEDAW Committee), Commc'n No. 22/2009, U.N. Doc. CEDAW/C/50/D/22/2009 (2011); Human Rights Committee, *Concluding Observations: Ireland*, para. 9, U.N. Doc. CCPR/C/IRL/CO/4 (2014).

[25] K.L. v. Peru, Human Rights Committee, Commc'n No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005); L.M.R. v. Argentina, Human Rights Committee, Commc'n No. 1608/2007, U.N. Doc. CCPR/C/101/D/1608/2007 (2011)

[26] CAT Committee, *Concluding Observations: Peru*, para. 15, U.N. Doc. CAT/C/PER/CO/5-6 (2013); CAT Committee, *Concluding Observations: Kenya*, para. 28, U.N. Doc. CAT/C/KEN/CO/2 (2013); CAT Committee, *Concluding Observations: Ireland*, para. 26, U.N. Doc. CAT/C/IRL/CO 1 (2011); CAT Committee, *Concluding Observations: Nicaragua*, para. 16, U.N. Doc. CAT/C/NIC/CO/1 (2009).

[27] *See* R.R. v. Poland, No. 27617/04 Eur. Ct. H.R. (2011); *see also* P and S v. Poland, No. 57375/08 Eur. Ct. H.R. (2008).

[28] *See e.g.* K.L. v. Peru, Human Rights Committee, Commc'n No. 1153/2003, para. 6.4, U.N. Doc. CCPR/C/85/D/1153/2003 (2005); L.M.R. v. Argentina, Human Rights Committee, Commc'n No. 1608/2007, para. 9.3, U.N. Doc. CCPR/C/101/D/1608/2007 (2011); Human Rights Committee, *Concluding Observations: Ireland*, para. 9, U.N. Doc. CCPR/C/IRL/CO/4 (2014); Tysiąc v. Poland, No. 5410/03 Eur. Ct. H.R., paras. 106-107 (2007); R.R. v. Poland, No. 27617/04 Eur. Ct. H. R., para. 181 (2011); P. and S. v. Poland, No. 57375/08 Eur. Ct. H.R. para. 96 (2008). *See also in general* Human Rights Committee, *General Comment No. 28: Article 3 (The equality of rights between men and women)*, (68th Sess., 2000), *in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, para. 20, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008).

information," encompasses a right to access clear, evidence-based information on health, including concerning reproductive health and abortion.[29]

Although the rights to privacy and information are not absolute rights under the Covenant and may be permissibly subjected to certain limitations or restrictions by state parties, such limitations must meet strict requirements in order to avoid giving rise to violations of these rights. As outlined above, in general these requirements demand that, among other things, any such limitation must be necessary, effective and proportionate to a legitimate aim. It is incumbent on the state to demonstrate that any limitation fulfils these criteria and such limitations are subject to strict scrutiny.[30] In addition, international law and standards require that any restriction must be consistent with the principles of equality and non-discrimination.[31]

Furthermore, international human rights mechanisms have repeatedly outlined that state measures intended to protect prenatal life must ensure that the rights of the woman are not wholly curtailed or annulled. For example, the CEDAW Committee has found that a woman's right to equal enjoyment of physical and mental health may not be sacrificed to a state's aim of protecting prenatal life. It has considered that medical decisions "influenced by the stereotype that protection of the foetus should prevail over the health of the mother," are discriminatory and violate the CEDAW Convention."[32] The Inter-American Court has held that state measures to protect prenatal life must not "annul" an individual woman's rights to privacy.[33]

III. Addressing the specific risks to life that women face, including those related to their reproductive capacities

As the Committee has recognized, women face unique risks to their lives as a result of discrimination, inequalities and gender-based stereotypes,[34] which are inherently connected to women's reproductive capacities. The Committee has firmly rooted women's reproductive rights in the right to life, among

[29] Committee on Economic, Social and Cultural Rights (CESCR Committee), *General Comment No. 14: The right to the highest attainable standard of health (Art. 12),* (22nd Sess., 2000), *in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, para. 11, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008); Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Rep. of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, para. 47, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013) (by Juan E. Méndez); R.R. v. Poland, No. 27617/04 Eur. Ct. H. R., para. 200 (2011). See also specific to information on abortion: WORLD HEALTH ORGANIZATION (WHO), SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS (2nd ed. 2012); WHO, CLINICAL PRACTICE HANDBOOK FOR SAFE ABORTION, 10 (2014), *available at* http://apps.who.int/iris/bitstream/10665/97415/1/9789241548717_eng.pdf?ua=1; FIGO, ETHICAL ISSUES IN OBSTETRICS AND GYNECOLOGY, *supra* note 58, at 93-97.

[30] *See, e.g., Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, supra* note 66. *See also* Human Rights Committee*, Gen. Comment No. 27, supra* note 117, paras. 11-18; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *Rep. of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, para. 18, U.N. Doc. A/HRC/13/37 (Dec. 28, 2009) (by Martin Scheinin); Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *Rep. of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,* para. 29, U.N. Doc. A/HRC/23/40 (Apr. 17, 2013) (by Frank La Rue).

[31] *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, supra* note 66. *See also* Report of the Office of the United Nations High Commissioner for Human Rights, *The right to privacy in the digital age,* para. 18, U.N. Doc. A/HRC/27/37, *available at* http://www.ohchr.org/en/hrbodies/hrc/regularsessions/session27/documents/a.hrc.27.37_en.pdf.

[32] L.C. v. Peru, CEDAW Committee, Commc'n No. 22/2009, para. 8.15, U.N. Doc. CEDAW/C/50/D/22/2009 (2011).

[33] *See* Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., series C, No. 257, para. 274 (Nov. 28, 2012).

[34] Human Rights Committee, *General Comment No. 28,* para. 10.

other rights, and has explicitly linked elevated rates of preventable maternal mortality and morbidity with the inadequate realization of women's reproductive rights, including lack of access to contraception, poor maternal health services, and restrictive abortion laws.[35]

By recognizing that women require access to a broad spectrum of reproductive health services in order to realize their right to life without discrimination, General Comment No. 36 would provide states with important guidance on compliance with Article 6.

A. States must take effective steps to eradicate preventable maternal mortality and morbidity in order to realize women's right to life.

The Committee has repeatedly recognized that pregnancy-related mortalities have a bearing on women's right to life and to equality and non-discrimination in the enjoyment of the right,[36] and has urged states to take necessary measure to reduce maternal mortality,[37] such as ensuring women access to reproductive health services and emergency obstetric care.[38] The Committee has also linked maternal mortality with unsafe abortion, inadequate access to contraception, and the need for better sexuality education.[39]

The approach of the Committee mirrors that taken by other international and regional human rights bodies who have also addressed maternal health care in relation to the right to life. For example, in the case of *Alyne da Silva Pimental v. Brazil*, the CEDAW Committee addressed the intersection between women's rights to life, health and non-discrimination in relation to the preventable maternal death of a poor, Afro-Brazilian woman due to the denial of adequate maternal health care. The CEDAW Committee determined that "the lack of appropriate maternal health services in the state party that clearly fails to meet the specific, distinctive health needs and interests of women" violates the right to health and non-discrimination, as protected under the CEDAW Convention.[40] The CEDAW Committee further indicated that "the lack of appropriate maternal health services has a differential impact on the right to life of women."[41]

In elaborating General Comment No. 36 the Committee has an opportunity to reaffirm that states parties must ensure women's right to life by taking effective steps to eradicate preventable maternal mortality, including by guaranteeing that women can access quality maternal health services that address their distinct health needs, including pre- and post-natal care, skilled attendance at birth, and emergency obstetric care.

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[35] *See, e.g.,* Human Rights Committee, *Concluding Observations: Peru*, para. 14, U.N. Doc. CCPR/C/PER/CO/5 (2013); Human Rights Committee, *Concluding Observations: Dominican Republic*, para. 15, U.N. Doc. CCPR/C/DOM/CO/5 (2012); Human Rights Committee, *Concluding Observations: Cameroon*, para. 13, U.N. Doc. CCPR/C/CMR/CO/4 (2010); Human Rights Committee, *Concluding Observations: Democratic Republic of Congo*, para. 14, U.N. Doc. CCPR/C/COD/CO/3 (2006).

[36] Human Rights Committee, *General Comment No. 28,* para. 10.

[37] *See, e.g.,* Human Rights Committee, *Concluding Observations: Mongolia*, para. 20, U.N. Doc. CCPR/C/MNG/CO/5 (2011) (urging the state to "urgently take all necessary measures to reduce maternal mortality, including by implementing the project of the nationwide network of national ambulance services and opening new medical clinics in rural areas."); Human Rights Committee, *Concluding Observations: Cameroon*, para. 13, U.N. Doc. CCPR/C/CMR/CO/4 (2010) (urging the state to "step up its efforts to reduce maternal mortality, including by ensuring that women have access to reproductive health services.").

[38] Rights Committee, *Concluding Observations: Cameroon*, para. 13, U.N. Doc. CCPR/C/CMR/CO/4 (2010); Human Rights Committee, *Concluding Observations: Mali*, para. 14, U.N. Doc. CCPR/CO/77/MLI (2003).

[39] Human Rights Committee, *Concluding Observations: Cameroon*, para. 13, U.N. Doc. CCPR/C/CMR/CO/4 (2010); Human Rights Committee, *Concluding Observations: Paraguay*, para. 10, U.N. Doc. CCPR/C/PRY/CO/2 (2006); Human Rights Committee, *Concluding Observations: The Gambia*, para. 17, U.N. Doc. CCPR/CO/75/GMB (2004).

[40] Alyne da Silva Pimental Teixeira v. Brazil, CEDAW Committee, Commc'n No. 17/2008, para. 7.6, U.N. Doc. CEDAW/C/49/D/17/2008 (2011).

[41] *Id.*

B. Reforming restrictive abortion legislation and guaranteeing women access to safe abortion services are critical in realizing women's right to life

Unsafe abortion continues to claim the lives of 47,000 women each year, nearly all of which occur in developing countries where restrictive abortion laws predominate.[42] The World Health Organization recognizes that restrictive abortion laws disproportionately impact poor women, as they create a two-tiered system wherein rich women can obtain illegal services from skilled providers or travel abroad for abortion services, while poor women are forced to seek out illegal, unskilled and unsafe abortion services,[43] jeopardizing their lives and health.

The Committee has previously recognized the impact that unsafe abortion poses to women's right to life and repeatedly urged states to amend their abortion laws to ensure women do not have to resort to unsafe and illegal abortions.[44] In urging states to prevent women from having to seek unsafe abortions, the Committee has called on states to liberalize their abortion laws in order to permit abortion, at a minimum, where pregnancy poses a risk to the woman's life or health and in cases of rape or incest.[45] The Committee has also recognized that procedural barriers to abortion services, such as third-party authorization requirements, can jeopardize women's right to life, and has urged states to take measures to guarantee access to such services.[46]

Other treaty monitoring bodies have made similar pronouncements,[47] and are increasingly progressing beyond articulating specific circumstances under which abortion should be legal, instead urging states to ensure women can access safe abortion services in general. For example, in its general comment on the right to health, the Committee on the Rights of the Child recognizes that a continuum of care is essential during pregnancy, including "safe abortion services and post-abortion care" and recommends that "states ensure access to safe abortion and post-abortion care services."[48] Furthermore, in its General Recommendation on women in conflict, the CEDAW Committee advises

[42] World Health Organization, SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS 17-18 (2012), *available at* http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf.
[43] *Id.*, at 18.
[44] *See, e.g.,* Human Rights Committee, *Concluding Observations: Jamaica*, para. 14, U.N. Doc. CCPR/C/JAM/CO/3 (2011) (urging the state to "amend its abortion laws to help women avoid unwanted pregnancies and not to resort to illegal abortions that could put their lives at risk. The State party should take concrete measures in this regard, including a review of its laws in line with the Covenant."); Human Rights Committee, *Concluding Observations: Mali*, para. 14, U.N. Doc. CCPR/CO/77/MLI (2003); Human Rights Committee, *Concluding Observations: Djibouti*, para. 9, U.N. Doc. CCPR/C/DJI/CO/1 (2013); Human Rights Committee, *Concluding Observations: Ireland*, para. 13, U.N. Doc. CCPR/C/IRL/CO/3 (2008). *See also* Human Rights Committee, *General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women*), (68th Sess., 2000), para. 10, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000).
[45] Human Rights Committee, *Concluding Observations: Paraguay*, para. 13, U.N. Doc. CCPR/C/PRY/CO/3 (2013); Human Rights Committee, *Concluding Observations: Djibouti*, para. 9, U.N. Doc. CCPR/C/DJI/CO/1 (2013); Human Rights Committee, *Concluding Observations: Dominican Republic*, para. 15, U.N. Doc. CCPR/C/DOM/CO/5 (2012).
[46] Human Rights Committee, *Concluding Observations: Bolivia*, para. 9(b), U.N. Doc. CCPR/C/BOL/CO/3 (2013); Human Rights Committee, *Concluding Observations: Zambia*, para. 18, U.N. Doc. CCPR/C/ZMB/CO/3 (2007); Human Rights Committee, *Concluding Observations: Argentina*, para. 14, U.N. Doc. CCPR/CO/70/ARG (2000).
[47] See, e.g., CEDAW Committee, *Concluding Observations: Bahrain*, para. 42(b), U.N. Doc. CEDAW/C/BHR/CO/3 (2014); CAT Committee, *Concluding Observations: Paraguay*, para. 22, U.N. Doc. CAT/C/PRY/CO/4-6 (2011)2; CRC Committee, *Concluding Observations: Chad*, para. 30, U.N. Doc. CRC/C/15/Add.107 (1999); ESCR Committee, *Concluding Observations: Dominican Republic*, para. 29, U.N. Doc. E/C.12/DOM/CO/3 (2010).
[48] *See* Committee on the Rights of the Child*, General Comment No. 15, Right of the Child to the Enjoyment of the Highest Attainable Standard of Health,* 7-8, paras. 54, 70, U.N. Doc. CRC/C/GC/15 (2013).

states to “ensure that sexual and reproductive health care includes access to… safe abortion services.”[49]

These statements demonstrate an increased recognition that narrow exceptions to abortion bans are inadequate to reduce maternal mortalities from unsafe abortions or protect women’s reproductive rights. Indeed, under these restrictive regimes, only a very small fraction of pregnant women needing abortion services actually qualify for them under the law, as many women who undergo unsafe abortions are not necessarily facing a threat to their life or health as defined by these laws. As such, only authorizing abortion under these circumstances is simply inadequate to prevent women from having to jeopardize their lives in order to exercise reproductive autonomy.

Further, where laws only permit abortion on limited grounds, restrictive interpretations of the law in practice often make it impossible for women to access legal and safe abortion services. As the aforementioned cases of *KL v. Peru, LMR v. Argentina* and *LC v. Peru* demonstrate, restrictive abortion laws often create a strong chilling effect on providers who then refuse to administer even legal abortion services for fear of prosecution.

In elaborating General Comment No. 36, the Committee has an opportunity to reaffirm that states parties must take effective steps to ensure that women are not compelled to seek clandestine and unsafe abortion services, including by guaranteeing women’s right to access safe abortion services.

C. Effective measures to ensure women’s access to a range of quality contraceptive information and services are critical for the realization of women’s right to life

The Committee has recognized that access to contraceptive information and services is critical for the realization of the right to life, as this enables women to plan their pregnancies, thereby reducing unwanted pregnancies, unsafe abortion and crucially maternal mortality.[50] In this context, the Committee has criticized restrictions on women’s access to contraception.[51]

In elaborating General Comment No. 36, the Committee has an opportunity to reaffirm the importance of access to contraception, including the need for contraceptive services to be of good quality and be administered in line with the principles of non-discrimination, free and informed consent and freedom from the threat violence or coercion. Indeed state parties’ failures to ensure respect for these principled in the delivery of contraceptive services may result in violations of the right to life.

As this demonstrates, there is a critical need for the Committee to explicitly recognize that states must guarantee women’s access to a range of *quality* contraceptives in a safe manner that respects the principle of free and informed consent.

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[49] CEDAW Committee, *General Recommendation No. 30: On women in conflict prevention, conflict and post-conflict situations,* (56th Sess., 2013), *in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, para. 52(c), U.N. Doc. CEDAW/C/GC/30 (2013). *See also* CEDAW Committee, *Concluding Observations: New Zealand,* para. 35(a), U.N. Doc. CEDAW/C/NZL/CO/7 (2012) (urging a state permitting abortion where pregnancy poses a risk to the woman’s physical or mental health and in instances of rape or incest to amend its abortion law “to ensure women’s autonomy to choose.”); *Sierra Leone*, para. 32, U.N. Doc. CEDAW/C/SLE/CO/6 (2014).

[50] *See, e.g.,* Human Rights Committee, *Concluding Observations: Djibouti*, para. 9, U.N. Doc. CCPR/C/DJI/CO/1 (2013); Human Rights Committee, *Concluding Observations: Hungary*, para. 11, U.N. Doc. CCPR/CO/74/HUN (2002); Human Rights Committee, *Concluding Observations: Azerbaijan*, para. 16, U.N. Doc. CCPR/CO/73/AZE (2001).

[51] Human Rights Committee, *Concluding Observations: Philippines*, para. 13, U.N. Doc. CCPR/C/PHL/CO/4 (2012).