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**No Mandate for Amendments to Right to Life in Paras. 9 & 10 Draft General Comment No. 36**

**Introduction: Paras. 9 & 10 compromise the integrity of the right to life as originally agreed by States parties to the Convention**

**Part 1 on para. 9**

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2. **Paras. 9 & 10 do not comply with rules for amendment to article 6 of the Covenant**
3. **Para. 9 switches to new language that mistranslates the agreed language of the Covenant**
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**Summary**

1. We find that para. 9 is unacceptable in that it introduces to Article 6 of the International Covenant on Civil and Political Rights an exception to the right life — for unborn children—an exception recorded as being rejected in the travaux préparatoires. Unfortunately, careless and faulty scholarship has been presented to the Human Rights Committee, multiple submissions tainted by a flawed ideology that has popularized the anti-scientific claim that all pregnancies are “childless” and that all deliberately contrived abortions targeting selected unborn children are “victimless”. Such claims are in direct contradiction to the well-documented recognition of “unborn children” in the drafting records that established the universal foundation commitment to provide equal human rights protection for “all members of the human family”. The attempted de-recognition in para. 9 of unborn children as members of the human family entitled to equal human rights protection tries to renege on these founding principles. With all its errors, para. 9 has no place in a serious and responsible interpretation of Article 6.
2. We find that para.10 is a *totum revolutum*. In a very muddled paragraph that speaks to the severe physical or mental pain and suffering of the suicidal, it is illogical not to reference any duty to provide palliative care which can relieve a patient’s severe physical or mental pain and suffering without terminating the patient’s life. It constitutes a radical amendment to the originally agreed understanding of Article 6 right to life protections against suicide to put forward an opinion that States parties may authorize medical professionals to provide for the terminally ill *medical treatment or the medical means in order to facilitate acts and omissions intended or expected to cause their unnatural or premature death*. Medicalized killing cannot be offered as a legitimate response to the suicidal distress of a terminally ill person as it is in violation of the fundamental human rights principle of inalienability. Human beings cannot be deprived of the substance of their rights, not in any circumstances, not even at their own request.
3. **The amendments to Article 6 being proposed in paras. 9 & 10 cannot be made validly in a General Comment. This Committee has no authority to remove legal protection from the unborn and the suicidal.** Proposed changes **do not comply with Article 51 rules for amendments.** This Committee has no mandate to create new rights. Contrary to the Vienna Convention rules of interpretation, abortion and suicide 'rights' contradict the “ordinary meaning” of “the right to life”. Other than specific provisions for the death penalty, no other “limitation” on the right to life is permitted under Article 5 — there is no provision for legalized killing of unborn children or suicidal persons.

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***Paras. 9 & 10 compromise the integrity of the right to life as originally agreed by States parties to the Convention***

**Introduction**

Upon examining the newly-designed philosophical basis of para. 9 inconsistent with the long-established deontological basis of the *Covenant on Civil and Political Rights* , we find thatpara. 9 does not belong in this document on the Covenant’s right to life article 6.

To inform and infuse a right to abortion for women into the content of the fundamental right to life is to remove and to destroy the right to life of the target of an abortion, the vibrant human being, the daughter or son being nurtured and protected naturally and normally in her/his mother’s womb.

Abortion is an act expected to cause the unnatural and premature death of a human being in her/his mother’s womb. Assisted suicide (*provision of medical treatment or the medical means in order to facilitate the termination of life para.10*) is also an act expected to cause the unnatural and premature death of a human being with suicidal ideation misrepresented in para. 10 by the euphemism *who wishes to die with dignity*. The term ‘dignity’ as used in this euphemism and throughout this General Comment is contrary to the established meaning in the human rights language of the Covenant where ‘dignity’ is inherent in every human being and inheres in the human person not in her or his circumstances. For even while living through the natural process of dying, the terminally ill retain their inherent dignity and their inalienable right to be legally protected from arbitrary deprivation of life. Article 6 guarantees this right for all human beings, without distinction of any kind… This Committee has no authority to interpret the right to life more narrowly by introducing a distinction that discriminates

* against the human being in her/his mother’s womb by facilitating abortion or
* against the human being with suicidal ideation by encouraging medical professionals to facilitate her/his unnatural or premature death.

Abortion is deprivation of life. Assisted suicide is deprivation of life. Para. 9 and para.10 give an irrational and indefensible approval to deprivation of life through abortion and assisted suicide *involving a deliberate or otherwise foreseeable and preventable life-terminating harm or injury, caused by an act or omission* (para 6). It is true that *the obligation of States parties to respect and ensure the right to life extends to all threats that can result in loss of life (*para. 7). These threats must include the threats to the lives of unborn children against deprivations caused by abortion-providers, and threats to the lives of persons suffering suicidal ideation at risk of foreseeable and preventable life-terminating harm or injury, caused by an act or omission by physicians.

Although paragraph 1 of article 6 of the Covenant provides that no one shall be arbitrarily deprived of his life and that the right shall be protected by law, this Committee’s para. 9 and para.10 introduce a contrary directive that in effect an unborn child at risk of abortion and a person with suicidal ideation may be arbitrarily deprived of her/his life and that her/his right to life shall be removed from protection of the law. Para. 9 and para. 10 remove the foundation for the obligation of States parties to respect and to ensure the right to life of the unborn child at risk of abortion and of human beings in distress seeking suicide; para. 9 and para.10 require States parties to fail to give effect to it through legislative and other measures and to discontinue to provide effective remedies to the unborn child at risk of abortion—to all victims of abortion, and to persons with suicidal ideation—all victims of violations of the right to life.

Paras 9 & 10 both fail in the duty in para. 23 to protect by law the right to life which *entails that any substantive ground for deprivation of life must be prescribed by law, and defined with sufficient precision to avoid overly broad or arbitrary interpretation or application*. Precision is lacking in current para. 9 grounds for abortion and para. 10 grounds for “facilitating” the termination of life. *Since deprivation of life by the authorities of the State is a matter of the utmost gravity, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities* Strict control and limitation of circumstances is lacking in legalized abortion. and the States parties must ensure full compliance with all of the relevant legal provisions. Para.23 speaks of the *the duty to protect by law the right to life* but there is no respect or assurance for the right to life of human beings in their mothers’ wombs and no mention of the duty to provide first and foremost adequate psychological and palliative care for the suicidal, the terminally ill and other vulnerable persons.

In the interest of logical consistency, para. 9 should be deleted; and references in para. 10 to facilitating the termination of the lives of the dying should be removed.

Para. 9 should be removed because it attempts to impose on States’ parties a removal of the right to life legal protections promised indivisibly to pregnant women and their unborn children as these protections were universally understood and agreed in the International Covenant on Civil and Political Rights (ICCPR).

It should be remembered that at the Nuremberg trials the utilitarianism of the Nazis’ positivist laws that clothed atrocities in “lawfulness” was rejected and condemned. The drafters of the *Universal Declaration* also rejected the legal positivism that had emerged in the 20th century. They saw clearly that legal positivism had proved hopelessly inadequate to protect the most vulnerable human beings from shifting laws that were fabricated to advance errant new ideologies.

They saw the victims of positivist laws untethered to natural law principles and they pledged “Never again!”

And so the drafters of the *Universal Declaration* and the *Covenant* built the entire structure of international human rights law on the agreed premise that human rights are logically antecedent to the rights enumerated in various systems of positive law and are held independent of the state. They established that human rights “constitute a law anterior and superior to the positive law of civil society”.[[1]](#endnote-1)

1. **This Committee has no mandate to create new rights or to impose a different model and a different philosophy on the human rights recognized in the Convention.**

Regrettably, the most dominant Committee members appear to be operating under the false impression that this General Comment on the right to life should be “a compilation” of their own decisions, judgments using only the newly crafted language of what they call their own “progressive jurisprudence”.[[2]](#endnote-2) This innovative Committee-generated jurisprudence on abortion ‘rights’ is far removed from the original agreed language and principles of the jurisprudence of the Covenant and indeed contradicts it in this matter of dehumanizing unborn children so that women’s rights can be expanded to include the States parties’ duty to provide “safe abortion”. Some Committee members have failed to understand that when the Human Rights Committee produces judgments and concluding observations that contradict foundation protections of the right to life universally agreed in the original Covenant, then it is the Committee’s judgments and observations that should be conformed to the Covenant principles and not vice versa.

It appears that the Committee is attempting to force on to all States parties an acceptance of the Committee’s own preferred jurisprudence based on a contrary theory, a theory that reduces the original human membership status of the unborn child to the inferior less-than-human status of ‘the foetus’ as merely a potential human being still under construction as it were. Professor Richard Stith identifies this alternate theory as the construction model of human gestation which, he shows, continues without any resolution to compete toe-toe with the development model that recognizes the existence of a new human being from conception: “Construction versus Development: Polarizing Models of Human Gestation”, *Kennedy Institute of Ethics Journal*, Volume 24, Number 4, December 2014, pp. 345-384,

<http://scholar.valpo.edu/cgi/viewcontent.cgi?article=1423&context=law_fac_pubs>

This Committee’s attempt in para. 9 to force on to States parties a premature adjudication of an on-going debate in order to legalize “safe abortion” of any unborn child is unacceptable.

With a view to removing recognition of the unborn child as a member of the human family, not only is the Committee reconfiguring the Convention’s right to life protections based on universally agreed human rights principles, but the Committee is also bent on replacing the Convention’s original natural law philosophy basis with the Committee’s own preferred utilitarian/consequentialist philosophy.

Regrettably, General Comment No. 36 is presenting in this single document two confusing alternate and irreconcilably conflicting understandings of reality—

* the original universally agreed understanding based on natural law philosophy[[3]](#endnote-3) that human rights principles such as the right to life apply to everyone “without exception” including the unborn child; and
* a more recently contrived ideologically altered approach based on a re-emergence of positivist law philosophy that reverts to the old Nazi utilitarian /consequentialist calculus that predicates the right to life on subjective assessments of each human being’s value or perceived threat to others.

The novel insertion in para. 9 of a differently based philosophical premise (*viz.*, that decriminalization of all abortions is necessary to make all abortions safe) which attempts to remove effective legal protection of the right to life from unborn children at risk of abortion, is way out of line. It is logically incompatible with the original agreed principle to provide legal protection for these smallest human beings from arbitrary deprivation of life.

What seems to have been conveniently suppressed or forgotten is that in 1959, the UN General Assembly formally declared: that the *Universal Declaration of Human Rights* “recognized” that every child “by reason of his physical and mental immaturity” is entitled to “special safeguards and care including appropriate legal protection before as well as after birth.”

The legal force of the 1959 *Declaration* lies in the formal evidence it provides that, as of November 20th 1959, the whole international community understood and agreed that the Universal Declaration had for that first decade of its operation *already recognized* the legal status of the child before birth and the child’s entitlement to human rights protection. Universal recognition of the child before birth as a juridical personality entitled to legal protection had been established and accepted in the very foundation instrument of modern international human rights law.

1. **Paras. 9 & 10 do not comply with rules for amendment to article 6 of the Covenant**

In paras. 9 &10, two amendments to the Right to Life article 6 are being slithered into a false position as two new exceptions to the right to life—abortion (thus removing the right to life of the unborn child) and professional medicalized killing (to “assist” the suicidal).

These proposed changes to include abortion and assisted suicide as rights under the Right to Life  Article 6 are so radically different to what was originally agreed that they clearly constitute amendments.

In contravention of the Vienna Convention on the Law of Treaties (1969) article 31 General rule of interpretation of, new abortion and suicide 'rights' contradict the “ordinary meaning” of “the right to life”.

Logically the right to life must remain existentially a different concept to the ‘right’ to kill through medical interventions.

Other than specific provisions for the death penalty, no other “limitation”[[4]](#endnote-4) on the right to life is permitted under Article 5 — there is no provision for legalized killing of unborn children or suicidal persons.

For some fifty years, the international community has worked hard to abolish the death penalty –the **single exception** to the duty to protect every life by law.

Can no one see the irony of now introducing two new exceptions? To remove protection from the suicidal and from children targeted for abortion?

All the States parties to the Covenant whose own laws  still uphold some legal protections for the right to life of the unborn and/or the suicidal should recommend that these  controversial amendments to the Right to Life article 6  be returned to the General Assembly and dealt with according to the rules for introducing amendments.  The rules are set out in Article 51 of the Covenant:

1. ICCPR Article 51 (1) Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. ICCPR Article 51 (2) Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. ICCPR Article 51 (3) When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted. **[Underlining added]**

**This Committee has no authority to remove originally agreed legal right to life protection from the unborn and the suicidal.**  **Proposed changes** **do not comply with Article 51 rules for amendments.**

Laws facilitating medicalized killing violate the founding human rights principle of inalienability.  **Human beings cannot be deprived of the substance of their rights, not in any circumstances, not even at their own or  their mothers’ request.**  The inherent right to life pre-exists birth – rights inhere in the humanity of the child in her/his mother’s womb—and remains inherent and inalienable in all the living—in every human being until death.

1. **Para. 9 switches to new language that mistranslates the agreed language of the Covenant**

The Covenant’s language of human rights was built around two basic concepts unanimously agreed:

The term “human rights” ( not ‘person rights’) The objection is often raised today that unborn children are “not persons’. The Inter-American Convention on Human Rights, being negotiated by many of the same delegates and over roughly the same period as the UN Covenants, established the consensus definition that “‘person’ means every human being”. No State, no court, no treaty monitoring committee has any authority to divide the human race into ‘persons’ and ‘non-persons’. Human beings even in the earliest stages of life, and irrespective of age or size, immaturity, disability or dependency, must not be subjected to arbitrarily defined, vexatious tests of ‘personhood’. Theirs are human rights not ‘person rights’.

The term ‘recognition’ in the phrase “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family” which appears in the Preambleof all three instruments of the *International Bill of Rights*. It is to introduce discriminatory distinctions, dehumanizing exceptions, to the fundamental principle of inclusion. Human rights are “recognized”—they cannot be granted or withdrawn by governments or courts. Thus the Universal Declaration proclaimed that “it is essential…that human rights be protected by the rule of law”; and that “Everyone has the right to recognition everywhere as a person before the law”. Charles Malik, an eminent philosopher who at the time of drafting the *Universal Declaration* principles was the Rapporteur explained:

*A careful examination of the Preamble and of Article I will reveal that the doctrine of natural law is woven…into the intent of the Declaration. Thus it is not an accident that the very first substantive word in the text is the word "recognition": …Now you can "recognize" only what must have been already there, and what is already there cannot… be anything but what nature has placed there… dignity and rights are natural to our being and are not the generous grant of some external power*.[[5]](#endnote-5)

**Revisionist interpretation of principles to authorize de-recognition of the right to life for any group is prohibited**

To deny human rights protection to unborn children is to directly contradict article 55 of the founding *Charter of the United Nations* which says that human rights belong inherently to “all without distinction”.

To remove the right to life of unborn children in order to introduce a new right to *safe abortion* for women contravenes article 30 of the Convention.

It is to introduce discriminatory distinctions, dehumanizing exceptions, to the fundamental non-derogable right to life principle.

Human rights protection was created most carefully to ensure a holistic unity. Withdrawal of legal protection of the human rights of unborn children and destruction of their human rights recognized by the *Universal Declaration* is not permissible—under any circumstances. This is made clear in Article 30:

*Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein*.

Article 30 is an explicit prohibition of revisionist interpretation aimed at the destruction of any of the rights recognized in the Declaration. Having recognized the human rights of the child before birth, the Universal Declaration may not be reinterpreted to condone activities such as decriminalization or legalization of abortion aimed at the destruction of the right to life of the child being targeted.

Charles Malik called this last article of the *Universal Declaration* “the article of inner consistency”:

…*it states that nothing should flow from this Declaration that can contradict or nullify its effect. Thus no person aiming at the destruction of the fundamental rights can take cover under any of the freedoms granted by this Declaration…*[[6]](#endnote-6)

Over time the original intention to provide legal protection of the right to life of an unborn child has been forgotten or ignored. Yet as far as the framers of the foundation human rights instruments were concerned, recognition of the human rights of the unborn child was never in doubt.

From the fact that the term “from the moment of conception” was dropped from the final text of Article 6 of the *Covenant* , some of today’s ingenious, but possibly not ingenuous, academics have attempted to argue that human rights begin “only from birth”.[[7]](#endnote-7) Not so. Any sensible reading of the *travaux* préparatoires reveals that ‘persons from the moment of conception’, along with ‘incurables’, ‘mental defectives’, ‘the insane’ and even ‘women’ were all deleted for the very good reason of the stated intention of the drafters to keep to the broadest, simplest expression of the principle in order to produce a more concise text.[[8]](#endnote-8)

1. **Para. 9 contravenes the foundation human rights principles**

This Committee’s new utilitarian/consequentialist approach that requires States parties to remove right to life protections from unborn children at risk of abortion is unsupported in the travaux préparatoires for the *Universal Declaration* and the *Covenant on Civil and Political Rights*. The drafters of these instruments were wholly committed to a deontological approach in establishing the original universally agreed human rights principles of inclusion, inherency, inalienability, indivisibility, equality and universality.

The *Universal Declaration of Human Rights* started out as “a permanent guide” based on natural law principles. At the inaugural meeting, the UN Commission on Human Rights was instructed to develop “a permanent guide for men of good will”, articulating essential human rights based on “a minimum of common principles”.

It is historical fact that the whole architecture of modern international human rights law is deontologically **based on human rights principles that are inalienable[[9]](#endnote-9)**.

* Inclusion— This principle requires universal application of these rights to “all members of the human family” and especially to all children “without any exception whatsoever”[[10]](#endnote-10) and “without discrimination of any kind”[[11]](#endnote-11). Peter Heyward, the Australian member of the drafting team that enunciated the first principles of the Universal Declaration, affirmed that **their intention in the deliberate use of the terms “every person” or “everyone” throughout the Declaration was to extend the prohibition of discrimination in the application of every human right in the Declaration to every human being.[[12]](#endnote-12)**

“They intentionally chose words like ‘everyone’ and ‘no one’ and meant them to be taken literally”.[[13]](#endnote-13)

* Inherency—rights are inherent in each human being, not granted by external government. The child’s rights pre-exist birth – they “inhere” in the child’s humanity.
* Inalienability—human beings cannot be deprived of the substance of their rights, not in any circumstances, not even at their own or their mothers' request.
* Equality—“All are equal before the law and are entitled without any discrimination to equal protection of the law.” The unborn child has the same right to life as every other member of the human family.
* Indivisibility**—**legal protection of the rights of one set of human beings cannot be abandoned to install unjustly expanded rights for another set. The right to life of the child at risk of abortion is not to be sacrificed to promote, for example, a new priority obligation to access *safe abortion*.
* Universality**—**the same non-derogable human rights are to be upheld in every age by every culture everywhere. Domestic legislatures may not pass laws in violation of the non-derogable right to life, not even in public emergencies.

Supervising the whole human rights project was the Canadian professor of international law and permanent head of the United Nations Division of Human Rights, John P. Humphrey who was meticulous in ensuring that the whole raft of founding principles was integrated into a logically consistent, legally coherent, comprehensive whole. It was Humphrey’s inimitable knowledge and expertise over the next four decades that ensured that the codification of the *Universal Declaration* principles in the subsequent UN Human Rights Covenants and Conventions maintained their legal integrity and did not contravene any of the original principles.

1. **Para. 9 attempts invalidly to delete the right to life for unborn children**

So when a UN Human Rights Committee’s Draft General Comment under the apparent influence of a novel populist ideology that denigrates the humanity of unborn children at risk of abortion so as to exclude them from human rights protection against abortion, the Committee risks losing its moral authority.

Para. 9 advances a unconscionable travesty of the original very clear purpose and meaning of Article 6 — “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”.

It was one of the chief drafters of the Declaration and the Covenant, René Cassin, who enumerated the guiding principles of human rights protection under the new international rule of law. Cassin was an eminent French jurist and Zionist who himself had suffered the loss of thirty-nine family members in Nazi concentration camps, and it was he who convinced the Drafting Committee that they must start with “the fundamental principle of the unity of the human race” precisely because Hitler had started his exterminations “by asserting the inequality” of human beings.[[14]](#endnote-14)

At the time that the right to life language of modern human rights law was settled in the *Universal Declaration* and the *Convention*, the terms ‘the unborn child’ and ‘unborn children’ were used consistently and repeatedly to register universal concern to ensure human rights protection for them.

The historical evidence that there was universal concern for protecting unborn children is clear in the travaux préparatoires of the founding instruments—the *Universal Declaration* and the *International Covenant on Civil and Political Rights* and in so many of the regional and international human rights documents being prepared and finalized in those years*.[[15]](#endnote-15)*

Right from the beginning of the drafting of modern human rights instruments, unborn children were formally and informally recognized as “members of the human family”. [[16]](#endnote-16)

Right from the first drafting of the International Bill of Rights in 1947 *”* (UN Doc.E.CN.4/21) to its completion in 1966, the legal language of human rights through all the hours of discussions and debates recorded in the travaux préparatoires consistently used the terms "unborn children" and the “unborn child”.

It is not valid for the Human rights Committee to replace these terms today with a medical term "the foetus" and then claim that "the foetus" has no right to legal protection under human rights law.

Dehumanizing language cannot legitimize human rights violations. Giving the human child at the early stages of development medical nomenclature does not alter the child’s human nature or the child’s entitlement “by nature” to the “inherent dignity and inalienable rights of all members of the human family”.

This tactic of dehumanizing the most vulnerable members of the human family by changing the terms by which they are to be referred is a very old, very cruel ploy.

In the 30’s, dehumanizing language paved the way for medicalized killing. This is still confronting. Small Jewish children were called “Jew-dogs” and “parasites”, children who were disabled were disparaged as “life unworthy of life”, and the unborn children of Polish and Eastern workers were labelled “racially inferior offspring”. Always the dehumanizing language came first, then came the exterminations, the aborting of human lives ideologically reclassified as less than human, and thus expendable.

In 1947, in response among other things to revelations of the Nazi selective abortion programme[[17]](#endnote-17), the British Medical Association (BMA) had no qualms about condemning all abortion, stating that the trials of medical war criminals had shown that the doctors who were guilty of these “crimes against humanity” lacked both moral and professional conscience and had “departed from the traditional medical ethic which maintains the value and sanctity of every individual human being”. The BMA went on to insist: “Although there have been many changes in Medicine, the spirit of the Hippocratic Oath cannot change.” The international medical profession was urged by the BMA to reaffirm:

*the duty of curing, the greatest crime being co-operation in the destruction of life by murder, suicide and abortion*… [British Medical Association UN submission War Crimes and Medicine (June 1947)]

The World Medical Association seemed to have had no difficulty in getting international agreement from doctors in all parts of the world across many different jurisdictions on the need to protect life “from the time of conception”. [[18]](#endnote-18) The *Geneva Declaration (1948)* was agreed by the World Medical Association (an association of national medical bodies) only three months before the UN General Assembly adopted the Universal Declaration. The concept of a duty to protect the child before birth was well established and included a solemn duty to maintain respect for human life “from the time of conception” and to protect human life “from the time of conception according to the laws of humanity”[[19]](#endnote-19).

This promise was reaffirmed *verbatim* by the World Medical Association in the Declaration of Geneva (1968), thus verifying that from three months before the *Universal Declaration* until two years after the *International Covenant on Civil and Political Rights* (ICCPR), this understanding of human rights to include the child before birth “from the time of conception” was indeed universally established and agreed.

That founding consensus for the *Universal Declaration and the Covenant* was forged in the strong need for a chastened international community to provide a vigorous forthright response to the massive human rights atrocities of World War II. This great concern was expressed in the second clause of the *Preamble*:

*Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind…*

Historian Dr. John Hunt, researching the Nuremberg Trials involving abortion, has established that condemnation of abortion was not simply limited to the practice of forced abortions but included all abortions in the Nazi abortion programme.[[20]](#endnote-20) It is part of the Nuremberg record of the trial testimony (RuSHA/Greifelt Case 1947-8) that from the very origins of modern international human rights law, unborn children are considered to be human beings entitled to the protection of the law: "…***protection of the law was denied to the unborn children***…”[[21]](#endnote-21) Nuremberg prosecutor, James McHaney, called abortion an "inhumane act" and an "act of extermination" and established that even if a woman's request for abortion was “voluntary”, abortion is still “a crime against humanity”.[[22]](#endnote-22)

SS Lieutenant General Richard Hildebrandt, under direct examination by his attorney, protested that, "Up to now nobody had the idea to see in this interruption of pregnancy a crime against humanity." His protest was rejected. The Nuremberg Judgments broke new ground. Both Hildebrandt and Otto Hofmann were given a 25-year sentence.[[23]](#endnote-23)

As part of the Nuremberg judgments, this principle of legal protection for unborn children at risk of abortion was mandated to be codified in the International Bill of Rights. [UN Resolution 95(1)[[24]](#endnote-24)].

At Nuremberg, the defendants were relying on a century of misguided development in the West of positivist law built on an ever-changing social consensus with few fixed moral standards. The Nazis admitted that they were moral relativists, and they challenged their accusers to be consistent with the moral relativism widely accepted in pre-World War II jurisprudence. [[25]](#endnote-25)

1. **Para. 9 fails to distinguish between pre-term parturition and induced abortion**

At the time of drafting the Convention, it was clearly understood that there can be no duty for any physician to perform or ‘assist’ in any action that results in loss of the unborn child’s life **unless such an action is the unintended consequence of saving the mother’s life.**

Good medicine has always recognized a fundamental difference between *elective* abortion and *necessary* medical treatments that are carried out to save the life of the mother, even when such treatment results in the inadvertent loss of the life of her unborn child.

Elective abortion, unlike all other medical procedures, is the only medical procedure that *intentionally* attacks and kills a tiny patient, another human being in our power and under our care.

Thus the para. 9 phrase “safe access to abortion” should be rejected as it fails to respect the critical distinction between preterm parturition (the separation of a mother and her unborn child for the purposes of saving a mother’s life) and an induced abortion the purpose of which according to the US Centers for Disease Control and Prevention is to “produce a non-viable fetus at any gestational age.”[[26]](#endnote-26)

Every induced abortion is an act of violence, albeit in a medical setting. The saddest aspect of every abortion is that the second patient, a little daughter or son, is lethally attacked by “physicians” who treat him or her as a piece of problematical rubbish, of no value, as “a problem” to be removed and incinerated (or sometimes as with Planned Parenthood in the USA sold as raw laboratory material for experimentation).

And so, in this proposed General Comment, the Committee’s unilateral and arbitrary deletion of the originally agreed right to life protections for the unborn child constitutes an unauthorized amendment to the foundation language and principles of the right to life which may be amended only by the States parties themselves (according to the rules for amendment as set out in ICCCPR article 51).

The decision by the current Human Rights Committee to avoid any reference to ‘the rights of the foetus’ was explained in the their discussions as necessary for the “guidance of states parties”:

“We have not referred to the right of the foetus…also we try to avoid the word foetus—maybe with our heads in the sand—but that is what we have to do to get States parties to focus on the rights of women”.

The Committee seems have plucked para. 9 out of some esoteric ideological extreme feminist pro-abortion manifesto that has never been examined and agreed by the States parties to the Covenant. Para. 9 is logically incompatible with the genuine protections for the right to life in the rest of the General Comment (with the notable exception of para.10 advocating medically assisted suicide as yet another form of arbitrary deprivation of life being scheduled for decriminalization without formal or even informal agreement by States parties who remain faithful to the original right to life commitments of the Convention).

The language of para. 9 is not the authentic, carefully reasoned and tested human rights language of the Universal Declaration and the Covenant. Its central premise introducing an obligation for States parties to provide “safe abortion” (together with its insidious subtext of killing the unborn child ’safely’) is contrary to the original principle “Every human being from conception has the right to life”.

Imposition in para. 9 on States parties of a putative *duty to ensure that women do not have to undertake unsafe abortions* is based on the Committee’s underlying assumption that the unborn child being aborted “safely” is not a human being who matters and is excluded from “Every human being has the right to life”. If the Committee is in doubt as to the lively presence of these smallest human beings in their mothers’ wombs, there is an easy way to dispel their doubts: they have only to ask any foetal surgeon and/or watch her/him perform life-saving surgeries on these little ones.

1. **Safe abortion like safe FGM—a flawed argument**

The amendment proposed in para. 9 attempts to authorize most improperly the direct violation of the right to life of unborn children on the imprudently concocted grounds that their mothers *do not have to undertake unsafe abortions*.

To illustrate the fatal flaw in this argument, we have only to consider trying to apply it to Female Genital Mutilation (FGM):

*States parties may not regulate Female Genital Mutilation (FGM) in a manner that runs contrary to their duty to ensure that women do not have to undertake unsafe FGM. For example, they should not take measures such as applying criminal sanctions against physicians assisting women undergoing FGM, when taking such measures is expected to significantly increase resort to unsafe FGM*.

Indeed, it is a curious irony that many of the same proponents of the pro-abortion argument that *States parties must provide safe access to abortion* have rejected strenuously and quite rightly the argument that Female Genital Mutilation should be legalized so that the procedure can be performed 'safely' by physicians to ensure that women and girls *do not have to undertake unsafe FGM..*

There is logical inconsistency here, for both procedures Female Genital Mutilation and abortion are pseudo-medical practices. Both of these mutilating elective surgeries are barbaric, inherently harmful and best avoided altogether. Education, legislative and social programmes are needed urgently to eliminate both these harmful practices.

At the Cairo International Conference on Population and Development (1994) and at the Fourth World Conference on Women (1995) international human rights conferences, UN member countries having committed to 'reducing recourse to abortion' and 'eliminating the need for abortion'[[27]](#endnote-27), also committed to eliminating Female Genital Mutilation. [[28]](#endnote-28)

As has been argued by certain delegations at the UN for many years now, we cannot reduce FGM by requiring governments to provide access to safe FGM for women and young girls. Neither, it is argued, should we pretend to be able to reduce abortions that hurt both mothers and their children by requiring governments to provide access to *safe abortion*.

1. **Unmasking the para. 9 fictions of ‘victimless’ abortion and ‘childless’ pregnancies**

Any reasonable person wanting to write a paragraph explaining how the right to life applies to pregnancy would start out by asking the States parties to recognize their obligations to provide pre-natal and postnatal health care for both the mother and her child in order to bring both patients safely through pregnancy.

Neither the term “unborn child” nor the term “mother” is present in this General Comment on the right to life.

Why is the *unborn child*—the targeted subject of an abortion not mentioned in para. 9?

Have the drafters of this paragraph succumbed to the extreme ideologically driven dogma that all pregnancies are childless? Or the dogma that all abortions are victimless?

Regrettably, here in what is meant to be a definitive and comprehensive General Comment on the Right to Life, there is not even a single mention of the States parties’ obligations to provide adequate pre-natal care to make pregnancy safe for children in their mothers’ wombs

A genuine interpretation of the right to life rule of law must reject the propaganda—a crazy mixed-up anti-scientific dehumanization of tiny daughter and sons in their mothers’ wombs so that they may then be called 'choices'.

Extreme ideological feminists have reinvented the old fairy tale fiction that a Stork (named ‘Reproductive Choice’) brings the baby whose existence is instantaneously affirmed only at the moment of birth!

The irony is that this fiction has been invented and continues to be propagated at a time in history where we have never had so much detailed scientifically verifiable knowledge of the humanity of each child who is taken to the abortionist to be “terminated”. A mother is able as never before to see her child through an ultrasound window to the womb; she can hear a heartbeat that is not her own.

A reasonable person, whose reason remains untainted by an errant ideology that dehumanizes the unborn child in order to expand unjustly “a woman’s right to choose” to commission the ‘safe’ killing of her unborn child, continues to understand that in every pregnancy there are two patients in need of prenatal care—the mother and her unborn child.

Science and reason tell us that there is no such thing as a ‘safe’ victimless abortion.

A cult of denial is not unusual where exterminations of vulnerable ‘unwanted’ human beings have been authorized and carried out with impunity over a long period of time.

It is an uncomfortable truth of the human condition that when we harm another human being in our power and under our care, we seek to deny that any harm was done. History has recorded so many, many lethal violations of the human rights of defenceless human beings, and the vapid narcissistic excuses of the perpetrators, as they themselves become more and more brutalized while always maintaining that there has been no harm done to any human being who matters.

Today's physician perpetrators of routine lethal execution of unborn human beings in their mothers' wombs rely on extreme feminist ideological constructions of the victims of abortion as abusers of their mothers’ ‘rights’ . The tiny victims are aborted, it appears, "because they deserve it" for threatening their mothers’ physical and mental health. This kind of ideologically driven reasoning was condemned at Nuremberg as "criminal impertinence".[[29]](#endnote-29)

1. **New exceptions to the right to life not compatible with the non-discrimination principle**

In much the same way, this Committee has discounted deadly discrimination against unborn children targeted for abortion and replaced it with an ideologically exaggerated concern for what they have called a “generalized discrimination against women”, a “fundamental inequality between men and women”, “women are imposed [upon]to have children”, and a woman is not allowed “to own her own body”.

It is only extreme ideology that describes a normal natural pregnancy as a discriminatory imposition on women’s ownership of their own bodies. We must reject this ideological recasting of all mothers as ‘victims’ of pregnancy.

Common sense reality tells us that a mother does not own the child in her womb—the ties are not ties of ownership but ties of deep belonging. Her tiny daughter or son belongs to her and she belongs to her child. It is the natural intimacy of two human beings, not of owner and object, or master and slave.

It's not just "her" body—in every pregnancy there is another body, an active little body, a tiny daughter or son, a tiny somebody, deserving a mother’s protection, a father’s protection and the protection of the law.  
A mother's unborn child is already in existence, being protected and nurtured in her/his mother’s womb.

The truth is that we women have no "right to choose" to have our abortion ‘provider’ inflict a deadly harmful procedure on another human being, no matter how small or dependent or 'unwanted'. No human being has ownership and killing rights over another human being.  
Adequate nutrition, the protective environment of the mother’s womb, and benign medical care are “basic rights” of every new human being and because of their fundamental necessity to the nurturing of life; they are the unborn child’s minimum and reasonable demands on her/his mother and the physician caring for them both. A mother nurturing her little daughter or son in her womb is exercising her natural duty of care. It is just the ordinary care owed by every mother to her child—nothing extraordinary—just exactly what our reproductive systems are equipped to do. It is just what our mothers did for us and what our grandmothers did for our mothers and what our great-grandmothers did for our grandmothers.

And so the principle of non-discrimination “without distinction of any kind”, of inclusion of “all members of the human family” [ICCPR article 2(1)], is not to be overturned in a General Comment in order to authorize women and their physicians to exercise deadly discrimination against children in their mothers’ wombs being targeted for abortion.

I**t is critical that the Human Rights Committee re-commits to the original principle of inclusion in the definition of human rights and in the universal application of these rights to “all members of the human family”[[30]](#endnote-30) and especially to all children “without any exception whatsoever”[[31]](#endnote-31) and “without discrimination of any kind”[[32]](#endnote-32).** And the Committee needs to reaffirm that the drafters of the Covenant recognized that all members of the human family, ‘every human being”, “everyone” including the unborn child[[33]](#endnote-33) has the inherent right to life, to be protected by law from arbitrary deprivation[[34]](#endnote-34), and that this right is non-derogable.[[35]](#endnote-35)

1. **Misrepresentation of abortion as a positive good**

As it stands, para. 9 promotes abortion wrongfully as a positive goal for a pregnant mother “to seek”—the intentional killing of a lively daughter or son being protected and nurtured in her/his mother’s womb. In para. 9, the misrepresentation of abortion as a moral good to be encouraged and legalized everywhere ignores the implicit failure in legalized abortion to recognize the positive good of bringing both mothers and their children safely through pregnancy.

The Committee’s direction for States parties to provide “safe abortion” relies on faulty ‘necessity’ arguments.

Indeed, the best way for States parties to perform *their duty to ensure that women do not have to undertake unsafe abortions* is to provide pregnant women with access to good prenatal and postnatal health and community care so that they do not have to undertake abortions at all.

1. **Committee must not target pregnancy itself as a dangerous condition to be treated by 'safe abortion'**

A false conflict is set up between the right to health of mothers and the threat to her health posed by allowing her unborn child to live. Just so was a false dilemma contrived between the health of the Aryan population and allowing the unborn children of Jews to live.

Always the plea is that abortion of the child is ‘necessary’ for the health of others who are of superior worth. Always the claim is that the abortion of unborn children is ‘lawful’ and may be performed in good faith because it serves the greater good of others.[[36]](#endnote-36)

In para. 9., the Committee seems to have taken on the pro-abortion ideologues’ perverted language of rights to disguise the terrible injustice of abortion being perpetrated each year now against an estimated 55.7 million children before birth [Lancet 2017](file:///C:/Users/Durnescu/AppData/Local/Temp/notes7F6E2B/Examining%20Draft%20General%20Comment%20No%2036.docx). Yet according to this latest World Health Organization study, “no clear association was observed between the proportions of unsafe abortions by subregion and case fatality rates”:

*Although the estimates of case fatality rates should be interpreted with caution because they were calculated with information from several different estimates and various time periods, our results suggested that the subregions with the highest proportions of least safe abortions also had the highest case fatality rates. This finding might be due to the more serious complications arising from least-safe abortions and the poor health infrastructure to treat complications when they occur.*

The humane response to any threats to a mother’s physical or mental health is to provide comprehensive prenatal health care including any necessary psychological treatment. Abortion must not be used *in lieu* of comprehensive prenatal psychological counselling and health care for distressed mothers.

Treat the mother’s health problems—don’t kill her child. Authentic treatment of women in physical pain is the administration of pain relief and the authentic treatment for mental suffering is good psychological and community care for the mother for as long as is needed—before and after the birth of her child. Regrettably, here in what is meant to be a definitive and comprehensive General Comment on the Right to Life, there is not even a single mention of the States parties’ obligations to provide adequate pre-natal care to make pregnancy safe for children in their mothers’ wombs.

An earlier World Health Organization study ([Lancet](http://www.thelancet.com/journals/langlo/article/PIIS2214-109X(14)70227-X/abstract) 2014) puts maternal deaths due to unsafe abortions at 7.9% as of 2014.

The Committee lacks social prudence when its jurisprudence is seen to target pregnancy itself as a dangerous condition to be treated by 'safe abortion'. Rather the Committee should be seen to be targeting the disturbing deficiencies, the States parties’ continuing failures to supply prenatal care, vaccines, trained midwives, centres equipped for obstetric complications, and to provide lack of transportation to those centres. In over-eagerness to expand abortion services for all the pregnant mothers across the world, the Committee should not be seen to ignore the fundamentals of prenatal and post-natal care—the appalling fact that the vast majority (92.1%, WHO) of maternal deaths are directly attributable to four major causes: haemorrhage, infection, hypertension and obstructed labour.

Adequate health care to bring both mothers and children safely to birth is blotted out by exclusive concern for the pregnant woman who wants access to safe abortion for themselves and deprivation of life for the daughter or son in her/his mother’s womb. In a General Comment on the Right to Life, it is indicative of an unacceptable pro-abortion bias to ignore the grave fact that '…tuberculosis kills more women than all the combined causes of maternal mortality'(WHO). Nor has the Committee considered the lives that can be saved by assigning more immunization and clean delivery practices for the prevention of neo-natal tetanus. In the year 2000, neonatal tetanus resulted in 200,000 deaths (WHO). Yet 17 years later, maternal and neonatal tetanus continues to be a massive public health problem for women in far too many countries around the world.

When it comes to our obligations to protect the right to life for every human being, the Committee should show some sensibility to the fact that there is more to saving mothers’ lives than aborting their children ‘safely’.  Access to sterile surgical facilities, safe blood transfusions and emergency prenatal care are far more urgently needed than setting up “safe’ abortion facilities to accommodate annually the deliberate lethal targeting of 55.7 million unborn children in their mothers’ wombs.

1. **Omission of “safe pregnancy” as part of the right to life: para. 9 lacks balance**

In safe guarding the right to life of during pregnancy, the Committee, perhaps in an excess of enthusiasm to require States parties to provide access to “safe abortions”, has failed to mention or to establish the logical first priority which is the requirement that States parties to ensure access to safe pregnancy—provide access to adequate health care for mothers and their children “before as well as after birth”. States parties have a duty to provide not just “post-abortion care” but life-affirming pre-natal and postnatal care that makes pregnancy safe for both patients—for both the pregnant mother and her little daughter or son—and to bring both patients safely through pregnancy.

Making pregnancy safe for both patients, the mother and her child, has always been recognized as an important part of the right to life. It has always been understood to be a duty of States parties to provide positive pre-natal healthcare for pregnant mothers and the little daughters and sons being protected and nurtured in their mothers’ wombs.

This right to life and to life-affirming pre-natal health care that safe guards this right has always been a shared right—a right shared by both patients—mother and child. Unfortunately, however, the Committee appears to have deleted any reference in para. 9 to the well-being of the lively second patient already present in every pregnancy—these smallest human beings at the fetal stage of life.

Science and reason tell us that a foetus is a human being at the foetal stage of life. In the formal legal language of founding international human rights instruments: “‘person’ means every human being”.

No legislature or committee has any authority to divide the human race into ‘persons’ and ‘non-persons’, while deeming the privileged group only to be worthy of human rights protection.

Under States parties’ solemn human rights treaty obligations, the right to life of every human being "without exception" is “the supreme right” and “basic to all human rights”.

 The Universal Declaration of Human Rights has "recognized" that every child is entitled to "special safeguards and care including appropriate legal protection before as well as after birth" (See *UN Declaration on the Rights of the Child*; also *UN Convention on the Rights of the Child*).

 Under the universal human rights principle of inherency, the child’s rights pre-exist birth – they inhere in the child’s humanity. “Every human being has the inherent right to life…” International Covenant on Civil and Political Rights, Article 6 (1).

 Rights are not predicated on size or seniority, or viability.

 To be eligible for membership of the human family and for human rights one has only to be a human.

Ultrasound technology, together with biology, embryology, fetal surgery, and examination of the human remains of an abortion, all tell us that the victim targeted for abortion is a human being, belonging to the human family, a human being who can be identified as a daughter or son, a ‘who’ not a generic ‘thing’.  
  
True justice requires that elective abortions be recognized and treated not as harmless, idiosyncratic, personal ‘choices’ but as abusive practices, as human rights violations perpetrated by individuals and involving the complicity of politicians, judges and others.

Indeed, this Committee is making a grave mistake in ignoring and thus deleting unilaterally the second patient, the smaller patient in every pregnancy from the States parties’ obligations to protect the right to life of every child “before as well as after birth”.

Neither the term “unborn child” nor the term “mother” is present in this General Comment on the right to life—yet it is the mother and the unborn child in a fundamental human relationship who are the actual patients in a “pregnancy”. It is the life of the child-patient that is deliberately terminated in an “abortion” that has from the start in the foundations of modern international human rights initiatives held a rightful place at the very heart of the right to life .[[37]](#endnote-37)

Why is the *unborn child*—the targeted subject of an abortion not mentioned in para.9?

Have the drafters of this paragraph succumbed to the extreme ideologically driven dogma that all pregnancies are childless?

A genuine interpretation of the right to life rule of law must reject the propaganda and mindless popularity of an extreme feminism that touts a logically incoherent anti-scientific dehumanization of tiny daughter and sons in their mothers’ wombs and then calls them 'choices'.

Extreme ideological feminists have been allowed to foster the untruth that a mother’s little daughter or son being nurtured and protected in her womb is not yet a human being with human rights. They have reinvented the old fairy tale fiction that a Stork (named ‘Reproductive Choice’) brings the baby whose existence is instantaneously affirmed only at the moment of birth.

The irony is that this fiction has been invented and continues to be propagated at a time in history where we have never had so much detailed scientifically verifiable knowledge of the humanity of each child who is taken to the abortionist to be “terminated”. A mother is able as never before to see her child through an ultrasound window to the womb; she can hear a heartbeat that is not her own.

The Committee must not give legitimacy to this ideologically generated phenomenon of popular belief in a dogma that disappears the unborn child as an extra-legal non-person and proclaims instant motherhood only at birth. Such an absurdity is fast becoming unsustainable.

The term “pregnant woman” in human rights discourse might better be replaced by the term “expectant mother” (employed from the start in the *Geneva Conventions*) which gives appropriate recognition to the logically necessary biological relationship which should be recognized by the law between the two patients who present to qualified health practitioners in every pregnancy—the mother and her biological child.

Para. 9 should be deleted: it is far too vague and offers the possibility of using extremely cruel and inhumane means such as partial-birth abortion The assumption that “the prohibition against cruel, inhuman and degrading treatment or punishment” applies exclusively to “pregnant women” and never to the children at risk of abortion while in their mothers’ wombs is unjust and indefensible: it is offers the possibility of using extremely cruel and inhumane means such as partial-birth abortion contrary to States parties’ human rights commitments to protect “every child….before as well as after birth” from “cruel inhuman and degrading treatment or punishment”.

Abortion law has failed to keep pace with rapid advances in medical science, particularly in embryology and foetal medicine and surgery. Evidence continues to mount that abortion of the life of a child at the earliest stages of the child’s existence is *cruel inhuman and degrading treatment* of the child and contravenes the age-old first principle of medical treatment *primum non nocere* –“first do no harm”.

There is a glaring discrepancy between para. 9 and para. 18 regarding “the application of lethal force” in the deliberate killing of human beings. Abortion is deprivation of life, as defined in para. 6: *Deprivation of life involves a deliberate or otherwise foreseeable and preventable life-terminating harm or injury, caused by an act or omission.* In demanding in para. 9 that States parties provide access to de-criminalized abortion, no thought has been given to the conditions that must be met by abortions “in order not to be qualified as arbitrary under article 6”. Absolutely no conditions appear to have been placed on the commissioning of application of lethal force in an abortion by a person acting in self-defence, [the mother] or on application of lethal force by another person coming to his or her defence [the abortion provider].

State sanction of the deprivation of the life of a daughter or son at risk of abortion in her/his mother’s womb should surely require the same proof for being “non-arbitrary” as required for State sanctioned capital punishment (para.16) and should be judged to meet the same conditions of necessity that apply to deprivation of life in self-defence (para. 18)

For example, in order that the deprivation of life in an abortion should not to be qualified as arbitrary under article 6, the application of lethal force by a physician must be *reasonable and necessary in view of the threat posed* by the presence of the child in her/his mother’s womb; it must represent *a method of last resort after non-lethal alternatives have been exhausted or deemed inadequate*; *the amount of force applied cannot exceed the amount strictly needed for responding to the threat*; *the force applied must be carefully directed, as far as possible, only against the threat; and the threat responded to must be extreme, involving imminent death or serious injury*. Neither patient, the mother or her unborn child, should be deliberately subjected to the kind of pain or suffering or punishment which violates article 7, most notably where the innocent unborn child is subjected to a form of capital punishment because the pregnancy is the result of *rape or incest or when the foetus suffers from fatal impairment*.

1. **The Covenant’s “prohibition against cruel, inhuman and degrading treatment or punishment” applies equally to mothers and their unborn children**

Prohibition of “inhuman treatment” signifies treatment that denies the humanity of the victim—it denies the care that is owed *“*in the spirit of brotherhood*”*[[38]](#endnote-38)or human solidarity by one human being to another. Abortion violates the child’s right to be treated not just humanely (even animals are to be treated humanely), but as a human being. This right to be treated as a human being belongs inherently and inalienably to every child as a member of the human family. The child at risk of abortion is at risk of being subjected to inhuman treatment and is entitled to legal protection against such treatment.

Prohibition of “degrading treatment” refers to treatment that degrades and disparages the inherent human dignity of the child before birth. Abortion destroys a small dependent human being, reducing her or him to dead matter, a small unit of non-recyclable refuse to be summarily removed and discarded. Degrading terms are routinely applied to the child at risk of abortion—in the material on abortion on the World Health Organization’s Web site, the child is referred to as “contents of the uterus to be expelled” and “aspirated tissue to be examined”.[[39]](#endnote-39)

Abortion debases the humanity of the child, stripping the child of inherent dignity and of life itself: the child at risk of such treatment is in desperate need of “appropriate legal protection before as well as after birth”.

The violence of abortion is intensely physical and can be cruelly painful.

The pain of abortion for mother and child cannot remain hidden—it is always a cruel business.

Cruelty is more than the absence of loving care—it is treatment that is insensitive to the harm inflicted. The cruelty of abortion lies in its intention and purpose to do harm to the unborn child; it is an act that withdraws love and care and good-will from one of the newest most defenceless members of the human family. Abortion of a tiny thriving human being *in utero* is never an ethically neutral act—rather it is actively callous, even merciless. It is medical maltreatment of the child, and requires a hardening of heart in any normal human being who would inflict such maltreatment. Even the most sophisticated rationalization cannot cloak the fact that it takes ruthlessness to deliberately inflict such cruelty on these smallest children.

And as for ‘punishment”—the child who has been conceived through rape or incest is subjected the capital punishment in an abortion. Bur the child is not to be treated as an offender—the child is not deserving of capital punishment—the child has committed no crime and there can be no lawful authorization for the intentional deprivation of the child's life. It is specifically forbidden in Article 6(5) of the Covenant.

There is a long history of association between the death penalty and protection for the unborn child. The maternal reprieve was an ancient rule of common law and recognized that the child in the womb had a right to life even when the child's mother had forfeited through a capital offence her own right to life.

If the unborn child is not to be executed for the crimes of her/his mother than neither should he or she be executed for the crimes of her/his father.

When para. 64 says *The right to life must be respected and ensured without distinction of any kind, such as…social origin*… it should have added under social origin “including being conceived through rape or incest”. *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*.

1. **Decriminalization fails to address the gender-based violence of gender selective abortions**

For many years now and in too many countries those in the abortion industry involved in sex selection have successfully stymied the introduction of even the most minimal requirements to enable the gathering of statistics on this appalling practice.

Such resistance to transparency on this human rights issue should no longer be acceptable, especially in the light of the promises made by Governments at the *Fourth World Conference on Women* (1995) in Beijing. In solidarity, all members of the United Nations promised to introduce protective legislation against this inhumane practice. Solemn commitments were made:

• To “enact and enforce legislation protecting girls from all forms of violence, including…pre-natal sex selection…” [Para 283 (d) Beijing Platform].

• To “enact and enforce legislation against the perpetrators of practices and acts of violence against women, such as…prenatal sex selection…and give vigorous support to the efforts of non-governmental and community organizations to eliminate such practices” [Para 124 (i) Beijing Platform].

Justice is not served

* where legislation protecting the unborn child from lethal prejudice is non-existent;
* where termination of the lives of the unborn for the discriminatory reason that the child at risk is the 'wrong gender' is without legal scrutiny;
* where the abortion industry operates without even the semblance of regulation regarding routine facilitation of lethal gender prejudice;
* where the shameful statistics of discriminatory ‘reasons’ for selective termination of tiny daughters because they are found prenatally to be the “wrong gender” are no longer even recorded or collated and
* where this omission is being excused on the invalid grounds of “a woman’s privacy”.

As para. 64 says rightly: *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.*

However, Para. 9 fails to acknowledge the need for effective legal restriction on prenatal sex selection through the brutal violence of abortion.

A principled reading of the right to life article 6 must understand the unacceptability of using a medical ‘procedure’ that is intended to violate a new life. Lethal violence directed against our girl-children in our wombs is never “necessary”. All violence against children is preventable. Before as well as after birth, children should never receive less protection than adults.

Their mothers’ personal and social needs can and should be met by non-violent means.

Selective abortion on discriminatory grounds is “a serious violation of human rights”: in 2005, the UN Committee on the Rights of the Child (CRC Committee) signalled a reaffirmation of the *Universal Declaration’s* recognition of the need to provide legal protection for all children before as well as after birth.

In its *General Comment No 7*, entitled *Right to Non-discrimination*, the CRC condemns selective abortion as discrimination against children and as a serious violation of their rights, affecting their survival. The CRC denounces not only selective abortion of girl children on the grounds of sex discrimination, but also goes on in the same paragraph to condemn “multiple discrimination (e.g., related to ethnic origin, social and cultural status, gender and/or disabilities)”.[[40]](#endnote-40)

1. **Legal restrictions must be placed on the injustice of ‘disproportionate representation’ of targeted groups in abortion programmes**

And so abortion, like the death penalty in para.28, must not be imposed in a discriminatory manner contrary to the requirements of articles 2(1) and 26 of the Covenant. Data suggesting that children with prenatally detected disabilities such as Down’s syndrome are disproportionately likely to face the equivalent of a death penalty 9n an abortion may indicate unequal application in practice of abortion, and may raise concerns under article 2(1) read in conjunction with article 6, as well as under article 26.

In regard to the General Comment 36, real concern for the “disproportionate representation’ of targeted groups in State-approved death penalty programmes should be matched with a similar concern for that group of survivors with a disability such as Down’s Syndrome whose members are being disproportionately affected and severely reduced in numbers through State approved abortion programmes.

Para. 42 encompasses rightly the principle of proportionality. Thus, for example, where children with Down’s are aborted at a higher proportion than children without Down’s, the disproportionality of the statistics demonstrates a breach of the principle of equality.

It should be noted that here are few attacks more “widespread and systematic” then the programmed abortion of children detected prenatally to have a disability such as Down’s syndrome—in  many States such as Britain, Canada and Australia over 90% are aborted; in Iceland  100%  were aborted for each of the last five years; and Denmark already at 98% predicts it will be a “Down-syndrome free” nation in the next 10 years.

The Committee should be alerted to the growing realization that with an antenatal screening programme and a health system to provide ‘lawful’ routine abortion on identification of Down’s syndrome, Spina Bifida and other conditions any country can facilitate a genocide. The medical technology for screening may be new and advanced but the ultimate intention for which it is being put to use is old and barbaric.

Recognition of the genocidal character of abortion programmes targeting particular groups lies in *consequences* and *intent*, with genetic screening and selective abortion being the *means*. The situation now is that a group can be targeted through their identification *in utero* and births to that group prevented through selective abortion. Today’s technologically sophisticated form of screening for selection for prevention of birth was not available when the *Convention on the Prevention and Punishment of the Crime of Genocide* (1948) (*Genocide Convention*) was written, but the intent and consequences are the same as pertained during the Nazi genocide.

The *intent* is to identify unborn children with Down syndrome, Spina Bifida and other conditions so that births to the group can be prevented. The *consequence* is that a substantial part of the group is being systematically destroyed. The screening programme facilitates genocidal acts against the group, with abortion being the means of perpetrating those acts.

Given that States parties have *an obligation to prevent and punish* death penalty programmes targeting disproportionately minority groups, States parties must also have an *obligation to prevent and punish* abortion programmes targeting disproportionately minority groups identified by a disability, as *deprivations of life authorized by domestic law, which constitute part of a crime of genocide* (para. 42).

The *responsibility as members of the international community to protect lives and to oppose widespread and systematic attacks on the right to life* (para. 71) should include opposing abortion programmes targeting children detected prenatally to have a disability such as Down’s syndrome and should be recognized in para. 42 *as part of a policy of genocide*.

Essentially what we are confronted with in many States today is yet another case of a genocidal practice and policy that masquerades as ordinary, good health care. The crime of imposing measures intended to prevent births within the group has become ‘banal’ precisely because it is being committed in a daily way, systematically, without being adequately named and opposed. It has become for the perpetrators “accepted, routinised and implemented without moral revulsion and political indignation and resistance”.[[41]](#endnote-41)

Public officials, medical practitioners and pregnant women who take part in this policy and practice do so under the misconception that it is legal. As far as domestic law applies, the policies and practices appear to be legal. In the light of international law, however, current law in many States must be examined for failure to protect the right to existence of the group targeted by State-sponsored antenatal programmes for detection of Down syndrome and other conditions.

In many States today, domestic law at present may tolerate identification and selection for prevention of birth on these grounds but so did Nazi domestic law. The ‘racial hygiene’/medical policies of the Nazis appeared to be legal: “Legislators codified policies into law…They were careful to construct racial policies in accordance with the rule of law.”[[42]](#endnote-42) Hitler himself guaranteed legal impunity for doctors carrying out abortions on the grounds of suspected ‘hereditary taints’.[[43]](#endnote-43)

Thus, right from the beginning of the drafting history of the *Genocide Convention*, it was agreed that:

…*domestic law could never be invoked as a defense for non-fulfillment of an obligation under an inter-national convention. Therefore, if under a convention a State undertook certain international obligations, the domestic law would not be a defense for failure to fulfill such obligations*.[[44]](#endnote-44) (E/AC.25/SR.18)

In regard to “widespread and systematic attacks on the right to life” of children detected prenatally to have a disability such as Down’s syndrome and their protection under the *Genocide Convention*, the crime is against the group (not simply the individual unborn children) and the effects targeted birth prevention has on that group. Genocide is distinct in how it impacts on the worth of people belonging to that group.  A State funded programme to facilitate prevention of the birth of children detected prenatally to have Down’s syndrome is part of a policy of genocide against the members of that community. States then have complicity in genocide as they are providing the means to carry it out (facilitating the crime)  [See Genocide Convention Article III (a) & (e) and Rome Statute Article 25 (3)(c)]

**Part 2 on Para. 10**

1. **Medicalized deprivation of life is contrary to the principle of inherent dignity**

The International Covenant on Civil and Political Rights (ICCPR) recognizes that all human rights derive from the inherent dignity of the human person.

*Recognizing that these rights derive from the inherent dignity of the human person…* (Preamble)

This inherent dignity inheres in the human person and being in pain and suffering must be treated with the best pain relief and comforting we can provide.

For even while living through the natural process of dying, the terminally ill retain their inherent dignity and their inalienable right to be legally protected from arbitrary deprivation of life.

States which have ratified the ICCPR must at all times take positive steps to effectively protect the right to life of every human being. The right to life of persons at risk of suicide, as protected by international human rights law, means, inter alia, that States parties have a strict legal duty at all times to prevent, investigate and redress threats to the right to life wherever such violations occur, both in private and in public. (Article 4(2) ICCPR)

Thus blueprints for medicalized killing or for other forms of lethal self-harm cannot be promoted or offered by governments or private clinics as a legitimate response to the suicidal distress of any person as it is in violation of the fundamental human rights principle of inalienability. Human beings cannot be deprived of the substance of their rights, not in any circumstances, not even at their own request.

While every person with a terminal illness has a right to refuse burdensome treatment intended to prolong life, no person has a right to demand of physicians an intervention intended to kill and no doctor has permission to exercise arbitrary deprivation of life.

The term 'death with dignity' should not be promoted and misused to mask the ignominious nature of medicalized suicide.

1. **The inherent right to life of the terminally ill is inalienable**

The term “inalienable rights of all members of the human family” applied to the terminally ill means that these human rights cannot be taken from the terminally ill person, not by anyone, and not even by himself. Thus the right to life, because it is inalienable, rules out suicide and assisted suicide.

Medicalized killing cannot be offered as a legitimate response to the suicidal distress of a terminally ill person as it is in violation of the fundamental human rights principle of inalienability. Human beings cannot be deprived of the substance of their rights, not in any circumstances, not even at their own request.

The natural law principles relevant here are that a human entity should be allowed to persist in being; and that one must not directly attack any basic good in any person, not even for the sake of avoiding bad consequences. This last principle, that the basic aspects of human well-being are never to be directly suppressed, is cited by Professor John Finnis as the principle of natural law that provides the rational basis for *absolute* human rights, for those human rights that “*prevail in all circumstances, and even against the most specific human enactment and commands”.[[45]](#endnote-45)*

The concepts of dignity, sanctity, status, worth, and ultimate value—*each individual an end in himself[[46]](#endnote-46) —*underpin the understanding and acceptance by the drafters of the *Universal Declaration of Human Rights* of the first principle of natural law—the moral imperative to do good and avoid evil, and emanating from this, the precept that affirms preservation of each human life and proscribes arbitrary deprivation of any human life.

International humanitarian law has recognized that special safeguards must be accorded to persons in positions of extreme vulnerability. It is prohibited to subject such persons *“ to any medical procedure which is not indicated by the state of health of the person concerned... even with their consent”.[[47]](#endnote-47)* Most significant here is the concept that some harmful medical procedures are prohibited for human beings in vulnerable situations “even with their consent”. There is indeed humane recognition here that some medical treatments are so lethal that even the consent of the persons concerned cannot give them legitimacy.

1. **The terminally ill have the right to recognition of their inherent dignity**

Inherent dignity is a core value in all three instruments of the *International Bill of Rights*:

“…*recognition of the inherent dignity and inalienable rights of all members of the human family is the foundation of freedom , justice and peace in the world .*”

Given this foundation, there is no “right to die” in the human rights instruments. Nor is there what euthanasia advocates call “a right to die with dignity”. The confusion here is engendered in their failure to grasp that human rights belong to the living—that every human being, because of her/his inherent dignity, has a right to live – a right that stems from the inherent dignity of every human being and inheres in every human person from conception through to the moment of their death.

The terminally ill, although they are dying, are still alive. It is their life not their death that entitles them to all their human rights. It is their live humanity, their living membership of the human family that entitles them to “…*recognition of the inherent dignity and inalienable rights of all members of the human family”.*  It is this recognition that obliges us to travel in human solidarity with the terminally ill, to provide them with the best attainable palliative care, in their homes or hospices or intensive care units, or even on the streets (as exercised by Mother Teresa’s Sisters) to be attentive to their needs, to be with them to the moment of natural death. Everyone has a right to refuse burdensome medical intervention intended to prolong life. But no person has a right to demand of carers a medical intervention intended to kill. There is no right to procure arbitrary deprivation of life. The terminally ill have no right to medicalized killing which is the antithesis of genuine recognition of the inherent dignity and worth of the human person who is terminally ill.

The term “inherent dignity” applied in the spirit and purpose of the *Universal Declaration* means that every human being, from the first moment of existence as a discrete, genetically unique human entity to the point of natural death, has an immutable dignity, a dignity that does not change with external circumstances such as levels of personal independence, satisfaction or achievement, mental or physical health, or prognoses of quality of life, or functionality or wantedness. There is no conceivable condition or deprivation or mental or physical deficiency that can ever render a human being “non-human”. Pejorative terms such as “just a vegetable” or “non-person in a permanent vegetative state” and dismissive attitudes such as “May as well put him out of his misery—he’s going to die anyway…” cannot justify violation of the human rights of the human person so described. Such prejudices cannot destroy *the inherent dignity of the human person.* As long as a human being lives, he or she retains all the human rights of being human, all the rights that derive from his or her inherent dignity as a human being.

1. **The terminally ill have the right to security of person**

*Everyone has the right to life, liberty and security of person* (*Universal Declaration* Article 3)

The terminally ill have the right to life, liberty and security of person. They have an inalienable right to life up to the very moment of natural death; and the right to security of person is very closely related to the right to life. The right to security of person means, *inter alia*, that the right to life is to be protected and *secured* for the terminally ill. They are to be protected from all attempts against their life, including self-harm and all other measures intentionally directed towards inflicting death. The right to life cannot be distorted to mean a right to be killed. All human rights “*derive from the inherent dignity of the human person*” (ICCPR), and must be rightly ordered towards sustaining the human person in his/her being. Clear human rights obligations are set out in the *Universal Declaration* Article 25 (1):

*Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control*.

The terminally ill have a right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of “… sickness, disability…old age or other lack of livelihood in circumstances beyond his control”. This last phrase has special relevance to the terminally ill—truly the terminally ill are *in circumstances beyond their control*.

The dependency, pain and deep sorrow that often accompanies terminal illness is part of the human condition—it is part of life, part of living. Dying is the final natural life event—it should not be transformed into act of arbitrary medicalized killing. Medical expertise and technology has overreached the proper purvey of medicine when it is used to kill instead of to provide palliative relief for the terminally ill.

1. **The limits of autonomy and the duty to secure the rights of all**

The autonomy of the terminally ill is limited by respect for the rights of others and for the security of all. Laws endorsing medicalized killing of suicidal persons who are terminally ill result in an abrupt disconnect of autonomous rights from the natural context of responsibilities to the community. Even persons who are terminally ill cannot unilaterally divorce their human rights from their human responsibilities to their family, their community, and mankind. Relationship between duties and rights remains valid for all human beings, including the terminally ill. Everyone has duties to the community. (UDHR Article 29 (1)).

The autonomy of the terminally ill may be limited by law in order to secure due recognition and respect for the rights and freedoms of others and to meet the just requirements of morality, public order and the general welfare in a democratic society. (UDHR Art.29(2).

States have a duty to maintain their part in a social and international order in which the rights and freedoms set forth in the human rights instruments can be fully realized for everyone. (UDHR Art.28)

These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations. (UDHR Art.29(3))

*Nothing in this Declaration [or in any of the subsequent human rights instruments] may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.( UDHR Art. 30).*

Unfortunately, the proposal in para. 10 seeks to authorize engaging in an activity aimed at the destruction of the inalienable right to life of the terminally ill.

In promoting a spurious new right, the Committee will take from the terminally ill who are not suicidal the security of a much older assumption. Assumptions go far deeper in human nature and in basic social organizations like the family, than any merely legal right. In this case, the original assumption is that there exists an unlimited duty of care owed by the living towards the dying, on which hitherto we have all been able to depend.

This is one of the vitally important assumptions on which the fabric of civilization has been founded and which are far deeper than any merely legal right established by legislatures.

Those who would support the introduction of professional medicalized killing threaten to undermine the common respect for a fundamental right of all human beings—the right *not* to have to choose when to die, the right *not* to have to justify lingering on, the right *not* to have to consider suicide in order to relieve one's carers of physical, medical, or financial responsibilities. Although that assumption was not formally inscribed in any legal enactment, in fact all human beings in modern civilized societies have relied on it.

1. **Professional medicalized killing is a threat to human solidarity**

Rash legislators did not consider that their seemingly compassionate legal endorsement of professional medicalized killing must cause, in the long run, an incalculably greater amount of misery than that which they were seeking to alleviate. They lack the social prudence to discern that suicide and assisted suicide are not just moral problems—they are problems of *morale* that threaten human rights and human solidarity.

Essentially, legalizing professional medicalized killing threatens once again to sever human solidarity on care for the dying. It will make way once again for introduction of the "choice" to “relieve” one's carers of their human obligations.

In seeking spurious new rights, they will threaten the old right: the unspoken, unwritten, but absolute right to good palliative care. It threatens also the absolute right to unquestioned and unquestioning care not just throughout the entire dying process, but throughout the entire life cycle—the very old and the very young have high levels of need as do those with disabilities and the terminally ill.

The euthanasia ‘choice’ itself brings a tyranny. The "right to die" introduces the *duty* to die. For the incapacitated, it will introduce constraints where once there were none. In creating the choice of physician-assisted suicide, governments will create the potential need to justify rejection of that choice. Legalized euthanasia introduces the heinous corollary that to remain alive the burdensome should be able to furnish adequate rational justification for "choosing" to remain alive. And this then damages the original, irreplaceable universal agreement that to be alive requires no justification—that it is sufficient simply that one *is* alive. To inadvertently sabotage such a crucial pivot of human civilization is a tragedy beyond the comprehension of some well-meaning but obtuse public authorities.

Thus the notion that euthanasia is a personal decision affecting no one beyond the person who demands professional medicalized suicide is absurd. It's a *human* rights issue affecting not just all those *who wish to die with dignity* (para.10) but all humanity. It attacks a fundamental human right that has applied in principle to all human beings, by virtue of their being human—that the dying have a right to be cared for, no matter how long or how demanding the process.

The dying patient's basic human right to faithful, unstinting care must not be watered down to a mere choice. In this substitution of a choice for a human right, they will cheat us all of something that for centuries we had been able to take for granted—the right not to be pressured to hasten our own death, the right to let nature take its course. Yet the pressure is now on, this pressure that insists it is a choice, not a right, to take time dying—to live our lives to the natural end.

1. **The inherent right to life of the terminally ill shall be protected by law**

The terminally ill are among the most vulnerable human beings; and legal systems must not place them at risk of lethal medical treatments. The terminally ill are entitled to have their rights fully respected in accordance with the special safeguards and duty of care guarantees as set out and agreed in the original international human rights instruments

Natural death or arbitrary death?

Natural death comes inevitably to all human beings. Natural death is an unprovoked, spontaneous natural event. Death is not a right, but an inevitability. Human rights are applicable to the living. For as long as the terminally ill are alive, their inherent right to life is to be protected by law.

Article 5(1) of the International Covenant on Civil and Political Rights states:

*Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.*

Other than strict and very specific provisions for the death penalty, no other limitation is allowed on the right to life—certainly there is no provision for legalized killing of suicidal persons who are terminally ill.

The law must ensure that no one is arbitrarily deprived of his life. The term “arbitrarily’ has immense significance in that it prohibits euthanasia and suicide precisely for the reason that both the timing and the manner of death are arbitrary rather than inevitable.

Regarding the concept of arbitrariness, UN Human Rights Committee’s General Comment No 16 explains that it is intended to guarantee that “even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant...”. The terminally ill may not be deprived “lawfully” of their lives. Laws that arbitrarily deprive terminally ill of their lives are bad laws, impermissible under international human rights law because they allow for unjust deprivation of lives—the only just deprivation of life allowed for in the ICCPR under very limited conditions relates to State imposition of the death penalty for only the most serious crimes, and only after a final judgment rendered by a competent court.

From the very beginning of the drafting of modern international human rights instruments, a clear understanding of the term “arbitrarily” was established—it was to be interpreted as “without justification in valid motives and contrary to established legal principles.”

Laws that pretend to establish the legality of routine medicalized killing of suicidal persons who are terminally ill are without justification in valid motive

They aspire to do good (relieve suffering and/or pain) by doing evil (arbitrary deprivation of life); and are they contravene the established legal principle that the state may condone deprivation of life only for those who are judged guilty of serious crime.

1. **Professional medicalized killing—“a tragedy of the commons”**

Regrettably, Para 10’s proposal to withdraw universal protection from the terminally ill is deficient in its short-sightedness. Laws permitting the professional medicalized killing of suicidal persons who are terminally ill will alter most unjustly our present social environment in which the terminally ill are entitled unconditionally to whatever palliative care, financial and other resources are necessary. Social environmental economists might recognize in the making here a tragedy of the commons. Legalized medical killing of the terminally ill sets a socially engineered trap, in which individual interests freely and legally gain access to a public resource (a health care system that provides unconditional specialized care for the terminally ill) and proceed to change drastically the ethos of that public resource—to change it from unconditional palliative care to a dangerous combination *viz*., optional care together with the option of medically assisted suicide.

A tragedy of the commons will unfold as the terminally ill are pressured subtly to accept the cheaper swifter option. This will lead eventually to the severe depletion of the shared resource—the end, effectively, of an admirable human endeavour to build a truly universal, unconditional and beneficent system of care for the terminally ill. A gradual reduction of specialized clinics, hospices, palliative care resources and research dedicated to the needs of the terminally ill is therefore a typical “externality” – *i.e*., the unintended and negative consequence of private decisions that ends up affecting everyone.

Inexorably, more research resources, more clinics, more medical personnel will be directed towards the science of killing (ktenology)—the science of annihilation—as fewer research dollars, fewer palliative care facilities, fewer medical professionals are dedicated to looking after the terminally ill with true compassion which often requires a loving patience that does not seek to hasten or to abend abruptly or conveniently the natural process of dying.

Decriminalization of professional medical killing of the terminally ill who are suicidal must lead to an immense paradigm shift in the ethical webbing that holds together our communal health care systems around the world. To remove the human rights principles of the inherent dignity and worth of all human beings and the equality of all human beings (irrespective of an individual’s impaired quality of life or negative prognosis) is to begin an unravelling of the common good that has been painstakingly established over years of careful effort.

Laws allowing and (implicitly) encouraging medicalized killing destroy an important aspect of our civilization’s heritage—the profound good will that has been forged towards the terminally ill, the very vulnerable, the very young, the very old, the very disabled. Such laws are an attack on the fundamental human rights principles of human dignity and worth that inhere in every human being, in all members of the human family from conception to natural death irrespective of externalities and individual circumstances—human rights are inherent and belong to all human beings precisely and only because they are humans.

The great paradigm shift that will be wrought by legalizing medicalized killing involves the abandonment of principles of goodness of life, the triumph of endurance, the virtue of patience in adversity, of helping others in pain and distress, of loving the feeble, the discouraged, the incapacitated, the needy. It is our humanity that recognizes that we are all in this together—that we must go on carrying with us the very old, the very young, the terminally ill and all those who are troubled and in distress.

Professional medicalized killing is not a humane response.

**Conclusion**

Para. 9 should be deleted.

It does not conform with the Committee’s grave duty as a main player in the support of the modern international human rights initiative—to build the rule of law that will function to protect the human rights of every human being *without discrimination*.

It may be all very well for para. 9 to say that *any legal restrictions on the ability of women to seek abortion must not, inter alia, jeopardize their lives* but this must be understood within the more comprehensive context that both safe and unsafe abortion actually destroys the right to life of their children. It is not justice when we cut out human rights protection for the unborn child with introduction of a ‘new’ right to seek abortion for ourselves.

And for some 45 years now, pro-abortion advocates have been sabotaging the deontological basis of modern international human rights law and surreptitiously substituting a different philosophical basis, utilitarianism/consequentialism.

To allow a so-called ‘right to abortion’ to destroy a child’s right to life, development and survival is to sabotage the system, to try to move across to a very precarious utilitarian/ consequentialist calculus, to a moral relativism, to a positivist legal system in which the expediency of subjectively weighted outcomes overpower legal principles such as equality and inclusion.

Unfortunately, in the writing of this General Comment, there was apparent agreement to rely primarily on self-referential authoritarianism (derived primarily from this Committee’s own Concluding Observations and judgments). It was understood: “We will have problems with States parties…”, that aspects “more philosophical in nature” should not feature in a General Comment—they “deal with the foundations of the law and not with the law itself…the point of a General Comment is to summarize the case law of this Committee—to compile everything that we have expressed in a single text”.[[48]](#endnote-48)

The Committee was right to be wary.

It is unfortunate for the Committee that this compilation in a single text has thrown up such a plethora of logically irreconcilable contradictions of the founding principles and philosophical basis of the *Universal Declaration* and the *Covenant.*

If it is right and true that back in 1959, under international human rights law, States must provide legal protection for the child before birth: then it can’t be right and true that international law now requires legal protection for the child at risk of abortion to be removed and abortion decriminalized.

This would be logically inconsistent and legally incoherent.

So the first and fundamental problem that this Committee has to resolve now is one that will take tremendous intellectual courage and honesty to tackle. Abortion and assisted suicide are becoming widespread and socially accepted in some states, and so the temptation is strong to dump the right to legal protection for the child at risk of abortion and for the terminally ill.

If, however, this Committee wants to write a General Comment on the Right to Life , then it can’t start by accepting the current abortion practices as a ‘right’. Reason and logic preclude that abortion can be reconciled with the child’s right to life.

One can’t affirm that human rights are inalienable and then remove them from children at risk of abortion or from the terminally ill at risk of suicide.

It can’t be done, not with intellectual integrity.

One can’t affirm the equality of all human beings and then authorize States parties to enact legislation that refuses the right to life to children selected for abortion.

One can’t affirm the principle of indivisibility and then argue that States parties can’t respect the rights of unborn children on the grounds that they must uphold the rights of women to access “safe abortion”.

One can’t affirm that the right to life is non-derogable and then go ahead to instruct States parties to derogate from their duty to protect the right to life of the terminally ill.

One can’t affirm the inherent dignity of all members of the human family and then introduce exceptions, introduce laws that would tolerate pre-natal sex selection, laws that would allow for children of rape and incest to be aborted for the sins of their fathers.

One can’t affirm the human rights of persons with disability and then tolerate routine abortion of some 90% of children detected prenatally to have Down syndrome.

One can’t do any of these contradictory things, not without abandoning reason and logic, not without compromising the inner coherence of the whole international human rights system.

Historically, our human rights legal system is deontologically based – founded on permanent principles. To concoct now a 'right' to suicide with professional medical assistance would be to over-ride the inalienable right to life. It would be to switch horses midstream. It is to try to move across to a different philosophical basis, consequentialism or utilitarianism, a much less secure system in which expediency prevails over principles, leaving the most vulnerable at greater risk.

Regrettably, a great many academics, politicians, judges and commentators have made this switch but they refuse to be honest about it. They have changed horses midstream and now pretend that they are still on the same horse we set out on.

The right to life is permanently and very deeply embedded in our understanding of modern international human rights law. It is one of the original *Universal Declaration* principles and a proper respect for it must remain in all interpretations of the subsequent human rights Covenants and Conventions.

Committees may not contravene with impunity the grave obligation to protect the right to life of every human being by introducing a right to medically assisted suicide, not without compromising the inner coherence of the whole international human rights system.

Para. 10 should be rewritten to protect the right to life for absolutely everyone.

1. **Endnotes**

   United Nations, Official Records of the General Assembly (GAOR) , Tenth Session, Annexes, (1955) A/2929 Chapter III Para. 6. [↑](#endnote-ref-1)
2. # Human Rights Committee 116th Session - Draft General Comment on the Right to Life part 2 at <https://www.youtube.com/watch?v=_-k7nfBh2ps>

   [↑](#endnote-ref-2)
3. At the inaugural meeting of the UN Commission on Human Rights (29April 1946), Henri Laugier, UN Assistant Secretary-General, instructed the Commission to develop “a permanent guide for men of good will”, articulating essential human rights based on “a minimum of common principles”.( E/HR/6 p.2) Thus was the *Universal Declaration* founded on principles shared among men of good will and intended as a permanent statement of the rights enunciated therein. At the outset of the UN project, a UNESCO group of culturally and geographically diverse philosophers were consulted about the practical possibility of drafting a statement of universal principles. They were justifiably optimistic. After a global questionnaire and survey of eminent representatives of all major philosophies, creeds, political and legal systems, they concluded that there are indeed a few basic practical concepts of human rights which are so widely shared that they “may be viewed as implicit in man’s nature as a member of society”. (UNESCO, (ed.), *Human Rights: Comments and Interpretations*, London & New York: Wingate, 1949, p.267)

   Jacques Maritain, an eminent French philosopher deeply involved in the discussions and drafting, described this fortuitous human commonality as basic principles of action implicitly recognized by the consciousness of free peoples, “a sort of common residue, a sort of unwritten common law”, at the point of convergence of extremely different theories and traditions.” (Maritain, Jacques: “The Possibilities for Co-operation in a Divided World”:inaugural address to the Second International Conference of the United Nations Educational. Scientific and Cultural Organization, Mexico, November 6, 1947.)

   And that consensus on a few principles fundamental to human societies right across the world was affirmed in the *Universal Declaration of Human Rights* (1948) and were codified in the law of the Covenants. [↑](#endnote-ref-3)
4. ICCPR Article 5 (1) Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant. [Underlining added] [↑](#endnote-ref-4)
5. From a speech on human rights to the U.S. Chamber of Commerce Committee on International, Political, and Social Problems held at the Waldorf Astoria in New York, November 4, 1949. [↑](#endnote-ref-5)
6. Malik, Charles, “International Bill of Human Rights”,United Nations Bulletin, July, 1948. [↑](#endnote-ref-6)
7. The concept of rights beginning only from birth was in fact rejected on the grounds that it was “not consistent” with protective laws for unborn children in many states. See Bossuyt, Marc J., *Guide to the “Travaux Préparatoires” of the International Covenant on Civil and Political Rights*, Dordrecht, Martinus Nijhoff Publishers, 1987. [↑](#endnote-ref-7)
8. E/CN.4/AC/SR.35 [↑](#endnote-ref-8)
9. Inalienability is one of the core values in the opening recognition “of the inherent dignity and of equal and inalienable rights of all members of the human family” which appears in the Preamble of all three instruments of the International Bill of Rights and was characterized by the Commission of Human Rights as “a statement of general principle which was independent of the existence of the United Nations and had an intrinsic value of its own.” General Assembly Official Records, United Nations, A/2929 Chapter III para. 4.. [↑](#endnote-ref-9)
10. UN Declaration on the Rights of the Child, Principle 1: “Every child without any exception whatsoever is entitled to these rights …” [↑](#endnote-ref-10)
11. UN Convention on the Rights of the Child, Article 2. [↑](#endnote-ref-11)
12. See Johannes Morsink: “Women’s rights in the Universal Declaration”, *Human Rights Quarterly*, Vol. 13, p.230. [↑](#endnote-ref-12)
13. ICCPR Article 5 (1) Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant. [↑](#endnote-ref-13)
14. For the best summary of Cassin’s contribution , see Morsink, Johannes, *The Universal Declaration: Origins, Drafting and Intent*, Philadelphia: University of Pennsylvania Press, 1999, especially pp.38-9. [↑](#endnote-ref-14)
15. The initial documentation started with the Geneva Declaration of the Rights of the Child (1924) and then post-World War II:

    Nuremberg Trials Record (1947/8) “…protection of the law was denied to the unborn children…”

    First Draft of the International Covenant (1947) — “any person from the moment of conception”

    Fourth Geneva Convention Relative to the Protection of. Civilian Persons in Time of War (1949) — Articles 14, 33(5), and 50—special protection measures specifically for “children under fifteen, expectant mothers and mothers of children under seven”

    UN Convention on the Prevention and Punishment of the Crime of Genocide (1948) —“Imposing measures to prevent births within the group”

    Draft American Declaration of the International Rights and Duties of Man (1948) — “…the right to life from the moment of conception”

    Declaration of Geneva (1948) World Medical Association —“the utmost respect for human life from the time of conception...”

    American Declaration of the International Rights and Duties of Man (1948) —“ Every person has the right to life, including those who are not yet born as well as the incurable, mentally defectives, and the insane” was changed without prejudice to “Every human being has the right to life…”

    International Code of Medical Ethics) (1949) —“the importance of preserving human life from the time of conception”

    Draft Declaration on the Rights of the Child (1950) —“even from before birth”

    Draft Covenant on Civil and Political Rights (1950) — “Every human being from the moment of conception has the inherent right to life.”

    European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) —“…the European Convention for the Protection of Human Rights and Fundamental Freedoms was modelled on the draft of the Covenant on Civil and Political Rights as it existed in 1950.” (John P. Humphrey)

    Draft Declaration on the Rights of the Child (1957) –“ special care and protection shall be provided both to him and to his mother, including adequate prenatal and post-natal care”.

    UN Declaration of the Rights of the Child (1959) —“…legal protection before as well as after birth

    Draft Inter-American Convention on Human Rights (1959) —“protected by law from the moment of conception”

    International Covenant on Civil and Political Rights (1966) —Article 6(5) “to save the life of an unborn child” (travaux préparatoires )

    Inter-American Convention on Human Rights (1969) —“in general, from the moment of conception" [↑](#endnote-ref-15)
16. See Rita Joseph: “Human Right and the Unborn Child”, Leiden & Boston, Martinus Nijhoff, 2009). [↑](#endnote-ref-16)
17. With regard to the Nazi record of decriminalizing abortion in Poland and the Eastern Territories, instructions by Nazi authorities issuing directives to decriminalize abortion were furnished as evidence for the count of crimes against humanity:

    "Abortion must not be punishable in the remaining territory… Institutes and persons who make a business of performing abortions should not be prosecuted by the police." (Nuremberg Trials Record: Trial of Ulrich Greifelt and Others Indictment [Tr. pp. 1-18, 7/1/1947.] Vol. V. at pp.95-6.)

    [↑](#endnote-ref-17)
18. Declaration of Geneva (1948) World Medical Association —“the utmost respect for human life from the time of conception...” [↑](#endnote-ref-18)
19. International Code of Medical Ethics (1949): “…the importance of preserving human life from the time of conception until death” [↑](#endnote-ref-19)
20. Hunt, John, “Out of Respect For Life: Nazi Abortion Policy in the Eastern Occupied Territories*”, Journal of Genocide Research*, Vol. 1(3), 1997, pp.379-385; and “Abortion and the Nuremberg Prosecutors: A Deeper Analysis”, *Life and Learning*, Vol. VII, Proceedings of the Seventh University Faculty for Life Conference, June, 1997. [↑](#endnote-ref-20)
21. *Nuremberg Trials Record*: “The RuSHA Case”, March 1948, Volume IV, p 1077. [↑](#endnote-ref-21)
22. Regarding the term ‘compelling abortions’, it is important to note that it is the abortion itself that is judged an atrocity against human life, against the lives of unborn children who should have been given “protection of the law”. Compulsion is an additional factor of rights violation but it is clear from the Nuremberg Judgments that it does not constitute the whole violation. See “Abortion and the Nuremberg Prosecutors: A Deeper Analysis”, Hunt. John, *Life and Learning*, Vol. VII, Proceedings of the Seventh University Faculty for Life Conference, June, 1997. p. 205. [↑](#endnote-ref-22)
23. See *Nuremberg Trials Record*: “The *RuSHA* Case”, Opinion and Judgment, “War Crimes and Crimes Against Humanity”, Vol.V, pp.152 to 154 and pp.160-2 [↑](#endnote-ref-23)
24. *Affirmation of the Principles of International Law recognized by the Charter of the Nuremberg Tribunal. Resolution 95* (*1)* *of the United Nations General Assembly***,** 11 December 1946. The UN committee on the codification of international law was directed to establish a general codification of “the principles recognized in the Charter of the Nuremberg Tribunal and in the judgment of the Tribunal”. These became the foundation of modern international human rights law. [↑](#endnote-ref-24)
25. See closing statements by the defence lawyers and the defendants in Nuremberg trials record, especially in the RuSHA/ Greifelt case. [↑](#endnote-ref-25)
26. See statement by Donna J. Harrison, MD is Executive director of the American Association of Pro-Life Obstetricians and Gynecologists 20 June 2014:

    *Elective abortion—that is, the deliberate killing of an unborn child prior to separating that child from the mother—is never necessary to save the life or preserve the health of any woman. Again, according to the CDC, the purpose of elective abortion is “to produce a non-viable fetus.”*

    *We continue to affirm the Dublin Declaration, which states, ‘As experienced practitioners and researchers in Obstetrics and Gynecology, we affirm that direct abortion is not medically necessary to save the life of a woman. We uphold that there is a fundamental difference between abortion and necessary medical treatments that are carried out to save the life of the mother, even if such treatments results in the loss of life of her unborn child. We confirm that the prohibition of abortion does not affect, in any way, the availability of optimal care to pregnant women.’*

    *In those unfortunate instances where a child must be separated from his or her mother, no abortion is performed. This is not a matter of semantics. The purpose of an elective abortion is to produce a dead baby. That is not the purpose of the medical procedures taken in these circumstances. When this happens there is no desire that either patient—the mother or the child—should die. Every reasonable effort is made to save both mother and child*. [↑](#endnote-ref-26)
27. Cairo International Convention on Population and Development *Programme of Action* (1994)and Beijing Fourth World Conference on Women *Platform for Action*: Consensus was achieved at Cairo ICPD para. 8.25 and Beijing PFA para. 106 (k): “to reduce the recourse to abortion” and “to eliminate the need for abortion”. [↑](#endnote-ref-27)
28. ICPD *Programme of Action* paras. 4.22, 5.5, 7.40; Beijing *Platform for Action* paras.124(i), 283(d). [↑](#endnote-ref-28)
29. “The victim is shown to be inhuman while the executioner is to be pitied. The condemned is put in the wrong and the slayer in the right. A person is robbed of all--his very life--but it is the assassin who is the sufferer.” [Nuremberg Einsatzgruppen Case (October 1946-April 1949) Volume IV/1] [↑](#endnote-ref-29)
30. “…recognition of the inherent dignity and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” [↑](#endnote-ref-30)
31. UN Declaration on the Rights of the Child, Principle 1: “Every child without any exception whatsoever is entitled to these rights …” [↑](#endnote-ref-31)
32. UN Convention on the Rights of the Child, Article 2. [↑](#endnote-ref-32)
33. International Covenant on Civil and Political Rights (ICCPR), Article 6(5). [↑](#endnote-ref-33)
34. International Covenant on Civil and Political Rights (ICCPR), Article 6(1). [↑](#endnote-ref-34)
35. ICCPR Article 4(2). [↑](#endnote-ref-35)
36. Defendant Otto Hoffmann: “…If today I look back on my work in the Race and Settlement Main Office and on my activity as Higher SS and Police Leader… I think that I may say that at all times I acted in good faith that all the decrees were based on law and that there was no reason for me not to comply with them”. *Nuremberg Trials Record*, *Vol V*, p.81. AlsoDefendant Richard Hildebrandt: “… I never did anything, or gave orders for anything to be done which would have brought me into conflict with my conscience… my orders were necessary and lawful” *Nuremberg Trials Record*,  *Vol V,* p.82. [↑](#endnote-ref-36)
37. Refer to list above in endnote # xv [↑](#endnote-ref-37)
38. Universal Declaration of Human Rights, Article 1: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” [↑](#endnote-ref-38)
39. See also World Health Organization (WHO), *Safe abortion : technical and policy guidance for health systems,* Geneva: WHO, 2003, pp.34-43. [↑](#endnote-ref-39)
40. UN Committee on the Rights of the Child (CRC) Comment No 7 (2005), Right to Non-discrimination, para 11. [↑](#endnote-ref-40)
41. “So if a crime against humanity had become in some sense "banal" it was precisely because it was committed in a daily way, systematically, without being adequately named and opposed. In a sense, by calling a crime against humanity "banal", she was trying to point to the way in which the crime had become for the criminals accepted, routinised, and implemented without moral revulsion and political indignation and resistance.” Judith Butler: "Hannah Arendt's challenge to Adolf Eichmann", *The Guardian*, Monday 29 August 2011. Hannah Arendt's "banality of evil" was the subject of a recent series of articles in *The* *Guardian*. [↑](#endnote-ref-41)
42. Robert Proctor: *Racial Hygiene: Medicine under the Nazis* (Harvard University Press, 1988), p. 285 from Chapter 10: “The politics of knowledge”. [↑](#endnote-ref-42)
43. Cited in Henry Friedlander: *The Origins of Nazi Genocide: From Euthanasia to the Final Solution* (Chapel Hill: University of North Carolina Press, 1995) p.30. [↑](#endnote-ref-43)
44. See also Nehemiah Robinson: *The Genocide Convention: A Commentary* (New York, Institute of Jewish affairs, 1960) p.73. [↑](#endnote-ref-44)
45. Finnis, John: *Natural Law and Natural Rights* (1980) and *Aquinas: Moral, Legal and Political Theory* (1998) [↑](#endnote-ref-45)
46. Speech by Eleanor Roosevelt [Adoption of the Declaration of Human Rights](http://www.udhr.org/history/ergeas48.htm) (December 9, 1948). [↑](#endnote-ref-46)
47. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1, Article 11, “Protection of Persons” [↑](#endnote-ref-47)
48. # Human Rights Committee 116th Session - Draft General Comment on the Right to Life part 2 at <https://www.youtube.com/watch?v=_-k7nfBh2ps>

    [↑](#endnote-ref-48)