

**CEDAW GENERAL DISCUSSION ON ACCESS TO JUSTICE  
(FEBRUARY 18, 2013)**

**Submission of**

**Alliance Defending Freedom (USA)**

**ALAFa - Alianza Latinoamérica para la Familia (Venezuela)**

**Fundación Alive (Guatemala)**

**ISFEM (Chile)**

**Jamaican Coalition for a Healthy Society (Jamaica)**

**Mujer para la Mujer (México)**

**Personhood Education (USA)**

**Red Familia (Colombia)**

**Red Por la Vida y la Familia (Chile)**

**Un Paso Al Frente (Colombia)**

**Dated February 1, 2013**

Alliance Defending Freedom, a/k/a Alliance Defense Fund (an ECOSOC-accredited non-governmental organization), ALAFa – Alianza Latinoamérica para la Familia, Fundación Alive, ISFEM, Jamaican Coalition for a Healthy Society, Mujer para la Mujer (an ECOSOC-accredited NGO), Personhood Education, Red Familia, Red Por la Vida y la Familia, and Un Paso al Frente make this submission in response to the call by the Committee on the Elimination of Discrimination against Women (Committee) for written contributions on the general theme of “access to justice.”

Our submission is made to correct certain erroneous interpretations of international law and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) put forward by certain civil society organizations which assert that “access to justice”

requires abortion decriminalization in various countries.<sup>1</sup> No such right is contained within the CEDAW treaty. Indeed, any such proposal subverts fundamental justice by denying the right to life, which is the primary right without which there can be no other rights; subsidiary rights, such as “privacy or “reproductive rights,” can never trump a primary right, no matter how insistently a contrary claim might be asserted.

### The Right to Life in International Human Rights Law

The right to life is the lodestar of international human rights law and the single, most fundamental right, for without it no other rights are secure: “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.” International Covenant on Civil and Political Rights art. 6.1. Cf. Universal Declaration of Human Rights art. 3 (“Everyone has the right to life, liberty and security of person.”).

The inclusion of the unborn in international human rights law is either explicitly or implicitly evidenced in a number of international instruments:

- International Covenant on Civil and Political Rights art. 6.1: “Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.”
- Convention on the Rights of the Child, preamble: “[T]he child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”
- American Convention on Human Rights, art. 4.1: “Every person has the right to have his life

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<sup>1</sup> See, e.g., Ipas submission dated January 15, 2013 to CEDAW General Discussion on Access to Justice, 18 February 2013 (claiming, erroneously, that “The criminalization of abortion...clearly violate[s] women’s access to justice.”).

respected. This right shall be protected by law and, in general, from the moment of conception.”

Neither CEDAW, nor any other global UN treaty, contains a “right” to abortion or even mentions abortion. This fact has been acknowledged even by groups which, to varying degrees, promote abortion.<sup>2</sup> Indeed, if anything, the text of CEDAW is presumptively pro-natalist. See CEDAW art. 12(2)(referring to postnatal periods and lactation).<sup>3</sup>

### Applicable Legal and Interpretive Principles Require Respect for Pre-Natal Life

The pro homine principle provides that all law, including human rights treaties, are created for the sake of human beings, and thus must be interpreted in a way that best serves and protects human beings.<sup>4</sup> Given the independent life interest of the unborn child,<sup>5</sup> the non-discrimination provisions of CEDAW treaty cannot be interpreted in a manner that would negate the child’s life interest. Moreover, even were there any doubt about the ontological status of the unborn child, application of the principle *alterum non laedere* (“harm no one”)<sup>6</sup> and the precautionary principle<sup>7</sup> calls

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<sup>2</sup> See Human Rights Watch, Letter to Senate Foreign Relations Committee, July 29, 2002 available at <http://www.hrw.org/press/2002/07/uscedawltr0730.htm> (“CEDAW does not take a position on abortion.”); Amnesty International, A Fact sheet on CEDAW: Treaty for the Rights of Women, available at <http://www.amnestyusa.org/women/pdf/cedaw.pdf> (“CEDAW does not address the matter of abortion.”).

<sup>3</sup> For further elaboration of applicable international law principles and the question of abortion, see Piero A. Tozzi, International Law and the Right to Abortion, International Organizations Law Group, Legal Studies Series No. 1 (2010). See also San Jose Articles: Abortion and the Unborn Child in International Law, available at [www.sanjosearticles.com](http://www.sanjosearticles.com).

<sup>4</sup> H. Victor Condé, A Handbook of International Human Rights Terminology 108 (2004).

<sup>5</sup> See T.W. Sadler, Langman’s Medical Embryology at 3 (7<sup>th</sup> ed. 1995)(development of new human being begins at fertilization); Keith L. Moore & T.V.N. Persaud, The Developing Human: Clinically Oriented Embryology (7<sup>th</sup> Ed. 2003) (same). Cf. ICCPR art. 6.5 (permitting application of death penalty to woman over age 18 for capital offenses, unless woman is pregnant in recognition of independent life interest of unborn child).

<sup>6</sup> Justinian, Institutes 36-37 (Peter Birks & Grant McLeod trans. Cornell University Press 1987).

<sup>7</sup> Causa Rol No. 740-2007, Requerimiento de inconstitucionalidad deducido en contra de algunas disposiciones de las “Normas Nacionales sobre Regulación de la Fertilidad”, aprobadas por el Decreto Supremo N° 48, de 2007, del Ministerio de Salud, (18 de abril del 2008) (Chile), available at <http://www.tribunalconstitucional.cl/index.php/sentencias/download/pdf/914> (applying principle with respect to “morning after” pill due to its potential abortifacient effects); Sentencia del Tribunal Constitucional del 26 de octubre de 2009 (Peru), available at <http://www.tc.gob.pe/jurisprudencia/2009/02005-2009-AA.html> (same) Cf. Rio Declaration on the Environment and Development of 1992, principle 15 (“In order to protect the environment, the

for protecting the actual or potential life interest and therefore rejecting any interpretations inconsistent with such principles.

Treaty Monitoring Bodies May Not Act Ultra Vires by  
Reinterpreting Treaties to Create Novel Rights

The Committee has issued General Recommendation 24, which calls for repeal or amendment of laws penalizing abortion. As set forth above, abortion is not a matter covered by the CEDAW treaty, and therefore, any recommendations by the Committee, whether in the form of a General Recommendation or Concluding Observations, go beyond the power granted to the Committee from within the four corners of CEDAW.<sup>8</sup> To hold otherwise would be to hold countries accountable to obligations they never agreed to when they ratified the treaty and would violate the principle of *pacta sunt servanda*, thereby undermining foundational principles of international law and creating potential obstacles to nations entering into future treaties.<sup>9</sup>

Moreover, any interpretation of CEDAW that conflicts with existing rights (namely, the right to life) would undermine the principle that human rights are universal and inalienable, indivisible, interdependent and interrelated.<sup>10</sup>

Concern over ultra vires interpretations has spurred certain member states, including States Parties to CEDAW, to initiate measures aimed at reforming treaty monitoring bodies.<sup>11</sup> Such ultra vires actions are problematic for they can cause acrimony among states parties instead of facilitating dialogue, thereby becoming an obstacle to the development of consensus among sovereign States Parties.

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precautionary approach shall be widely applied by States . . . . Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”)

<sup>8</sup> For a critique of such actions, see Alliance Defense Fund, Catholic Family and Human Rights Institute and Focus on the Family, Human Rights Treaty Body Reform and Strengthening: Some Concerns of Civil Society, Submitted to the Office of the High Commissioner for Human Rights, June 2012.

<sup>9</sup> See Vienna Convention on the Law of Treaties, May 22, 1969, 1155 U.N.T.S. 331, 8 I.L.M. 679 at art. 2, 31.

<sup>10</sup> See Vienna Declaration and Programme of Action, UN doc. A/Conf. 157/23, July 12, 1993.

<sup>11</sup> GA Resolution A/RES/66/254.

## Conclusion

For the reasons sets forth above, the undersigned respectfully request that the Committee refuse to consider any interpretation that CEDAW or “access to justice” requires that states parties weaken legal protection for unborn life.

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