**Submission by Members of the United States Congress**

**Comment on Draft General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights - Right to Life**

As lawmakers, we believe we have a duty to protect the weak, disenfranchised, unwanted and vulnerable from violence and abuse. Therefore we write to affirm that the most elemental human right of all—the right to life—includes unborn children.

Accordingly, we oppose any attempt by the Human Rights Committee (HRC) to reinterpret Article 6 of the International Covenant on Civil and Political Rights (ICCPR) so as to abrogate the right to life of the unborn human being, or seek to impose any novel obligation upon States that they never contemplated at the time the ICCPR was negotiated, signed and ratified. As any such attempt by the HRC is contrary to the text and intent of the ICCPR and an *ultra vires* act beyond the competency of the HRC, it is therefore illegitimate.

In light of the fact that the United States has signed and ratified the ICCPR, we believe that as members of the United States Congress we speak with particular authority on this matter.

**The Text of the Article 6 Contemplates Protection of the Unborn Child**

Article 6 of the ICCPR states in relevant part:

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.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

….

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*.

ICCPR art. 6 (emphasis added).

Applying well-established norms of treaty interpretation set forth in the Vienna Convention on the Laws of Treaties, the life of the unborn child is clearly covered within the protective ambit of Article 6. *See* Vienna Convention on the Law of Treaties art. 31(1) (“A treaty shall be interpreted in good faith in accordance with the *ordinary meaning* to be given to the terms of the treaty *in their context* and in the light of its object and purpose.”) (Emphasis added).

From the text of Article 6, it is clear that a broad, “inherent right to life” for “every human being” is established. There is no language of qualification such as would limit this right to humans in a post-natal stage of being. Moreover, from the context, it is clear that protection of unborn life is contemplated, as the treaty’s explication of the death penalty acknowledges the life interest of the unborn child, independent from his or her mother: a non-minor woman adjudicated by a competent court as deserving the penalty of death for a most serious crime may be put to death, unless she is pregnant, in which case “Sentence of death … shall not be carried out on pregnant women.” ICCPR art. 6 (2&5). *Cf.* Convention on the Rights of the Child, preamble (“[T]he child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, *before as well as after birth*.”) (emphasis added); American Convention on Human Rights art. 4(1) (“Every person has the right to have his life respected. This right shall be protected by law, and, in general, *from the moment of conception.* No one shall be arbitrarily deprived of his life.”) (Emphasis added).

Indeed, the HRC itself affirms this broad interpretation by stating that “*The right to life is a right which should not be interpreted narrowly*. It concerns the entitlement of individuals to be free from acts or omissions intended or expected to cause their unnatural or premature death, as well as to enjoy a life with dignity. Article 6 guarantees this right *for all human beings, without distinction of any kind*, including for persons suspected or convicted of even the most serious crimes.” Human Rights Committee, General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life – Revised Draft Remarks Prepared by the Rapporteur,” (“Draft Remarks”), ¶ 3 (emphasis added).

After such a magnanimous statement, how then could the HRC seek to diminish the life interest of the human being at the ante natal state of development mere paragraphs later? The HRC simply disregards the life interest of the unborn child, declaring *ipse dixit* that “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.” Draft Remarks ¶ 9. [[1]](#footnote-1)

This statement overlooks the fact that in every abortion it is the child who undergoes substantial pain, suffering and death. Also, as set forth below, abortion harms women.

Modern medicine and scientific breakthroughs have shattered the myth that unborn children are not human beings or alive. Today ultrasound technologies and other diagnostic tools have helped doctors to diagnose illness and disability before birth. New and exciting breakthrough health care interventions for the unborn are leading to an ever expanding array of successful treatments and cures of sick or disabled unborn babies in need of help, rather than being subjected to painful administration of deadly chemicals or dismemberment.

Abortion methods either rip, tear and dismember or chemically poison the fragile bodies of unborn children to death. There is nothing whatsoever benign, compassionate or just about an act that utterly destroys the life of a baby. [[2]](#footnote-2)

**Any Attempt to Change the Meaning of the ICCPR or Imposition of Obligations upon States Parties by the Human Rights Committee is Illegitimate**

The HRC has no authority whatsoever by which to make the categorical statement “States parties must provide safe access to abortion.” It is a principle of international law that obligations binding sovereign States Parties to a treaty are to be found only within the four corners of the treaty itself, which upon good faith negotiation, signing and due ratification, becomes binding upon them, a principle known as *pacta sunt servanda*. Restatement (Third) of the Foreign Relations Law of the United States §102(1)(a).

Simply put, there is no “right to abortion” contained anywhere in the ICCPR. To the contrary, as set forth above, Article 6 imposes a broad obligation to protect human life in all its stages, including at the unborn stage of human development.

By issuing a general comment that attempts to impose obligations beyond what is set forth in the ICCPR, the HRC has exceeded its competency and is acting *ultra vires*. The powers of the HRC are set forth within same four corners of the ICCPR. Article 40 empowers the HRC to request, receive and to study reports from Member States. It also allows the HRC “to transmit its reports, and such general comments as it may consider appropriate, to the States Parties.” *Nowhere, however, is the HRC given authority to create new obligations and seek to impose such obligations upon sovereign states.[[3]](#footnote-3)*

Such a power grab, seeking to impose obligations upon sovereign states by a mere treaty compliance committee such as the HRC – unelected and unaccountable to any *demos* – actually undermines international law. If sovereign states are told that they now have obligations which they never agreed to and never contemplated at the time they entered into a treaty – in other words, if the treaty terms have been fundamentally changed without their agreement – States Parties may as of sovereign right denounce the treaty, or apply the principle of *rebus sic stantibus* by which withdrawal from a treaty is justified due to a fundamental change in meaning not contemplated at the time of ratification. The HRC’s draft proposal certainly amounts to a fundamental change, as the HRC seeks to stand the very words of the ICCPR protective of unborn life on their head and declare that there now is created an obligation to provide “safe access to abortion.” Thus rather than promoting respect for international law and encouraging adherence to the ICCPR, the HRC is undermining international consensus and comity.[[4]](#footnote-4)

**We need to be Pro-Mother and Pro-Child**

Lastly, General Comment No. 36 speaks with concern about women. We strongly believe women deserve better than abortion. Nonviolent, humane solutions need to be found for mothers in crisis or sexual abuse victims. Abortion solves nothing – it only adds another victim. Indeed, it is often the unborn girl child which is the victim of abortion, particularly in countries such as the People’s Republic of China where past adoption of the heinous one-child-per-couple policy led to a generation of aborted girl children and a resulting gender imbalance which Chinese authorities are only now beginning to come to grips with.

We believe that the killing of an unborn child by abortion can never be construed to be a human right. Every child – born or unborn – deserves protection and to have his or her human rights secured and protected. Therefore we call on the Human Rights Committee to defend all human rights and ensure that unborn children continue to be included in Article 6 on the Right to Life.

Sincerely,

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| Christopher H. Smith  Member of Congress |  | Michael S. Lee  United States Senator |
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| Trent Franks  Member of Congress |  | Daniel W. Lipinski  Member of Congress |
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| Vicky Hartzler  Member of Congress |  | Marsha Blackburn  Member of Congress |
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| Jim Banks  Member of Congress |  | Robert Pittenger  Member of Congress |
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| Robert B. Aderholt  Member of Congress |  | Brian Babin  Member of Congress |
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| Mike Kelly  Member of Congress |  | Mike Rogers  Member of Congress |
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| Ted Yoho, D.V.M.  Member of Congress |  | Kevin Brady  Member of Congress |
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| Diane Black  Member of Congress |  |  |

1. Likewise, the HRC condones assisted suicide and euthanasia of those who “wish to die with dignity.” Draft Remarks ¶ 10. While the draft language proposals are less categorical about what state obligations are under such circumstances, finding any obligation to facilitate the taking of human life in a provision that states that “the inherent right to life…shall be protected by law” requires an act of linguistic deconstruction which contorts language beyond any semblance of its ordinary meaning. [↑](#footnote-ref-1)
2. The HRC makes no attempt whatsoever to engage in textual analysis of Article 6 in paragraph 9. Rather, it makes an utterly inapposite reference to Article 7, concerning torture and “cruel, inhuman or degrading treatment or punishment” – language that best fits the acts of the abortionist with his scalpel and curette. While the HRC makes passing reference to the prohibition of the death penalty on pregnant women, there is no attempt to ferret out the clear implication of this prohibition – that the unborn child has a life interest independent from his or her mother. *See* Draft Remarks ¶ 52. [↑](#footnote-ref-2)
3. The (non-binding) ICPD Programme of Action adopted in Cairo in 1994, which abortion proponents have sometimes pointed to as supporting a right to abortion states that “Governments should take appropriate steps to avoid abortion, which in no case should be promoted as a method of family planning.” ICPD Programme of Action ¶ 7.24. It affirms that “Any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process.” *Id.* ¶ 8.25. Likewise, the Beijing Platform of Action of 1995 reiterates these same principles. [↑](#footnote-ref-3)
4. This gambit also undermines faith in the HRC itself, for by its actions in aligning itself with the push to impose abortion on member states, the Committee’s members are failing to live up to the obligation contained in ICCPR Article 38 that functions be performed “impartially and conscientiously.” [↑](#footnote-ref-4)