



Priests for Life

Written Statement on Proposed General Recommendation on Access to Justice 54th Session of CEDAW General Discussion: 18 February 2013 Palais des Nations, Geneva

Introduction

The equal dignity of all people requires that women have the same access to justice as men. In the areas where law touches the lives of women – inheritance, property, business, redress from wrongs – women deserve equal justice. To fully participate in all aspects of life, women should have equal access to justice and the ability to right the wrongs they may experience as individuals. Barring women from owning and inheriting land, entering into contracts, filing lawsuits when wronged, petitioning courts, or pressing charges when abused or when they suffer unjust discrimination are all egregious barriers to women’s justice.

Prison and the death penalty

The rule of law needs to apply equally to both women and men. This includes the criminal justice system and most significantly prison systems where women ought not to suffer discrimination, abuse and violence, and where the special needs of female prisoners must be provided for. Incarcerated women include pregnant women, however, who require a special accommodation. Access to pre-natal care to ensure the health of both the woman and her child, for example, is vital to a just penal system.

Importantly, owing to women’s unique procreative capacity, international law recognizes the fact that the death penalty carried out on a pregnant woman destroys another life. The taking of the life of the preborn child through imposition of the death penalty is now illegal in almost every country in the world.¹

International law not only acknowledges the injustice of the death penalty for the unborn child but also recognizes her or his separate right to life. The International Covenant on Civil and Political Rights acknowledges: “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”² and then extends a special

¹ Death Penalty Worldwide, tracks data on death penalty prohibitions including exceptions for pregnant women. <http://www.deathpenaltyworldwide.org/women.cfm>

² International Covenant on Civil and Political Rights, Article 6.1.

protection to the child in the womb by barring the death penalty on pregnant women: “Sentence of death ...shall not be carried out on pregnant women.”³

In like manner, the American Convention on Human Rights addresses the child’s right to life and prohibits the death penalty on pregnant women. While addressing state obligations, the Convention acknowledges the right to life of the child existing from conception: “Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.”⁴ The Convention bans application of capital punishment to pregnant women: “Capital punishment shall not be... applied to pregnant women.”⁵

In addition, the Third Committee of the General Assembly on November 12, 2012 approved a draft resolution calling for a moratorium on executions with a view to abolishing the death penalty that calls on States to not impose capital punishment on pregnant women.⁶

Justice respects the separate right to life of the child in the womb and does not hold the new unique individual responsible for the crimes of her or his mother. Access to justice for women cannot violate international law by imposing death on another human being.

Protection of maternity

The recognition of the need for special measures to protect maternity—pre-natal stage through pregnancy and childbirth to lactating mothers—is stipulated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Article 4 and emphasizes that these measures “shall not be considered discriminatory” while the beneficiaries are solely women.⁷ In addition, the Treaty seeks to ensure that pregnancy is not grounds for discrimination “aware that the role of women in procreation should not be a basis for discrimination”.⁸

As discussion is undertaken it would be beneficial to recall that CEDAW recognizes the importance of the family, woman and man, and, in particular, the condition of maternity—pregnancy and the post natal period— as a social function. Article 5 includes: “States parties must also ensure that family education incorporates a proper understanding of maternity as a social function and the common responsibility of men and women with respect to their children”. The treaty includes provisions that apply to the protection of pregnant women to guard against discrimination, “Specific measures are to be taken to prevent discrimination against women in employment on the basis of marriage, or maternity.”⁹

³ Ibid, Article 6.5.

⁴ The American Convention on Human Rights, Inter American System of Justice, Article 4.1.

⁵ Ibid, section 5.

⁶ General Assembly, Department of Public Information, November 19, 2012.

<http://www.un.org/News/Press/docs/2012/gashc4058.doc.htm>

⁷ Convention on the Elimination of Discrimination Against Women, Article 4.2.

⁸ Ibid, Preamble.

⁹ Ibid, Article 11.2ab.

Equal justice for all

The family and its responsibilities of childbearing and childrearing are universal. The family is the very building block of all communities, cultures, and countries. Providing for access to justice for all members of the family is essential for true equality. Women and men, girls and boys, mothers and fathers need to be valued for their contributions to the family and to society and given equal opportunities, and treated without discrimination.

True social justice precludes any member of the family being treated unfairly, denied justice or selectively marked as expendable— regardless of sex, age, disability, disease, condition of dependency or stage of development. All members of the family are deserving of durable protections, including those who have been classified as expendable by some and excluded from basic social protection. No member of the family should be stripped of their human dignity and denied their most basic right—the right to life.

This especially applies to abortion methods which cause dismemberment and mutilation of the preborn child through powerful vacuum aspiration or use of a curette, forced expulsion from the womb, chemical poisoning or crushing of the skull and suctioning the child's brain.

Any claim that termination of pregnancy is a component of women's access to justice also falsely portrays pregnancy as an impediment to women. It conveys the harmful belief that woman as mother is an inferior position that must be "corrected" via abortion and perpetuates the notion that in order to be equal with man, woman must become more like men by denial of her basic feminine capacity to bear new life.

Such a belief is a gross injustice to women.

International law and protection of motherhood

The promotion of "access to abortion" as a component of "access to justice" ignores established international law which recognizes the dignity of mothers and their young children. The recognition that "motherhood and childhood are entitled to special care and assistance" was established in the Universal Declaration of Human Rights.¹⁰

It was also affirmed in the International Covenant on Economic, Social and Cultural Rights in Article 10 in which States recognized: "Special protection should be accorded to mothers during a reasonable period before and after childbirth."¹¹

International law and protection of the child

International law not only recognizes the need for special protection for mothers before and after childbirth, but for their children as well—those in the womb and those already born. Bearing in mind, the Declaration of the Rights of the Child declared: "Whereas the child, by

¹⁰ Universal Declaration of Human Rights, Article 25.2.

¹¹ International Covenant on Economic, Social and Cultural Rights, Article 10.2.

reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”¹²

The Convention on the Rights of the Child reinforces this core belief in protection of the child during pregnancy. After stating the need to protect the child “before as well as after birth”¹³ the Convention states: “States Parties recognize that every child has the inherent right to life”¹⁴ and “States Parties shall ensure to the maximum extent possible the survival and development of the child.”¹⁵ Efforts to ensure women’s access to justice ought not to violate international law and include the destruction of the preborn child—an act of injustice.

As previously stated, the International Covenant on Civil and Political Rights and the American Convention on Human Rights acknowledge the inherent right to life of every human being, with the Convention recognizing that the right to life exists from conception.

Rule of Law

No international United Nations treaty, including CEDAW, recognizes a right to abortion.¹⁶ Yet, relentless efforts attempt to reinterpret treaties to include abortion. Such duplicity does a disservice to women and the promotion of equality and justice and often obstructs consensus and obscures the law.

The Rule of Law is critical for women’s access to justice and interpretations of the law must be consistent, coherent, and compatible with just and compassionate law. We express deep concern that CEDAW is the focal point of repeated attempts to inject an alien pro-abortion agenda into the Treaty and now into the general recommendation on “women’s access to justice”.

The first ever U.N. High-Level Meeting on the Rule of Law held was held this past September at the United Nations headquarters in New York during which the President of the General Assembly Vuk Jeremić stated, “I am convinced that today’s deliberations will reaffirm our common faith in the everlasting moral pre-eminence of justice.”¹⁷

Justice as a moral issue

¹² Declaration of the Rights of the Child, Preamble.

¹³ Convention on the Rights of the Child, Preamble.

¹⁴ Ibid, Article 6, section 1.

¹⁵ Ibid, Article 6, section 2.

¹⁶ San Jose Articles, Abortion and the Unborn Child in International Law, <http://www.sanjosearticles.com/>

¹⁷ General Assembly, Department of Public Information, September 19, 2012, <http://www.un.org/News/Press/docs/2012/ga11288.doc.htm>

Justice is a moral issue that requires universal support so all can benefit and live in peace and security. The quest for human rights unites the world; the denial of justice harms, exploits, and undermines justice for all people, especially women.

The cries of women for justice are not always heard or answered. For instance, Chinese women suffering the cruelty of forced abortion and involuntary sterilization—used as tools by the government to enforce compliance with the strict birth limitation policy—cry out for justice.

Baby girls destroyed in the womb— simply because they are female—cannot cry out for the justice they were denied. The abhorrent injustice of sex selective abortion has greatly contributed to the over 160 million girls missing from the world today.¹⁸ Failure to end this injustice—or to even protest it—enables the continuation of gender based violence against the youngest girl child and is an inconsistent and subjective approach to justice for women.

The denial of the right to life to all children in the womb in the name of justice is a gross distortion of the true application of justice; the death of an innocent is a great injustice.

Conclusion

The prohibition of capital punishment for pregnant women recognizes that true justice does not deprive a child in the womb of her life for a crime she did not commit. The right to life of the preborn child is recognized in international law and no binding United Nations treaty contains a right to abortion. Many States protect the lives of children in the womb, not only from the death penalty but from the violence of abortion. In fact, more States ban or restrict abortion than allow abortion on demand.¹⁹ All attempts to manipulate the noble goal of “women’s access to justice” to promote abortion inhibits, disrupts, and delays the advance of women’s access to authentic justice.

Justice demands consistency and universality. Justice for women depends on equal application of the rule of law; justice is not selective and ought to be inclusive of all, including children in the womb. It is our hope that in pursuit of justice for women, justice is not denied to their children. The intrinsic dignity of all human life is the foundation of human rights; may it not be denied to the most vulnerable in the name of justice. It is our conviction that abortion must be excluded from the General Recommendation on access to justice.

¹⁸ Unnatural Selection, Choosing Boys over Girls and the Consequences of a World Full of Men by Mara Hvistendahl, Public Affairs, 2011.

¹⁹ World Abortion Policies, 2011, United Nations, Department of Economic and Social Affairs.