**Submission of Frente Joven to the Call for Comment on the Draft General Comment on Article 6 of the International Covenant on Civil and Political Rights – Right to life**

Dear Members of the Human Rights Committee,

1. In July 2017, during its 120th session, the United Nations (the “UN”) Human Rights Committee (the “Committee”) finalized its first reading of draft General Comment on article 6 of International Covenant on Civil and Political Rights (the “Covenant”) and invited all interested stakeholders to comment on the said draft (the “Draft”). We, **Frente Joven**, hereby present our comment to the Draft.
2. Article 6 of the Covenant recognizes the inherent right to life of every human being.[[1]](#footnote-1) Paragraphs 9 and 10 of the Draft are reading into and trying to incorporate into this general acknowledgement of the right to life three new “rights.” These three supposed rights can be summarized as: (i) the “right” to a safe abortion; (ii) the “right” to access contraception, a right that the Committee is expressly extending to minors; and (iii) the “right” to euthanasia.[[2]](#footnote-2)
3. This interpretation of article 6, as presented in the Draft, violates basic principles of public international law, the international law of treaties, and of the organization of the UN itself. The international law of treaties, a branch of public international law, establishes that sovereign States are bound by the treaties they have ratified to the extent of the terms established in said treaties. To go beyond those terms would violate their sovereignty, a principle on which public international law in general, and the UN in particular, are built on.
4. The sovereignty of States is the organizational principle upon which the UN is premised, as established in the Charter of the United Nations: “The Organization is based on the principle of the sovereign equality of all its members.”[[3]](#footnote-3) Sovereignty ensures the territorial integrity of States, and that the traditions and cultures of their peoples be safeguarded from foreigners who wish to impose their own values. The contrary would be a form of neo-colonization.
5. There are no standing treaty obligations that require governments to modify their existing laws on abortion or euthanasia, and no such obligations can be inferred from the Covenant. When a State gives its consent to the terms of a treaty, the agreement entered into becomes binding, a principle known as *pacta sunt servanda.* States are binded to the terms ratified: nothing more, nothing less.
6. The text of a treaty is where one should first look to determine its meaning. Pursuant to the Vienna Convention on the Law of Treaties, “A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”[[4]](#footnote-4) Language and the choice of words are of paramount importance. The Covenant does not contain the word “abortion” or “euthanasia,” nor can a “right” to them be inferred from the “ordinary meaning” of the words of article 6.
7. The Covenant keeps silence on abortion and euthanasia, although they existed at the time of its drafting. Both were pre-existing realities to the Covenant, and yet they were not incorporated in its text. We can only assume this was deliberately done, and the Committee cannot, in justice, conclude the opposite. The fact that a right to a “safe abortion” or to “euthanasia” were not included was intentional. Therefore, because these supposed rights were not subjected to a vote or proposed for signature, they cannot be considered to be included in the Covenant as it stands and cannot legally interpreted or enforced as such by the Committee. If it does so, the Committee will be acting beyond its authority and contrary to its mandate. It would constitute an *ultra vires* act that does not create legal obligations for Member States.
8. There is no denying that human rights are universal. However, universality allows a room for divergence, given that States are sovereign and the international human rights system is subsidiary. This translates into a healthy diversity in the practice of human rights, which is not incompatible at all with their universality. All human societies are different from each other, and so fundamental rights “blend with local conditions to different outcomes, as a function of different local variables.”[[5]](#footnote-5) After all, human rights “must be connected to the way people think and feel. Only the people themselves can activate and strengthen human rights.”[[6]](#footnote-6) To make a sovereign State accept euthanasia and abortion in its interpretation of inherent right to life—when it has not ratified these terms—would violate the principle of subsidiarity as well.
9. In cases where there is disagreement on what fundamental human rights require, there are two possible options, and one will have to be chosen and decided: (i) impose a particular view on what human dignity and basic rights demand on all states and countries; or (ii) allow divergent state or domestic law on these issues since no consensus exists. The Committee has to keep into account that human dignity is being invoked from both sides of the debate. If the Draft were to be adopted, the Committee would be narrowing down the options of sovereign States, and unilaterally establishing a criterion that by no means established by Member States when they drafted, signed, and ratified the Covenant.
10. The Committee will commit a grave injustice if it does not allow reasonable differences to flourish, given that there are divergences and that abortion and euthanasia were not included in the Covenant. To consider that States must accept the “rights” to abortion and euthanasia would be an attempt to strike down domestic laws that protect life in the womb and until natural death. This surmounts to making the statement that such policies imply an irrational state interest, and that other rights should be given more weight than life at these fragile stages, when no such considerations were expressly made in the Covenant. To the contrary, there are Member States that actually considered article 6 to encompass the unborn or the terminally ill when they accepted, signed, and ratified the terms of the Covenant.
11. Regardless of whether a State considers the unborn or the terminally ill to be encompassed by article 6 or not, a sovereign State can nevertheless have an interest in protecting them, and whether or not that interest is grounded in its own constitution or in an international treaty is irrelevant. A State should not have to be forced to justify this interest. It is a divergence that has to be allowed to flourish if we aim for diversity and world peace. These divergences in the interpretation of article 6 are grounded in the principle of sovereignty and protected by public international law.
12. The Committee, by considering that these supposed rights are encompassed in article 6, is assuming a normative function, and moving from an empirical universal principle respecting the right to life to what it considers *ought* to be the much more specific rules it should contain. However, the States have not given the Committee this power and have not given up their sovereignty to such an extent. It is not up to the Committee to make these choices and determinations; its job is to interpret the Covenant as it is. It cannot make these policy calls without encroaching upon the sovereignty of Member States, thus violating public international law and international human rights law.
13. It is worth noting that there is also no right to abortion or euthanasia that can be derived from customary international law. Customary international law refers to a general, consistent practice of States, which is followed by them due to a sense of legal obligation. However, a sovereign State may object to being bound by a customary rule by consistently maintaining it is not bound. And because the creation of customary international law is not as clear-cut as what results from treaties, assertions that an “obligation” imposed by customary international law should be viewed with great caution. Regarding a supposed right to abortion and euthanasia, there is no existing international customary norm. To the contrary, a number of Member States have consistently maintained that they do not adhere to such thing.
14. Treaties are not lightly drafted, signed, or ratified. To maintain peace in our societies, we need for these fundamental rights to be protected by the rule of law: what is included is there intentionally, as is what has been left out. It does not do to have the Committee pencil into the Covenant rights that are not there for a reason, and this includes the alleged right to abortion and to euthanasia. Under the Covenant that created it and the principles of public international law, the Committee has no authority to interpret article 6 in ways that create new state obligations or that alter its substance. We hereby ask the Committee not to consider article 6 of the Covenant to encompass these supposed rights of abortion and euthanasia that have not been debated on, included in the text of the Covenant, signed, or ratified by Member States, and have therefore not been assumed as obligations by the States.
1. “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.” *See* International Covenant on Civil and Political Rights art. 6(1). [↑](#footnote-ref-1)
2. Paragraph 9 of the Draft states that although State parties may adopt measures in order to regulate terminations of pregnancy, these 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.” The Draft goes on to state that “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,” and that “state parties must provide safe access to abortion to protect the life and health of pregnant women, and in situations in which carrying a pregnancy to term would cause the woman substantial pain or suffering.” Paragraph 9 also establishes that “the duty to protect the lives of women against the health risks associated with unsafe abortions requires States parties to ensure access for women and men, and, in particular, adolescents to information and education about reproductive options, and to a wide range of contraceptive methods.” Lastly, paragraph 10 of the Draft mentions “States parties [may allow] [should not prevent] medical professionals to provide medical treatment or the medical means in order to facilitate the termination of life of [catastrophically] 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.” [↑](#footnote-ref-2)
3. *See* UN Charter art. 2(1). [↑](#footnote-ref-3)
4. Vienna Convention, art. 31(1). [↑](#footnote-ref-4)
5. Wojciech Sadursky, *Universalism, Localism and Paternalism*, in ANDRÁS SAJÓ, ED., HUMAN RIGHTS WITH MODESTY: THE PROBLEM OF UNIVERSALISM 141, 154 (2004). [↑](#footnote-ref-5)
6. Eva Brems, *Reconciling Universality and Diversity in International Human Rights Law*, in ANDRÁS SAJÓ, ED., HUMAN RIGHTS WITH MODESTY: THE PROBLEM OF UNIVERSALISM 213, 223-4 (2004). [↑](#footnote-ref-6)