

Submission to the Human Rights Committee on General Comment No. 36 - Article 6: Right to life

This submission to the Human Rights Committee relating to the adoption of General Comment No. 36 – Article 6: Right to life is made by the Sexual Rights Initiative (SRI)¹. The SRI is a coalition of organizations that has been advocating for the advancement of human rights in relation to gender and sexuality at the UN Human Rights Council since 2006.

The draft General Comment as presented by the Human Rights Committee in section A.6 (b) questions if “abortion can be an exception from the duty of a state to protect life”. We submit that the contrary is true i.e. denial of the right to terminate a pregnancy is a violation of the right to life of persons and this denial is an abrogation by the State of its duty to protect life.

A State’s obligation to ensure that the right to life of every human being is respected does not refer to the laws allowing a pregnant person to terminate a pregnancy. It is our submission that provisions for abortion should not be perceived as limiting the right to life. Abortion and the right to terminate a pregnancy has a scientific and medical basis and it has been established that this right is provided before “life begins”. The Human Rights Committee cannot base its interpretation on theology and should rather base it on established legal standards. Although there have been discussions about the legal status of human embryos and fetuses, it is well established that the notion of a “human being” as a right holder means a person who is legally defined as a human being or a corporation who is assigned the status of a person.² A fetus is therefore not a “person” and discussing its right to life only furthers discrimination against and the denial of the right to life of persons who seek abortion care and services.

It has been well established within the UN system that denial of abortion services is a violation of right to life and amounts to gender discrimination. The Committee on the Elimination of All Forms of Discrimination Against Women in General Comment 24 on Women’s Health has affirmed that the refusal of a state party “to provide legally for the performance of certain reproductive health services for women” constitutes discrimination³. Further, the Committee in General Recommendations 19 and 23 has reaffirmed this right. “State parties should ensure that measures are taken to prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control.”⁴ And, “some reports disclose coercive practices which have serious consequences for women, such as forced pregnancies, abortions or sterilization”. Further, “decisions to have children or not, while preferably made in consultation with spouse or

¹ SRI is a coalition of organisations including Action Canada for Sexual Health and Rights (Canada), Akahata (Argentina), CREA (India), Coalition of African Lesbians (South Africa), Egyptian Initiative for Personal Rights (Egypt), and Federation for Women and Family Planning (Poland).

² Please see Black’s Law Dictionary on definition of a person.

³ Paragraph 11 of General Recommendation 24 of the The Committee on the Elimination of All Forms of Discrimination Against Women on Women’s Health (1999)

⁴ Paragraph 24 (m) of General Recommendation 19 of the The Committee on the Elimination of All Forms of Discrimination Against Women on Violence against Women (1992)

partner, must not nevertheless be limited by spouse, parent, partner or Government.⁵
(Emphasis supplied)

Furthermore, this Committee (Human Rights Committee) in its General Comment 28 on equality of rights between men and women has accurately emphasized the obligation of States to provide abortion services to women.

All of these standards have been reiterated in the Concluding Observations of the Committee Against Torture (CAT). In 2006, the Committee recognized that Peru’s restrictive abortion law, which only allows abortion in cases where pregnancy poses a risk to a woman’s health or life, leads to “grave consequences, including the unnecessary deaths of women.” Similar concerns can also be seen in the Concluding Observations issued to Paraguay by the Committee.

The human rights standards mentioned above are merely illustrative of the fact that denial of abortion has serious and grave consequences on women and persons who are in need of these services, seriously violating the principles of the right to life. It is not an exhaustive list.

Further, studies have shown that the denial of the right to terminate a pregnancy leads to women resorting to clandestine and unsafe abortion leading to maternal deaths. An estimated 287 000 maternal deaths occurred globally in 2010⁶ and WHO estimates that 88 to 98 per cent of maternal deaths are preventable.⁷ Deaths due to unsafe abortion constitute close to 13% of all maternal deaths. Globally, an estimated 47,000 women die each year from complications associated with unsafe abortion.⁸ Hence, States are complicit in these preventable deaths of large numbers of women by not providing safe and legal abortion services.

Furthermore, denying abortion services especially when the health or life of a woman is at risk is a very direct denial of her right to life. This is in contravention of the right to life in its narrowest formulation, i.e. the denial of a “person’s right to life” and positing it against an assumed right of a non-entity and non-person, constitutes a denial of the right to life of a woman by the State.

Therefore termination of pregnancy in no way contravenes the right to life principles. On the contrary, the denial of the right to terminate a pregnancy contravenes the pregnant woman’s right to life. The denial of provisions for the lawful termination of pregnancy is also discriminatory and a form of gender based violence. The connection between the right to life and abortion laws should be seen from the perspective of a pregnant woman and her right or lack thereof to terminate the pregnancy.

⁵ Paragraph 22 of General Recommendation 24 of the The Committee on the Elimination of All Forms of Discrimination Against Women on Equality in Family Relations (1994)

⁶ WHO, UNICEF, UNFPA and The World Bank estimates, Trends in Maternal Mortality: 1990 to 2010

⁷ WHO, “Maternal mortality: helping women off the road to death”, WHO Chronicle, vol. 40 (1986), pp. 175-183

⁸ World Health Organisation: Unsafe abortion: global and regional estimates of the incidence of unsafe abortion and associated mortality in 2008

Recommendations:

We call upon the Human Rights Committee to unequivocally affirm that the denial of abortion services to women and persons in need of them is a violation of their right to life and States must be held accountable for such denial.

Further, the Committee must hold that the denial of the right to terminate a pregnancy is also discriminatory towards women and certain trans* persons. It must hold that all persons have the right and freedom to decide upon their bodies and lives, and affirm the bodily autonomy of all persons.