



Submission on General Comment on Article 6 (Right to Life) under the International Covenant on Civil and Political Rights (ICCPR) to the United Nations Human Rights Committee By **Reproductive Health Matters**

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Reproductive Health Matters (RHM) welcomes the opportunity to submit written input to the work of the Human Rights Committee in preparation for a General Comment on Article 6 (Right to Life) of the International Covenant on Civil and Political Rights (ICCPR). **We also kindly request the opportunity to provide an oral presentation of our statement.**

In its submission, UNAIDS recalls General Comment 6, Article 6 (Sixteenth session, 1982), of the Human Rights Committee that states that the right to life “is a right which should not be interpreted narrowly” and that States must adopt positive measures, specifically those “to increase life expectancy, especially (...) to eliminate (...) epidemics.”

Reproductive Health Matters (RHM) is an international organisation addressing sexual and reproductive health and rights, with a peer reviewed journal publishing emerging research findings and critical analysis. In this context RHM welcomes the opportunity to comment on the interpretation of the right to life, highlighting that provision (or lack) of comprehensive sexual and reproductive health services and realisation (or denial) of the full range of sexual and reproductive rights impact on the right to life. Similarly, lack of legal and social protection against discrimination, violence and arbitrary killing of individuals on the basis of sexual orientation, gender identity and gender expression, as well as lack of access to comprehensive sexual and reproductive health services by the LGBTI community is a breach of the rights to life.

In this document we will limit our comment specifically to the issue of maternal mortality, unsafe abortion, including as a result of criminalisation of abortion and the denial of care following miscarriage and unsafe abortion, as well as the equal right to enjoyment of the right to life of LGBTI people.

Affirmation that the right to life begins at birth

Some groups and countries have attempted to argue that international human rights conventions and treaties must be interpreted in such a way as to grant right to life

protection to people from conception thus restricting women's access to the full range of reproductive health services including post-coital contraception and safe abortion. In fact no human rights instrument or treaty accords the developing foetus a right to life, and an amendment to the Universal Declaration of Human Rights that attempted to do so was repeatedly rejected by authoritative international human rights bodies¹. The declaration specifically uses the word 'born'² and it should be reaffirmed that the protections afforded by Article 6 begin at birth and cannot be used to invoke a right to life of the developing foetus in order to limit women's rights. It does not mean that the development of the foetus shall not be protected though various means including through prenatal health services.

Constitutional and legal protection of the right to life of the foetus in several countries, including in Africa, Asia, Latin America and Europe, lead to very restrictive abortion laws that invariably result in preventable maternal deaths and disability. This has been demonstrated, for example, in Ireland where equal constitutional protection for the fetus and pregnant woman recently resulted in failure to provide timely, life-saving abortion and the consequent death of a woman³. In countries where there is no legal exception to save the life and health of a woman, women die, not only from the complications of unsafe abortion and miscarriage, but also, as in the Dominican Republic in 2012⁴, as a result of the refusal of clinicians to provide life-saving treatments which may end the pregnancy.

Twenty two million unsafe abortions are estimated to take place globally each year resulting in the deaths of 47,000 women a year⁵. The vast majority of these deaths could have been prevented through provision of safe abortion. Women resort to unsafe abortions both in places where it is not legally restricted, but unaffordable or inaccessible, and where it is legally restricted or prohibited. Where safe abortion is not accessible, post-abortion care can save lives and, and timely and accessible post-abortion care must be provided to manage complications of unsafe abortion⁶.

Affirmation that the right to life includes states obligation to provide appropriate, comprehensive and non-discriminatory sexual and reproductive health services to prevent maternal mortality

The failure to meet the Millennium Development Goal 5A to reduce maternal mortality by 75% between 1990 and 2015 has disproportionately impacted women in poor, rural and marginalized communities: "of the 89 countries with the highest

¹ UN GAOR 3rd Comm., 99th mtg. at 110–124, UN Doc. A/PV/99, 1948

² United Nations Universal Declaration on Human Rights, UN GAOR, Art.1, G.A. Res.217, UN Doc. A/810, 1948

³ [Investigation of Incident 50278 from time of patient's self referral to hospital on the 21st of October 2012 to the patient's death on the 28th of October, 2012. June 2013 Health Service Executive](#)

⁴ [Dominican Republic: Parliament must decriminalise abortion](#)

⁵ WHO Safe abortion: technical and policy guidance for health systems

⁶ IBID

maternal mortality ratio in 1990 (100 or more maternal deaths per 100 000 live births) 13 have made insufficient or no progress at all, with an average annual decline of less than 2% between 1990 and 2013”⁷

The leading causes of maternal deaths continue to be direct obstetric complications, many of which are preventable where skilled birth attendants and appropriate medicines are available. Yet in 2012, 40 million births in developing regions were not attended by skilled health personnel⁸. Where care is available - it may be unaffordable, unreachable, discriminatory and poor quality. As reported in *Reproductive Health Matters*, a lack of accountability, discrimination against and negligence of poor women, particularly minority women often associated with maternal deaths.⁹

The Human Rights Committee may wish to continue its practice to hold State’s accountable for the provision of timely, non-discriminatory, affordable and good quality maternal health services to all women, irrespective of their socio-economic, racial, ethnic or other background.

Affirmation that the right to life applies to all individuals regardless of sexual orientation or gender identity

The Homophobic and transphobic violence around the world is cause for grave concern¹⁰. Criminalization of consensual same sex sexual activities and (trans)gender expression in many countries¹¹, including application of capital punishment, exacerbate the hate crimes against LGBT individuals and markedly restricts the availability and access of appropriate and targeted health services for this population. These result in increasing risk of ill-health among this population, including high HIV rates in particular among men that have sex with men and transgender women.^{12,13,14} Many of the countries with restrictive laws are parties to the Covenant, and some have also ratified the Optional Protocol. It is important to highlight that criminalisation of consensual same sex sexual activities is a breach of Article 6(1), and the imposition of the death penalty a breach of article 6(2).

⁷ Health-related Millennium Development Goals World Health Organization 2015

⁸ [The Millennium Development Goals Report 2014](#)

⁹ [Subha Sri B et al. Reproductive Health Matters 2012;20\(39\):11–20](#)

¹⁰ Discrimination and violence against individuals based on their sexual orientation and gender identity A/HRC/29/23 May 2015

¹¹ Countries that still criminalise homosexuality <<http://antigaylaws.org/all-countries-alphabetical>> (Accessed 2 June 2015).

¹² Gruskin, S, Ferguson L. *Reproductive Health Matters* 2009;17(34):108–118

¹³ Gruskin, S et al. *Reproductive Health Matters* 2014;22(44):174–184

¹⁴ El Feki, S et al. *Reproductive Health Matters* 2014;22(44):125–136

As highlighted in the Report of the Office of the United Nations High Commissioner for Human Rights on *Discrimination and violence against individuals based on their sexual orientation and gender identity* (A/HRC/29/23 May 2015)¹⁵:

“Application of international human rights law is guided by the fundamental principles of universality, equality and non-discrimination. All human beings, irrespective of their sexual orientation and gender identity, are entitled to enjoy the protection of international human rights law with respect to the rights to life, security of person and privacy, to freedom from torture and ill-treatment, discrimination and arbitrary arrest and detention, and to freedom of expression, association and peaceful assembly, and all other civil, political, economic, social and cultural rights.”

“States have well-established obligations to respect, protect and fulfil the human rights of all persons within their jurisdiction, including LGBT and intersex persons. These obligations extend to refraining from interference in the enjoyment of rights, preventing abuses by third parties and proactively tackling barriers to the enjoyment of human rights, including, in the present context, discriminatory attitudes and practices. Specific related obligations are elaborated below, building on analysis in the previous report (A/HRC/19/41) and evolving work of United Nations human rights mechanisms.”⁶

Conclusion

In order to protect and realise women’s right to life states need to fulfil their obligation to provide good quality, non-discriminatory health services, including maternal health care to all women. The failure to do so is resulting in hundreds of thousands of preventable maternal deaths each year globally. Constitutions and laws that invoke a prenatal right to life and those that severely restrict or prohibit abortion endanger women’s lives by: deterring, delaying or preventing health professionals from providing life-saving abortion care, miscarriage care, and appropriate treatment of life-threatening illnesses during pregnancy; and preventing the provision of post-abortion care to manage complications of unsafe abortion.

States must also be reminded of their obligation to protect life of all their citizens regardless of their sexual orientation, gender identity and gender expression, provide adequate and appropriate health services, and prevent killings, arbitrary executions and discrimination on the basis of sexual orientation, gender identity or gender expression, including in health care settings. The General Comment should affirm that the obligation of states to protect life includes investigation and

¹⁵ Office of the High Commissioner for Human Rights *Discrimination and violence against individuals based on their sexual orientation and gender identity* A/HRC/29/23 May 2015

prosecution of hate crimes, as recommended by the UN General Assembly (UN General Assembly Resolution 65/208).

Therefore we respectfully call on the Human Rights Committee to:

- 1) reaffirm that the right to life apply from birth;
- 2) call on states to fulfil their obligations to provide appropriate, comprehensive and non-discriminatory sexual and reproductive health services, including maternal health services, provision of contraception, safe abortion, post-abortion care, and gender-sensitive services for prevention and management of HIV and other STIs;
- 3) ensure a legal framework in which abortion can be provided, at a minimum, to protect the life and health of the women and in case of rape and foetal impairment;
- 4) ensure a legal framework in which consensual same sex sexual conduct is decriminalized;
- 5) reaffirm the right LGBTI persons to enjoy the right to life on an unequal basis with others, and;
- 6) call on states to meet their obligation to take measure to investigate and prevent hate crimes on the basis of sexual orientation, gender identity and gender expression.