



THE NATIONAL CATHOLIC BIOETHICS CENTER

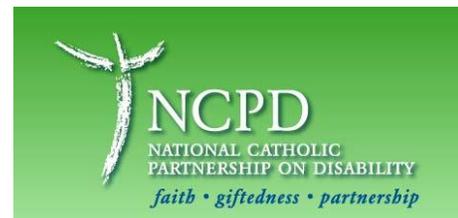
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National Association of Catholic Nurses-U.S.A.

Where NURSING, MINISTRY and CATHOLIC MISSION meet

“Unity in Charity”



October 1, 2017

Office of the United Nations High Commissioner
For Human Rights
Palais Wilson
52 rue des Pâquis
CH-1201 Geneva, Switzerland.

Re: Human Rights Committee *Revised Draft of General Comment 36*

Dear High Commissioner Zeid:

The National Catholic Bioethics Center (The Center), supported by the National Association of Catholic Nurses-U.S.A. (NACN-U.S.A.), the Catholic Medical Association (CMA), and the National Catholic Partnership on Disability (NCPD), writes to provide comment on the Human Rights Committee *Revised Draft of General Comment 36* (Draft). There are grave concerns about the contradictions within the document related to the arbitrary nature of the protection of human rights of vulnerable persons, whom we serve as educators, advocates, and providers of health care.

Defending the dignity of the human person in health care and the life sciences since 1972

The Center is a non-profit research and educational institute committed to applying the moral teachings of the Catholic Church to ethical issues arising in health care and the life sciences. The Center administers a certification program in bioethics in collaboration with two graduate programs providing graduate degrees to our dually enrolled students concentrating in bioethics. It also provides consultations to institutions and individuals seeking its opinion on the appropriate application of Catholic moral teachings to these ethical issues, impacting human rights of vulnerable populations and conscience rights of their providers. The Center has 2,500 members (many of whom are institutional members representing thousands of persons) throughout the United States.

NACN-U.S.A. is a non-profit group of hundreds of nurses of different backgrounds, focusing on promoting moral principles of patient advocacy, professional development, spiritual development, the integration of faith and health, all within the Catholic context in nursing. It provides guidance, support, continuing education, and networking for Catholic nurses and nursing students, as well as other healthcare professionals and non-healthcare professionals who support the mission and objectives of the NACN-U.S.A. It has advocated on numerous occasions for the human rights of vulnerable populations and the rights of health care providers to protect those persons.

The CMA is a national, physician-led community of healthcare professionals that informs, organizes, and inspires its members, in steadfast fidelity to the teachings of the Catholic Church, to uphold the principles of the Catholic faith in the science and practice of medicine. The CMA has a membership of 2,200 members and over 100 guilds nationwide. This mission is congruent with the values the Hippocratic tradition which the medical profession has asserted over the centuries. The proposed Draft allowing physician-assisted suicide and mandating abortion, for all intents and purposes on demand, is a contradiction of this tradition.

NCPD, rooted in Gospel values that affirm the dignity of every person, works collaboratively to ensure meaningful participation of people with disabilities in all aspects of the life of the Church and society. It advocates for over fourteen million Catholics who live with disabilities, to foster a community that enables them to participate in the celebrations and obligations of their faith, and advocates for their inclusion "within the total fabric of society." It has grave concerns for the escalating eugenic culture that would deny life, at all stages of development, to those deemed less valuable to society.

The Draft interprets Article 6 of the *International Covenant on Civil and Political Rights* (*Covenant*). Article 6 recognizes and protects the right to life of all human beings. It identifies this right

as the supreme right from which no derogation is permitted.¹ This right is guaranteed for all human beings “without distinction.”²

The right to life must be respected and ensured without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or any other status, including caste, sexual orientation and gender identity, disability albinism and age. 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.³

Article 6 affirms that “no one shall be arbitrarily deprived of his life.”⁴ The Draft affirms that “any deprivation of life based on discrimination in law or fact is *ipso facto* arbitrary in nature.”⁵ It specifically recognizes that “the right to life must be respected and ensured without distinction ... based on disability”,⁶ and that people with disabilities are “entitled to special measures of protection so as to ensure their effective enjoyment of the right to life on an equal basis with others.”⁷ However, paragraph 10 indicates that “States parties may allow medical professionals to provide medical treatment or the medical means in order to facilitate the termination of life of afflicted adults, such as the mortally wounded or terminally ill, who experience severe physical or mental pain and suffering and wish to die with dignity.”⁸ The Draft allows euthanasia and assisted suicide for “afflicted adults,” a class broad enough to include people with disabling conditions.⁹ By allowing professionals to either “provide medical treatment or the medical means to end life,” the Draft authorizes both euthanasia and assisted suicide. This does not preclude eugenic elimination of children by their parents either before or after birth. Thus, it legitimizes the laws of those States Parties that have legalized euthanasia and assisted suicide for minors and for non-terminal conditions, and makes it the more likely that others considering end-of-life legislation will do the same.¹⁰ By allowing euthanasia and assisted suicide, with no

¹ General Comment 6, para. 1; Communication No. R.11/45, Suarez de Guerrero v. Colombia, Views adopted on 31 March 1982, para. 13.1; Communication No. 146/1983, Baboeram Adhin v Suriname, Views adopted on 4 April 1985, para. 14.3.

² Draft, para. 4, <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx>.

³ *Ibid.*, para. 16 (footnotes omitted).

⁴ ICCPR, Art. 6(1).

⁵ Draft, para. 64 (footnote omitted).

⁶ *Ibid.*

⁷ *Ibid.*, para. 28 (footnote omitted).

⁸ *Ibid.*, para. 10 (footnote omitted).

⁹ *Ibid.*

¹⁰ In Europe, Belgium, Luxembourg, and the Netherlands have all legalized euthanasia and assisted suicide without the need to show the condition is terminal. Euthanasia- ProCon.org, <https://euthanasia.procon.org/view.resource.php?resourceID=000136>. By requiring only that “natural death has become reasonably foreseeable,” Canada has in effect done the same. R.S.C. 1985, c. C-46, § 242.2(2) (d).

prohibition for its application to children as evidenced in countries such as Belgium and the Netherlands, the Article 24 of the *Covenant* is blatantly contradictory:

Article 24, paragraph 1, of the Covenant entitles every child “to such measures of protection as are required by his status as a minor on the part of his family, society and the State.” This article requires adoption of special measures designed to protect the life of every child, in addition to the general measures required by article 6 for protecting the lives of all individuals. When taking special measures of protection, States parties should be guided by the best interests of the child, by the need to ensure the survival and development of all children, and their well-being.¹¹

Physician-assisted suicide is allowed against all persons, regardless of developmental stage, based on the mere fact that there is severe physical or mental pain and suffering,¹² which by its very presence constitutes a disabling diagnosis. Thus, the Draft is emphatically eugenic, and thus arbitrary and discriminatory. Without that diagnosis society would do all in its power to prevent suicide by its members.

Notably, severe “mental” pain and suffering are sufficient grounds for people with disabilities to request assistance in dying under the Draft.¹³ Those with a mental health disability are to be helped to die, rather than having their right to life protected. Adding safeguards “to verify that medical professionals are complying with the free, informed, explicit and, unambiguous decision of their patients,”¹⁴ at best ensures that, before assisting them to die, physicians are convinced that, in the eyes of their patients, there is no other acceptable solution. Yet, “research indicates ... that many people who request physician-assisted suicide withdraw that request if their depression and pain are treated.”¹⁵ Nothing in the Draft, however, requires physicians to refer patients for clinical evaluation and treatment before aid in dying is given.

To claim that people with physical or mental suffering, and thus, disability, are to be provided with euthanasia or assisted suicide indicates that living with a disability is degrading. Yet, the many States Parties that have also ratified the *Convention on the Rights of Persons with Disabilities* (CRPD) have pledged “to promote respect for ... the inherent dignity of all such persons.”¹⁶ They have further

¹¹ *Ibid.*, para. 63 (footnotes omitted).

¹² *Ibid.*, para. 10 (footnote omitted).

¹³ Ore. Health Auth.: Ann. Reports: Year 19- 2016,

<http://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/EVALUATIONRESEARCH/DEATHWITHDIGNITYACT/Pages/ar-index.aspx#main>.

¹⁴ *Draft*, para. 10 (footnote omitted).

¹⁵ *Washington v. Glucksberg*, 521 U.S. 702, 730 (U.S. Sup. Ct. 1997) (citations omitted).

¹⁶ CRPD, Art. 1 (Purpose), <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-1-purpose.html>. Thus far, 174 countries have ratified the Convention. CRPD|

guaranteed to ensure the Right to Life of persons with disabilities “on an equal basis with others.”¹⁷ Though recognizing a like obligation under Article 6,¹⁸ the Draft nonetheless sanctions aid in dying for disabled persons while requiring States Parties to “take adequate measures... to prevent suicides, especially among individuals in other particularly vulnerable situations.”¹⁹ All socially aware societies promote public policy to prevent suicide, yet, in the presence of such a diagnosis, now including psychosocial diagnoses, persons are helped to end their lives, which discriminates against persons who have such a diagnosis. The internal inconsistency of the Draft is blatantly obvious.

Furthermore, to require nations, and thus their health care systems, to cooperate in such eugenics, particularly concerning unborn human beings, the Draft violates the very human rights of human beings, as well as health care providers, that the United Nations should be protecting. The Draft not only sanctions abortion, it mandates its access, specifically singling out those unborn children with fatal fetal anomalies.²⁰ Specifically, Paragraph 9 not only allows States to adopt measures to regulate the terminations of pregnancy, the Draft mandates that States must provide safe access to abortion, with no limit on developmental stage of the unborn child, to protect the “health” and life of the mother. “Health” of the mother is a subjective criteria, and there is no reason to directly kill an unborn child disabled by a fatal fetal anomaly; nature will provide the time of death on its own terms without an attack on a helpless human being. Such public policy denigrates all of society and the healing professions increasingly forced to cooperate in that denigration. This is eugenic and entirely contradictory to other provisions in the document and lacks internal consistency, specifically Article 24, as cited earlier:

Article 24, paragraph 1, of the Covenant entitles every child “to such measures of protection as are required by his status as a minor on the part of his family, society and the State.” This article requires adoption of special measures designed to protect the life of every child, in addition to the general measures required by article 6 for protecting the lives of all individuals. When taking special measures of protection, States parties should be guided by the best interests of the child, by the need to ensure the survival and development of all children, and their well-being.²¹

United Nations Enable, <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html#content>.

¹⁷ *CRPD*, Art. 10 (Right to Life), <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-10-right-to-life.html>; *Draft*, para. 28.

¹⁸ *Draft*, para. 10.

¹⁹ *Ibid.* (footnote omitted). The “vulnerable situations” the Draft references concern reactions of certain adolescent girls to unwanted pregnancies. *Ibid.*, n. 23 (citing Concluding Observations: Ecuador (1998), para. 11).

²⁰ *Ibid.*

²¹ *Ibid.*, para. 63 (footnotes omitted).

Again, in its first section, Article 6 of the Covenant declares: “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.” Paragraph 7 states:

States parties have the duty to refrain from engaging in conduct resulting in arbitrary deprivation of life. They must also exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities, whose conduct is not attributable to the State. The obligation of States parties to respect and ensure the right to life extends to all threats that can result in loss of life. States parties may be in violation of article 6 even if such threats have not actually resulted in loss of life.²²

Zygotes and fetuses are genetically unique living human beings, and their vulnerability requires our protection at every stage of development, even before embryos are implanted. Their vulnerability is no excuse to destroy them. Paragraphs 11 and 16 continue to stress that any deprivation of life may never be arbitrary. However Paragraph 9 codifies the right to destroy these young human beings, thus creating a right to kill human beings:

Although States parties may adopt measures designed to regulate terminations of pregnancy, such measures must not result in violation of the right to life of a pregnant woman or her other rights under the Covenant, including the prohibition against cruel, inhuman and degrading treatment or punishment. Thus, any legal restrictions on the ability of women to seek abortion must not, inter alia, jeopardize their lives or subject them to physical or mental pain or suffering which violates article 7.... Nor should States parties introduce humiliating or unreasonably burdensome requirements on women seeking to undergo abortion.²³

Justifying abortion based on nebulous “physical or mental pain or suffering” or because respecting the life of the human being engendered by the mother is “humiliating or unreasonably burdensome” is arbitrary. Whether forbidding a “remedy” for such nebulous threats constitutes a “deprivation” under Article 6 is debatable. Assuming it does, States Parties are prohibited from arbitrary deprivations. Manifestly, banning abortion to avoid killing the fetus is not arbitrary. Fetuses, and the zygotes and embryos from which they develop, are genetically human and genetically unique and, even before implantation, are alive. Accepting the Committee’s interpretation of article 6 would thus codify for the first time a human right to kill other human beings.

²² *Ibid.*, para. 7 (footnotes omitted).

²³ *Ibid.*, para. 9 (footnote omitted).

Equal Protection of the Law means, at the very least, that government not discriminate in its defense of the Right to Life, at any developmental stage of life, from the unborn to those frail elderly who need palliative care not assistance to die. In sanctioning euthanasia and assisted suicide for people with disabilities, and requiring nations and health care professionals, regardless of their religious beliefs, to cooperate and endorse the termination of the lives of the unborn, basically at any stage of development, denigrates all of society and the healing professions. While securing the lives of some, but not others, the Draft is arbitrary, and even discriminatory, in singling out certain developmental stages and diagnoses that are deemed less worthy of human life protections. We therefore urge the Committee to strike these provisions from the Draft.

Respectfully submitted,



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