

Human Rights Watch Submission  
General Comment on Article 6 (right to life)  
*June 26, 2015*

Human Rights Watch welcomes the opportunity to provide input to the Human Rights Committee (the Committee) for its General Comment on article 6 (right to life). This is not, nor intended to be, an exhaustive set of recommendations related to the list of issues presented by the rapporteurs of the general comment, but we wish to provide input, in particular, to the application of the article to the State’s obligations on preventable maternal morbidity and mortality. Human Rights Watch has examined this issue in our human rights reporting around the world, which serves as the basis for the information and recommendations presented below.

Preventable maternal deaths and morbidity continue to exist globally, yet accountability remains elusive. The scope and nature of the duty to respect and ensure the right to life is inextricably linked to article 12 of the International Covenant on Economic, Social and Cultural Rights.<sup>1</sup> For pregnant women and girls, arbitrary deprivation of their right to life is often the result of obstacles in accessing life-saving and necessary care for which the state bears responsibility.

Human Rights Watch has documented some of these obstacles in various reports. For example, in India, where a little under a quarter of the world’s maternal deaths occur, Human Rights Watch documented barriers to emergency obstetric care, poor referral practices, gaps in continuity of care, and bribes for health services.<sup>2</sup> Access to maternal health services is particularly difficult for Dalit (so-called “untouchables”) and tribal communities. The father of Kavita K., a woman who died from post-partum complications, told us they took Kavita from one government health facility to another, and none would admit her. After five days of seeking care, a hospital finally admitted her. They provided medical treatment for one hour before she died. Many other women and girls face a similar fate.

Likewise, Human Rights Watch found in 2010 that in the Eastern Cape of South Africa a range of mistreatment and substandard care of maternity patients in public health facilities in the Eastern Cape put women at risk of maternal death and injury, and violated their rights to respectful and dignified care.<sup>3</sup> Several maternity patients who sought care in Eastern Cape public health facilities described to Human Rights Watch instances of substandard care by health workers, in some cases putting women or their newborns in life-threatening situations. Women described being turned away from clinics without examination while in labor, being ignored by nurses when they called for help, waiting hours or even days for care, being denied referrals to specialized care, and being told to walk with their newborns between wards immediately after delivery while weak and bleeding heavily. These risky practices are a particular concern in South Africa where

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<sup>1</sup> See the Committee’s own acknowledgement that the right to life should not be interpreted narrowly and has positive aspects that require states to take steps to increase life expectancy. General Comment No. 6, on article 6 (1982) paras. 1 and 5.

<sup>2</sup> Human Rights Watch, *No Tally of the Anguish: Accountability in Maternal Health Care in India*, October 2009, <http://www.hrw.org/reports/2009/10/08/no-tally-anguish-0>.

<sup>3</sup> Human Rights Watch, *Stop Making Excuses: Accountability for Maternal Health Care in South Africa*, August 2011, <http://www.hrw.org/reports/2011/08/08/stop-making-excuses-0>.

the government has succeeded in getting many women to deliver in facilities yet maternal death rates are still high.

Several women said that they witnessed nurses refusing to admit women to health facilities, in some cases putting the women at serious risk of injury or death. Lack of communication by health officials about maternal and infant deaths left some families or women with little or no information about what caused the deaths. These failures in communication can lead to a delay in diagnosis and treatment and in turn, to increased morbidity and mortality.

While the State has a responsibility to address barriers to accessing life-saving care, it should also take steps to prevent early pregnancy and childbirth, which have been associated with higher risks of maternal death. In particular, States should take steps to curb child marriage, which contributes to early pregnancy in countries around the world. Human Rights Watch research in South Sudan, Malawi, Tanzania, Yemen, and Afghanistan, demonstrates that many girls and women are expected to become pregnant soon after marriage.<sup>4</sup> There are serious risks to the health and lives of young mothers and their children associated with early pregnancy and childbirth. While these increased risks are not only related to age, due to physical immaturity, young girls are more susceptible to obstructed labor, which is a leading cause of maternal mortality globally.<sup>5</sup> Obstructed labor also causes obstetric fistula, a devastating childbirth injury that leaves its victims with urine or fecal incontinence.<sup>6</sup> Curbing child marriage is important in reducing the number of pregnancies in young girls and women. Research in developing countries shows that complications in pregnancy and childbirth are the leading cause of death for girls and women aged 15 to 19. Teenagers who are aged 15 to 19 years are twice as likely to die during pregnancy or childbirth compared to women over 20 years old.<sup>7</sup> Girls between the ages of 10 and 14 are five times more likely to die during delivery than mothers who are between 20 and 24.<sup>8</sup> The children of young mothers also face higher mortality rates.<sup>9</sup> The Committee on the Elimination of

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<sup>4</sup> Human Rights Watch, *"I've Never Experienced Happiness": Child Marriage in Malawi*, March 2014, <http://www.hrw.org/node/123427>; Human Rights Watch, *"This Old Man Can Feed Us, You Will Marry Him": Child and Forced Marriage in South Sudan*, March 2013, <http://www.hrw.org/reports/2013/03/07/old-man-can-feed-us-you-will-marry-him>; Human Rights Watch, *No Way Out: Child Marriage and Human Rights Abuses in Tanzania*, October 2014, <http://www.hrw.org/reports/2014/10/29/no-way-out>; "Afghanistan: Ending Child Marriage and Domestic Violence," Human Rights Watch news release, September 4, 2013, <http://www.hrw.org/news/2013/09/04/afghanistan-child-marriage-domestic-violence-harm-progress>. Human Rights Watch, *"How Come You Allow Little Girls to Get Married?" Child Marriage in Yemen*, December 2011, <http://www.hrw.org/reports/2011/12/07/how-come-you-allow-little-girls-get-married>.

<sup>5</sup> Nawal Nour, "An Introduction to Maternal Mortality," *Journal of Obstetrics and Gynecology*, vol. 1, No. 2 (2008), pp. 77-81.

<sup>6</sup> See Amy Tsui et al., "The Role of Delayed Childbearing in the Prevention of Obstetric Fistulas," *International Journal of Gynecology and Obstetrics*, vol. 99 (2007), p. 98; WHO, "Obstetric Fistula: Guiding Principles for Clinical Management and Programme Development," p.3; and UNFPA, "Marrying too Young: End Child Marriage," p. 22.

<sup>7</sup> WHO, "WHO Guidelines on Preventing Early Pregnancy and Poor Reproductive Outcomes Among Adolescents in Developing Countries," 2011, [http://whqlibdoc.who.int/publications/2011/9789241502214\\_eng.pdf](http://whqlibdoc.who.int/publications/2011/9789241502214_eng.pdf) (accessed January 8, 2014), p. 2.

<sup>8</sup> *Ibid.* Studies on other countries show that women who marry early have the highest proportion of unfavorable pregnancy outcomes at all stages throughout their childbearing years. S. Shawky and W. Millat, "Early Teenage Marriage and Pregnancy Outcome," *Eastern Mediterranean Health Journal*, 2000, vol. 6, issue 1, <http://www.emro.who.int/publications/emhj/0601/06.htm> (accessed January, 8, 2014), pp. 46-54.

<sup>9</sup> Young mothers are less likely to get prenatal care and often do not have enough information about proper nutrition while pregnant to nurture themselves and their babies. Babies born to young mothers run a 30 percent increased risk of dying during their first year of life. Babies may have a low birth weight as a consequence of their mother's poor nutritional status while pregnant, and babies with low birth weight are 5 to 30 times more likely to die than babies of normal weight. See Population Action International, "How Family Planning Protects the Health of Women and Children," May 1, 2006,

Discrimination against Women and the Committee on the Rights of the Child have both raised concerns about the relationship between higher maternal morbidity and mortality rates related to child marriage and early and frequent pregnancies.<sup>10</sup>

Undue restrictions on access to safe and legal abortion may threaten women's and girls' rights to life and health. Laws restricting or criminalizing abortion force millions of women and girls around the world to resort to clandestine and often unsafe abortion to terminate pregnancies resulting from rape or incest that impact their health, are unviable, or are otherwise not desired. The Committee on Economic Social and Cultural Rights has called on States to amend restrictive abortion laws or to increase access to legal abortion, in order to decrease avoidable maternal deaths.<sup>11</sup> The Committee has urged States to remove penalties for abortion in certain circumstances (including for therapeutic abortion, for pregnancies resulting from rape or incest, and in cases of fetal abnormality).<sup>12</sup> It has expressed its deep concern regarding the general prohibition of abortion with no exceptions.<sup>13</sup>

Human Rights Watch has documented the impact of unsafe abortions in more than half a dozen countries around the world. For example, Human Rights Watch found that the criminalization of abortion, even in the case of rape, leads many women and girls to seek illegal and unsafe procedures and to delay seeking life-saving care. Government data in Ecuador attributes the maternal deaths of at least 15 women or girls in 2013 to complications from abortion—whether a legal abortion or one procured illegally.<sup>14</sup> The number of women or girls that died from unsafe abortions in fact is likely to be higher, because few doctors report the actual cause of death or morbidity, instead reporting cases of abortion as sepsis, hemorrhaging, and other pregnancy and post-partum complications. Some women and girls who experience abortion-related complications delay seeking important medical care because of the legal prohibition on abortion. This puts the lives of many women and girls at risk. According to government statistics, abortion was the second leading cause of morbidity in women in Ecuador's hospital with nearly 17,000 cases.<sup>15</sup> Of great concern is the number of cases of abortion-related morbidity affecting girls and adolescents. Ecuador estimates that in 2011, there were at least 286 cases of abortion-related

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[http://www.populationaction.org/Publications/Fact\\_Sheets/FS2/How\\_Family\\_Planning\\_Protects\\_the\\_Health\\_of\\_Women\\_and\\_Children.pdf](http://www.populationaction.org/Publications/Fact_Sheets/FS2/How_Family_Planning_Protects_the_Health_of_Women_and_Children.pdf) (accessed March 12, 2012), pp. 1-2; Nawal M. Nour. "Health Consequences of Child Marriage in Africa," November 2006. [http://www.wnc.cdc.gov/eid/article/12/11/06-0510\\_article.htm](http://www.wnc.cdc.gov/eid/article/12/11/06-0510_article.htm).

<sup>10</sup> UN Committee on the Elimination of Discrimination against Women, Joint General Recommendation No. 31, and No. 18 of the Committee on the Rights of the Child, on Harmful Practices, CEDAW/C/GC/31-CRC/C/GC18 (2014), [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f18&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f18&Lang=en).

<sup>11</sup> See, for example, CESCR concluding observations on Philippines, U.N. Doc. E/C.12/PHL/CO/4 (2008), para. 31; Argentina, U.N. Doc. E/C.12/ARG/CO/3 (2011), para. 22; Rwanda, U.N. Doc. E/C.12/RWA/CO/2-4 (2013), para. 26.

<sup>12</sup> See, e.g., See, e.g., CESCR concluding observations on the United Kingdom of Great Britain and Northern Ireland, U.N. Doc. E/C.12/GBR/CO/5 (2009), para. 16 (recommending that the 1967 Abortion Act apply in Northern Ireland so as to prevent "clandestine and unsafe abortions in cases of rape, incest or fetal abnormality"); Dominican Republic, U.N. Doc. E/C.12/DOM/CO/3 (2010), para. 29 (recommending lifting the prohibition on abortion "in cases of a serious threat to the health or life of the pregnant woman and pregnancies resulting from rape or incest"); Guatemala, UN Doc. E/C.12/GTM/CO/3 (2014), para. 23; Sri Lanka, U.N. Doc. E/C.12/LKA/CO/2-4 (2010), para. 34; Ecuador, U.N. Doc. E/C.12/ECU/CO/3 (2012), para. 29; Peru, U.N. Doc. E/C.12/PER/CO/2-4 (2012), para. 21; and Rwanda, U.N. Doc. E/C.12/RWA/CO/2-4 (2013), para. 26.

<sup>13</sup> See e.g., CESCR concluding observations on El Salvador, UN Doc. E/C.12/SLV/CO/3-5 (2014), para. 22; Nicaragua, UN Doc. E/C.12/NIC/CO/4, para. 26; and the Philippines, U.N. Doc. E/C.12/PHL/CO/4 (2008), para. 31.

<sup>14</sup> INEC-Estadísticas Vitales: Nacimientos y Defunciones 2013, p. 190.

<sup>15</sup> INEC, Anuario de Estadísticas Hospitalarias Egresos, 2013, p. 36,

[http://www.ecuadrencifras.gob.ec/documentos/web-inec/Estadísticas\\_Sociales/Camas\\_Egresos\\_Hospitalarios/Publicaciones-Cam\\_Egre\\_Host/Anuario\\_Camas\\_Egresos\\_Hospitalarios\\_2013..pdf](http://www.ecuadrencifras.gob.ec/documentos/web-inec/Estadísticas_Sociales/Camas_Egresos_Hospitalarios/Publicaciones-Cam_Egre_Host/Anuario_Camas_Egresos_Hospitalarios_2013..pdf) (accessed January 11, 2015)

morbidity in girls ages 10 to 14 (up from 258 in 2011),<sup>16</sup> and nearly 4,000 cases in girls and women ages 15 to 19.<sup>17</sup> Human Rights Watch interviewed service providers in Ecuador who said that when women and girls who have had illegal abortions do seek care, most often they do not tell healthcare professionals how they tried to induce an abortion, forcing them to guess what happened to their patients, and undermining their ability to provide timely, quality care.<sup>18</sup> This can have a significant impact on the State's ability to meet its obligations related to preventable maternal death.

Even where the termination of a pregnancy is legal, women and girls may face undue delays in access to necessary health care that can threaten their health and life. Human Rights Watch has extensively documented how the failure to provide clear and adequate legal, administrative, and procedural guidance on access to legally sanctioned abortion creates obstacles and uncertainty that deny women and girls access to lawful treatment and violates human rights. In Ireland, Argentina, Mexico, and Peru where access to abortion is restricted, but may be permitted in certain circumstances, Human Rights Watch has documented how exercise of the legal right to an abortion was compromised and often denied as the result of lack of legal certainty on how women and girls could access lawful abortions. In too many cases arbitrary denial of access to abortion would lead directly to violations of the right to life.<sup>19</sup>

For example, prior to Peru's 2014 adoption of a national protocol related to legal abortion, Human Rights Watch found that healthcare practitioners were reluctant or unwilling to perform legal abortion procedures without greater clarity from an official protocol.<sup>20</sup> We found that some doctors failed to provide their patients with adequate medical treatment because they feared prosecution or other sanctioning due to unpredictable administrative approval procedures and confusion about the legal exceptions to the criminalization of abortion.

Absolute bans on abortion in every instance, even to save the life of the pregnant woman, have a discriminatory and deadly impact. Only women and girls are denied life-saving medical care by law on the basis of their gender, and it is only women and girls who die from preventable maternal deaths. Human Rights Watch documented the impact of Nicaragua's blanket ban on abortion less than a year after it went into effect. A medical doctor at a large public hospital testified that women had already died under the effect of the then new law. He described the case of one woman who was admitted to the hospital. An ultrasound confirmed that her life was at risk and a therapeutic abortion was needed. According to this doctor, no doctor would perform the

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<sup>16</sup> INEC, Anuario de Estadísticas Hospitalarias Egresos, 2011.

<sup>17</sup> INEC, Anuario de Estadísticas Hospitalarias Egresos, 2013, p. 357.

<sup>18</sup> See, for example, Human Rights Watch interview with Dra. A., Esmeraldas, July 2, 2013; Human Rights Watch interview with Dr. W., Quito, July 9, 2013; Human Rights Watch interview with Dra. S., Quindí, July 1, 2013; Human Rights Watch interview with Lcda. A.M., Santo Domingo, July 4, 2013; Human Rights Watch interview with Obst. C., Cajabamba, July 14, 2013.

<sup>19</sup> See Human Rights Watch, *A State of Isolation: Access to Abortion for Women in Ireland*, January 2010, <http://www.hrw.org/reports/2010/01/28/state-isolation-0>; Human Rights Watch, *The Second Assault: Obstructing Access to Legal Abortion after Rape in Mexico*, vol. 18, no. 1(B), March 2006, <http://www.hrw.org/reports/2006/03/06/mexico-second-assault-0>; Human Rights Watch, *Decisions Denied: Women's Access to Contraceptives and Abortion in Argentina*, vol. 17, no. 1(B), June 2005, <http://www.hrw.org/reports/2005/06/14/decisions-denied-0>; Human Rights Watch, *Illusions of Care: Lack of Accountability for Reproductive Rights in Argentina*, August 2010, <http://www.hrw.org/reports/2010/08/10/illusions-care-0>; and, Human Rights Watch, *My Rights, and My Right to Know: Lack of Access to Therapeutic Abortion in Peru*, July 2008, <http://www.hrw.org/reports/2008/07/08/my-rights-and-my-right-know-0>.

<sup>20</sup> Ibid.

procedure. Two days later, the woman miscarried but was already in septic shock. She died five days later.<sup>21</sup>

It is virtually inevitable that absolute prohibitions on abortion will lead to preventable maternal deaths, for two main reasons. First, it is not possible to foresee and prevent all pregnancies that might threaten the life or health of the pregnant woman, even in countries with universal health care and full access to modern contraceptive methods. That is, the need for therapeutic abortion cannot be completely eliminated. Second, it is possible to foresee the impact of specific pathologies on a pregnant woman's health, or on the healthy development of her pregnancy. That is, the death or severe health consequence following the denial of a therapeutic abortion is in many cases foreseeable and preventable.<sup>22</sup>

Therefore, Human Rights Watch recommends that the Human Rights Committee, in its newest general comment regarding Article 6:

- Address explicitly States' obligation to adopt positive measures to reduce and eventually eliminate preventable maternal deaths and morbidity, including steps States take to:
  - o Eliminate barriers to maternal and reproductive health care, including emergency obstetric care;
  - o Address mistreatment and substandard care of maternity patients; and,
  - o End discrimination in access to public health facilities.
- Reiterate its call in General Comment No. 28, Equality of rights between men and women for States, when reporting on the right to life, to:
  - o Provide data on birth rates and on pregnancy and childbirth-related deaths of women;
  - o Give information on any measures taken by the State to help women prevent unwanted pregnancies;
  - o Ensure that women do not have to undertake life-threatening clandestine abortions; and
  - o Provide information on whether the State party gives access to safe abortion to women who have become pregnant as a result of rape.
- Call on States to adopt positive measures to reduce early pregnancy, including by setting the minimum age of marriage at 18 and ensuring that adolescent girls have access to comprehensive sexuality education and youth-friendly health services.
- Require States to remove undue restrictions on access to safe and legal abortions that may threaten women's and girls' rights to life and health and adopt clear regulations and guidelines on safe and legal abortion for health professionals providing abortion and post-abortion services.

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<sup>21</sup> Human Rights Watch, *Over Their Dead Bodies: Denial of Access to Emergency Obstetric Care and Therapeutic Abortion in Nicaragua*, vol. 19, no. 2(B), October 2007, <http://www.hrw.org/reports/2007/10/01/over-their-dead-bodies>.

<sup>22</sup> Certain medical conditions predict high maternal risk (e.g. diabetes, cardiac conditions, and poorly controlled hypertension). Other conditions that imperil maternal health and might require termination of pregnancy for maternal reasons develop during pregnancy (e.g. eclampsia, or pre-eclampsia not responding to treatment, HELLP syndrome and others). See American Medical Association, Jerrold B. Leikin and Martin S. Lipsky, eds., *Complete Medical Encyclopedia* (New York, NY: Random House Reference, 2003), pp. 496, 1011, 1015.