



Women Enabled International Contribution to the General Discussion Regarding the Human Rights Committee's General Comment No. 36 – Article 6: Right to Life

I. Introduction

[Women Enabled International](#) (WEI) appreciates the opportunity to provide comments in preparation for the Human Rights Committee's Day of General Discussion on General Comment No. 36 – Article 6: Right to Life. WEI advocates and educates for the human rights of all women and girls, emphasizing women and girls with disabilities, and works tirelessly to include women and girls with disabilities in international resolutions, policies, and programs addressing women's human rights and development.

WEI's comments are directed at three of the issues identified in the Human Rights Committee's Note: (1) the scope and nature of the duty to respect and ensure the right to life (para. 5(a)), particularly the relationship of the right to life to other international human rights instruments, and (2) the applicability of the article to the unborn and other forms of human existence (para. 5(c)), as it relates to (3) possible exceptions to the duty to protect life by law (para. 6(b)).

II. The scope and nature of the duty to respect and ensure the right to life (para. 5(a)).

Women, including women with disabilities, face unique and specific risks to their right to life as a result of pregnancy and childbirth. The leading causes of death for women of reproductive age worldwide are HIV/AIDS and complications from pregnancy and childbirth,¹ yet the majority of maternal deaths are preventable with access to appropriate perinatal care, contraceptive information and services, safe abortion, and post-abortion care.² Women with disabilities, in particular, face significant barriers in combating these leading causes of death. As a result of stereotypes regarding their sexuality and despite their heightened risk of sexual violence, women and girls with disabilities frequently lack the health information necessary to protect themselves from sexually transmitted diseases or unwanted pregnancy.³ Furthermore, "in many places women with disabilities are routinely turned away from [maternal health] services . . . , often also being told that they should not be pregnant, or scolded because they have decided to have a child."⁴ The specific risks that women, including women with disabilities, face as a result of pregnancy and childbirth must be considered in evaluating the scope and nature of States parties' duty to respect and ensure the right to life.

¹ World Health Organization (WHO), Factsheet No. 334: Women's Health (Sept. 2013).

² WHO, Factsheet No. 348: Maternal Health (May 2014). *See also*, UNITED NATIONS POPULATION FUND (UNFPA) AND CENTER FOR REPRODUCTIVE RIGHTS, "Maternal Mortality and Morbidity," *in* ICPD AND REPRODUCTIVE RIGHTS: 20 YEARS OF ADVANCING REPRODUCTIVE RIGHTS THROUGH UN TREATY BODIES AND LEGAL REFORM 2 (2013) ("Over 70 percent of maternal deaths worldwide result from severe bleeding, high blood pressure, infection, unsafe abortion, and prolonged or obstructed labor; these causes are generally preventable if they are identified and properly managed in a timely manner.").

³ WHO AND UNFPA, PROMOTING SEXUAL AND REPRODUCTIVE HEALTH FOR PERSONS WITH DISABILITIES 6-7 (2009).

⁴ WHO AND UNFPA, PROMOTING SEXUAL AND REPRODUCTIVE HEALTH FOR PERSONS WITH DISABILITIES 10 (2009).

A growing body of international and regional human rights standards and jurisprudence recognizes that the right to life includes an implicit right to live with dignity. Accordingly, a State's obligations with respect to this right requires guaranteeing the factors that contribute to a decent or adequate standard of living, including access to adequate sexual and reproductive health services. This holistic understanding of the right to life reflects the indivisibility and interdependence of human rights norms and the relationship of article 6 to other international human rights treaties, including, among others, article 12 of the International Covenant on Economic, Social and Cultural Rights,⁵ article 12 of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW),⁶ and article 28 of the Convention on the Rights of Persons with Disabilities (CRPD).⁷

The right to a dignified life manifests in international and regional human rights standards in various forms. The Committee on Economic, Social and Cultural Rights has explained that “[t]he right to live a dignified life can never be attained unless all basic necessities of life—work, food, housing, health care, education and culture—are adequately and equitably available to everyone.”⁸ The Convention on the Rights of the Child not only recognizes an inherent right to life of the child, but also requires that “States Parties shall ensure to the maximum extent possible the survival and development of the child.”⁹ The CRPD, in addition to protecting the right to life,¹⁰ “recognize[s] the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.”¹¹

The Inter-American Court of Human Rights, in particular, has developed a robust understanding of a State's positive obligations to “guarantee the creation of the conditions required in order that violations of [the right to life] do not occur.”¹² The Inter-American Court has clarified that a State's duty does not extend to every situation where life is at risk; rather accountability requires that “the authorities knew or should have known of the existence of a situation of real and immediate risk to the life of an individual or group of specific individuals, and that they did not take the necessary measures within their powers that could reasonably be expected to prevent or avoid that risk.”¹³ Notably, the Court has found that the risk to the life of an individual or group of individuals is sufficient to find a violation of the right to life, even in the absence of a

⁵ International Covenant on Economic, Social and Cultural Rights, art. 12, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3.

⁶ Convention on the Elimination of All Forms of Discrimination against Women, art. 12, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46 (*entered into force* Sept. 3, 1981)

⁷ Convention on the Rights of Persons with Disabilities (CRPD), art. 28, G.A. Res. 61/106, UN GAOR 61st Sess., U.N. Doc. A/RES/61/106, Annex I (*entered into force* May 3, 2008)[hereinafter CRPD].

⁸ Committee on Economic, Social and Cultural Rights, *Fact Sheet No. 16 (Rev.1)* (1991).

⁹ Convention on the Rights of the Child, art. 6(2), G.A. Res. 44/25, annex, U.N. GAOR, 44th Sess., Supp. No. 49, at 166, U.N. Doc. A/44/49 (1989), *reprinted in* 28 I.L.M. 1448 (*entered into force* Sept. 2, 1980).

¹⁰ CRPD, *supra* note 7, art. 10.

¹¹ *Id.*, art. 28(1).

¹² “Street Children” (Villagran-Morales et al.) v. Guatemala, Inter-Am. Ct. H.R. (ser. C) No. 63 (Nov. 19, 1999), ¶ 144.

¹³ Case of the Xákmok Kásek Indigenous Community v. Paraguay, CIDH, Judgment of August 24, 2010, ¶ 188.

related death, particularly in the context of poverty and isolation from necessary health services.¹⁴

This holistic analysis of the right to life, and its interdependence with the right to health, is essential in addressing women's right to life. Accessible sexual and reproductive health care—including contraceptive information and services, safe abortion, post-abortion care, and prenatal, labor and delivery, and postnatal care—is necessary to safeguard women's right to life, and States' obligations to protect the right to life include the duty to provide these necessary services. International and regional human rights bodies, including this Committee, have recognized this crucial link. This Committee has called on States to provide information about pregnancy and childbirth-related deaths in the context of their article 6 obligations, as well as “information on the particular impact on women of poverty and deprivation that may pose a threat to their lives.”¹⁵ The Committee on the Elimination of Discrimination against Women (CEDAW Committee) has noted that “the lack of appropriate maternal health services has a differential impact on the right to life of women.”¹⁶ In the case of *Alyne v. Brazil*, the CEDAW Committee found that the State has an obligation to protect the right to life by implementing adequate interventions to prevent maternal deaths, including through the provision of appropriate medical care that is responsive to the specific health needs of women¹⁷ and that is accessible to individuals and groups who face heightened barriers to accessing health care.¹⁸ Similarly, in *Xákmok Kásek Indigenous Community v. Paraguay*, the Inter-American Court noted that the lack of adequate medical care for pregnant women or women who have recently given birth result in high maternal mortality and morbidity, and held that a failure to ensure access to adequate maternal health care violated the right to life.¹⁹

WEI urges the Committee to incorporate into General Comment No. 36 the duty of States to guarantee the factors that are essential to a dignified life for all women, including women with disabilities, and to make clear that such factors include appropriate and accessible sexual and reproductive health services.

III. Applicability of the article to the unborn and other forms of human existence (para. 5(c)) and possible exceptions to the duty to protect life by law (para. 6(b)).

WEI encourages the Committee to make clear in its General Comment No. 36 that (a) international human rights law does not protect a prenatal right to life and (b) abortion is not an exception to the duty to protect life by law, but rather access to safe abortion is essential to preserving women's right to life and other fundamental rights. Framing

¹⁴ See, e.g., Steven R. Keener and Javier Vasquez, *A Life Worth Living: Enforcement of the Right to Health through the Right to Life in the Inter-American Court of Human Rights*, 40 Colum. Hum. Rights L. Rev. 595, 607, 611-612 (2009).

¹⁵ Human Rights Committee (HRC), *General Comment No. 28: Equality between men and women*, ¶ 10 (2000).

¹⁶ *Alyne da Silva Pimentel Teixeira v. Brazil*, Committee on the Elimination of Discrimination against Women (CEDAW Committee), Commc'n No. 17/2008, ¶ 7.6, U.N. Doc. CEDAW/C/49/D/17/2008 (2011).

¹⁷ *Id.*

¹⁸ *Id.*, ¶ 7.7.

¹⁹ Case of the *Xákmok Kásek Indigenous Community v. Paraguay*, CIDH, Judgment of August 24, 2010, ¶ 233.

abortion as a “possible exception[] to the duty to protect life by law” (para. 6(b)) could be improperly interpreted as suggesting that States parties otherwise have a duty to protect prenatal life. While the State may have an interest in protecting zygotes, embryos, and fetuses in circumstances where such protections are consistent with respecting and ensuring women’s fundamental rights,²⁰ extending a right to life prenatally carries significant consequences for women’s enjoyment of their fundamental rights and runs contrary to prevailing international human rights standards.

Globally, efforts to codify a prenatal right to life have resulted in situations where zygotes, embryos, and fetuses have been prioritized over the rights of women, resulting in egregious rights violations. Prioritization of prenatal life has led to, for example:

- **Denial of life saving medical care.** In 2012, Savita Halappanavar, then 17 weeks pregnant, began experiencing severe pain and went to a hospital in Ireland, where she was told that she was miscarrying. Despite repeated requests for an abortion, she was denied this essential medical care because there was still a fetal heartbeat and the Irish constitution provides for equal protection of the life of both the “unborn” and pregnant women²¹. Savita subsequently died from an infection.²² In its 2014 periodic review of Ireland, this Committee expressed concern about Ireland’s restrictive abortion law and “the lack of legal and procedural clarity on what constitutes ‘real and substantive risk’ to the life, as opposed to the health, of the pregnant woman” and urged Ireland to expand the grounds for legal abortion in the country.²³
- **Criminalization of obstetric complications.** In El Salvador, at least 17 women have been imprisoned for miscarriages or stillbirths—some facing decades-long prison sentences—because they were suspected of having induced an illegal abortion.²⁴ El Salvador’s Constitution provides that rights, including the right to life, accrue at conception.²⁵ Through the Human Rights Council’s Universal Periodic Review monitoring El Salvador’s compliance with its international human rights obligations in 2014, twelve countries called on El Salvador to decriminalize abortion.²⁶
- **Denial of access to assisted reproductive technology.** In 2000, Costa Rica’s Constitutional Chamber of the Supreme Court of Justice held that life begins at fertilization and accordingly outlawed *in vitro* fertilization given that some

²⁰ See, e.g., CENTER FOR REPRODUCTIVE RIGHTS, “Striking a Balance: Women’s Rights and an Interest in Prenatal Life,” *in* WHOSE RIGHT TO LIFE?: WOMEN’S RIGHTS AND PRENATAL PROTECTIONS UNDER INTERNATIONAL AND COMPARATIVE LAW (2012) (identifying specific actions States may take to safeguard women’s fundamental rights while promoting prenatal, infant and child survival).

²¹ IR. CONST., 1937, art. 40.3.3.

²² Henry McDonald, *Abortion refusal death: Hindu woman told ‘Ireland is a Catholic country,’* THE GUARDIAN (April 8, 2013).

²³ HRC, *Concluding Observations: Ireland*, ¶ 9, U.N. Doc. CCPR/C/IRL/CO/4 (Aug. 19, 2014).

²⁴ Tracy Wilkinson, *El Salvador Jails Women for Miscarriages and Stillbirths*, L.A. TIMES (April 15, 2015).

²⁵ CONST. DE LA REPÚBLICA DE EL SALVADOR, art. 1 (1983).

²⁶ See, Center for Reproductive Rights, *12 Countries Call on El Salvador to Decriminalize Abortion* (Nov. 10, 2014), <http://www.reproductiverights.org/press-room/12-countries-call-on-el-salvador-to-decriminalize-abortion>.

embryos would inevitably perish.²⁷ In 2012, the Inter-American Court of Human Rights held that the prohibition of *in vitro* fertilization violated a number of rights, including the rights to physical and mental integrity, personal liberty, privacy, and the right to be free from gender-based discrimination.²⁸

Although the International Covenant on Civil and Political Rights does not specify when the right to life begins, the *travaux préparatoires* suggest that the article 6 right to life was never intended to extend prenatally. Specifically, the drafters of the Covenant rejected a proposal to amend article 6 to read “the right to life is inherent in the human person from the moment of conception, this right shall be protected by law.”²⁹ The CEDAW Committee has further clarified that prioritization of the interests of a zygote, embryo, or fetus over the rights of a woman constitutes gender-based discrimination.³⁰ Significantly, this Committee,³¹ other U.N. treaty bodies,³² and regional human rights systems³³ have consistently found that States have an obligation to safeguard women’s fundamental rights to, *inter alia*, life and health and that access to safe abortion and other sexual and reproductive health care is essential to such protections.

WEI urges the Committee to state unequivocally in General Comment No. 36 that the right to life does not apply to zygotes, embryos, and fetuses. It is crucial that the Committee uphold its existing jurisprudence and articulate that access to safe and legal abortion does not contravene a State’s obligations to protect the right to life. The Committee should further make clear that access to safe abortion is not an exception to the duty to protect life by law, but rather that abortion is essential to preserving women’s fundamental human rights, including the right to life.

²⁷ Murillo y Otros (“Fecundación In Vitro”) v. Costa Rica, Inter-Am. Ct. H.R. (ser. C) No. 257, ¶¶ 72-74 (Nov. 28, 2012).

²⁸ *Id.*, ¶¶ 288-302, 317.

²⁹ U.N. GAOR Annex, 12th Session, Agenda Item 33, ¶¶ 96, 113, 119, U.N. Doc. A/C.3/L.654.

³⁰ L.C. v. Peru, CEDAW Committee, Commc’n No. 22/2009, ¶ 8.15, U.N. Doc. CEDAW/C/50/D/22/2009 (2011);

³¹ See, e.g., K.L. v. Peru, HRC, Commc’n No. 1153/2003, U.N. Doc. CCPR/C/85/d/1153/2003 (2005); L.M.R. v. Argentina, HRC, Commc’n No. 1608/2007, U.N. Doc. CCPR/C/101/D/1608/2007 (2011); HRC, *Concluding Observations to: Argentina*, ¶ 14, U.N. Doc. CCPR/CO/70/ARG (2000); *Bolivia*, ¶ 22, U.N. Doc. CCPR/C/79/Add.74 (1997); *Chile*, ¶ 211, U.N. Doc. A/54/40 (1999); *Costa Rica*, ¶ 11, U.N. Doc. CCPR/C/79/Add.107 (1999); *El Salvador*, ¶ 14, U.N. Doc. CCPR/CO/78/SLV (2004); *Ecuador*, ¶ 11, U.N. Doc. CCPR/C/79/Add.92 (1998); *Gambia*, ¶ 17, U.N. Doc. CCPR/CO/75/GMB (2004); *Guatemala*, ¶ 19, U.N. Doc. CCPR/CO/72/GTM (2001); *Honduras*, ¶ 8, U.N. Doc. CCPR/C/HND/CO/1 (2006); *Kenya*, ¶ 14, U.N. Doc. CCPR/CO/83/KEN (2005); *Kuwait*, ¶¶ 466, 467, U.N. Doc. A/55/40 (2000); *Lesotho*, ¶ 11, U.N. Doc. CCPR/C/79/Add.106 (1999).

³² See, e.g., Committee on the Rights of the Child (CRC Committee), *General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child* (33rd Sess., 2003), ¶ 31, U.N. Doc. CRC/GC/2003/4 (2003); CRC Committee, *Concluding Observations to: Chad*, ¶ 30, U.N. Doc. CRC/C/15/Add.107 (1999); *Chile*, ¶ 55, U.N. Doc. CRC/C/CHL/CO/3 (2007); *Palau*, ¶ 46, U.N. Doc. CRC/C/15/Add.149 (2001); *Uruguay*, ¶ 51, U.N. Doc. CRC/C/URY/CO/2 (2007); CEDAW Committee, *General Recommendation No. 24: Article 12 of the Convention (women and health)*, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, ¶ 11, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008); CEDAW Committee, *Concluding Observations to: Belize*, ¶ 56, U.N. Doc. A/54/38/Rev.1 (1999); *Chile*, ¶ 228, U.N. Doc. A/54/38/Rev. 1 (1999); *Colombia*, ¶ 393, U.N. Doc. A/54/38/Rev.1 (1999); *Dominican Republic*, ¶ 337, U.N. Doc. A/53/38/Rev.1 (1998); *Paraguay*, ¶ 131, U.N. Doc. A/51/38 (1996).

³³ See, e.g., Inter-Am. Comm’n H.R., *Precautionary Measures 43-10, “Amelia,” Nicaragua* (2010); A, B and C v. Ireland, App. No. 25579/05, Eur. Ct. H.R. ¶¶ 237-238 (2010); Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 2nd Ordinary Sess., Assembly of the Union, *adopted* July 11, 2003, art. 14(2)(c).

IV. Conclusion

WEI encourages this Committee to ensure that General Comment No. 36 addresses States parties' obligations to respect and ensure the right to life of women and girls, including women and girls with disabilities by emphasizing:

- States have a duty to guarantee the conditions for a dignified life, including through the provision of sexual and reproductive health services that are responsive to women's distinct health care needs and accessible to women who face heightened barriers to health care;
- Access to safe and legal abortion is essential to safeguarding women's fundamental rights, including the right to life; and
- The right to life does not apply to zygotes, embryos or fetuses, and any protections States do grant to prenatal life cannot be prioritized over women's fundamental rights.

Thank you for this opportunity to provide comments to the General Comment 36 – Article 6: Right to Life. Please do not hesitate to contact us at the emails below or by telephone (+1-202-630-3818) should you have any questions or require additional information on any of the comments addressed herein.

Sincerely,

Stephanie Ortoleva, Esq.
President
Women Enabled International
President@WomenEnabled.org

Suzannah Phillips
Legal Advisor
Women Enabled International
LegalAdvisor@WomenEnabled.org