



27 July, 2012

**To: *The Technical Committee on Drafting the Zambian Constitution***

**Re: *Right to Life from Conception Provision in the Draft Constitution***

Please accept this submission from the Center for Reproductive Rights [the Center], an international human rights non-governmental organization that provides international and comparative legal analysis on reproductive health-related issues to governments, international and regional human rights bodies such as those which monitor compliance with key human rights treaties, and non-governmental organizations around the world.

In hopes that it will be of use to the Committee during their deliberations, the Center respectfully submits this brief analysis of right to life provisions in national constitutions of African and Commonwealth countries as well as the international and regional human rights treaties to which Zambia is a party or signatory.

### SUMMARY

- To protect the lives and health of Zambian women and fulfil the promises of a new Zambian Constitution, the Constitution should take a rights-protective approach that simply affirms the fundamental and universal right to life, without stating when life begins.
- Protecting the right to life from conception would interfere significantly with women's basic human rights, including the right to life and to be free from discrimination, and from cruel, inhuman and degrading treatment.
- The harm of pitting a woman's rights against the interests of prenatal life has been repeatedly recognized by international and regional human rights bodies, and national courts.
- International and regional human rights treaties and their official bodies do not extend "right to life" protections to zygotes, embryos or foetuses. [See Annex I].
- States have consistently chosen to use language in their constitutions that affirms the right to life without trying to define when life begins, reinforcing the approach taken by all major international human rights instruments. [See Annex II for examples of such language].
- Recognizing legal personhood at any state of prenatal development could also have wide ranging, and often unintended, consequences throughout the legal sphere, which could lead to further human rights violations and other legal inconsistencies.

### **RECOGNIZING RIGHT TO LIFE FROM CONCEPTION COULD HAVE HARMFUL, POTENTIALLY FATAL, CONSEQUENCES FOR WOMEN**

Prioritizing an interest in prenatal life over women's fundamental rights can result in women being denied access to emergency contraception, safe abortion, post-abortion care, and other essential health services, such as life-saving or emergency treatment. Doing so jeopardizes women's rights to life and health; freedom from cruel, inhuman, or degrading treatment; liberty and personal security; freedom from discrimination; and autonomy.

A current case in the Dominican Republic provides a powerful example of the devastating consequences of such a provision. The Dominican Republic's recently-enacted Constitutional provision, which stipulates that the right to life begins at conception, is preventing a 16-year-old girl dying of acute leukemia from receiving life-saving chemotherapy because she is nine weeks pregnant, and the treatment would likely terminate the pregnancy. Interpreting the right to life from conception language as an absolute prohibition on abortion, doctors are afraid to treat her for fear of prosecution. It remains unclear whether or how the government will respond; for now, the girl lies in a hospital in the Dominican Republic, denied the treatment that could save her life.<sup>1</sup>

In Honduras, a constitutional provision that provides that the “unborn” will be treated as a born person in the context of individual constitutional rights, including the right to life,<sup>2</sup> has resulted in an absolute ban on emergency contraception. A 2009 Ministerial decree, relying upon this constitutional mandate, prohibits the promotion, use, sale, purchase, and free distribution of emergency contraception on the *scientifically inaccurate* grounds that emergency contraception could potentially cause an abortion. Women—including women who have been raped—are unable to safely prevent unwanted pregnancies in Honduras. Rather than prevent recourse to abortion, this will likely lead to a serious increase in the number of unsafe abortions in Honduras. This ban violates women's right to privacy and the right to decide the number and spacing of children, as well as their right to health. Further, the World Health Organization's Guidelines for the Medico-Legal Care for Victims of Sexual Violence identify comprehensive, gender-sensitive health services as essential for survivors of sexual violence to “cope with the physical and mental health consequences of their experience and to aid their recovery from an extremely distressing and traumatic event.”<sup>3</sup> These services include access to emergency contraception.<sup>4</sup>

The case of *K.L. v Peru* illustrates how prioritizing prenatal protections could violate a woman's right to be free from cruel, inhuman, or degrading treatment. K.L., a 17-year-old Peruvian girl, was pregnant with an anencephalic fetus, a fetal abnormality that is ultimately fatal in all cases. K.L.'s doctors informed her that continued pregnancy posed risks to her life and recommended she terminate the pregnancy. The hospital director refused to authorize the legal abortion, forcing K.L. to carry the pregnancy to term. The baby survived for only four days after birth, during which time hospital officials made K.L. breastfeed the child. This harrowing experience had a profound impact on K.L. and doctors diagnosed K.L. with severe depression requiring psychiatric treatment. A psychiatric report concluded that “the so-called principle of the welfare of the unborn child has caused serious harm to the mother, since she has unnecessarily been made to carry to term a pregnancy whose fatal outcome was known in advance.”<sup>5</sup> In 2005, the Human Rights Committee which oversees compliance with the International Covenant on Civil and Political Rights (Civil and Political Rights Covenant)—a treaty that Zambia has ratified, found that the mental suffering K.L. experienced as a result of the denial of therapeutic abortion constituted cruel, inhuman, and degrading treatment.

In the case of *L.C. v. Peru*, the CEDAW Committee found that government had violated a pregnant girl's rights by prioritizing the fetus over her health by postponing an essential surgery until the girl was no longer pregnant. The girl's continued pregnancy posed a substantial risk to her physical and mental health, and the CEDAW Committee held that the denial of a therapeutic abortion and the delay in providing the surgery constituted gender-based discrimination and violated her rights to health and freedom from discrimination.<sup>6</sup>

**INTERNATIONAL AND AFRICAN HUMAN RIGHTS INSTRUMENTS DO NOT EXTEND “RIGHT TO LIFE” PROTECTIONS TO PRENATAL LIFE; THEY SUPPORT THE POSITION THAT RECOGNIZING THE RIGHT TO LIFE FROM CONCEPTION WOULD INTERFERE SIGNIFICANTLY WITH WOMEN’S BASIC HUMAN RIGHTS**

Every international and African human rights instrument that Zambia has signed or ratified rejects the proposition that life begins at conception [*See Annex I for additional information*]. International and regional human rights treaties protect a right to life without defining when life begins. Authoritative sources of interpretation, including the history of negotiations (*travaux préparatoires*) and the jurisprudence of bodies charged with interpreting and monitoring compliance with human rights treaties, clarify that these protections do not apply before birth. They also recognize that protecting an absolute right to life before birth could contradict human rights protections for women.

For example, an instrument no less authoritative than the Universal Declaration of Human Rights states: “All human beings are *born* free and equal in dignity and rights.”<sup>7</sup> Significantly, the *travaux préparatoires* indicate the word “born” was used intentionally to exclude application of rights to the fetus. The Declaration’s drafters rejected a proposal to delete “born,” and the resulting text of the Declaration conveys intentionally that the rights of the Declaration are “inherent from the moment of birth.”<sup>8</sup>

The Civil and Political Rights Covenant<sup>9</sup> likewise rejects the proposition that the right to life, protected in Article 6(1), applies before birth. The drafters specifically rejected a proposed amendment which stated: “the right to life is inherent in the human person from the moment of conception, this right shall be protected by law.”<sup>10</sup>

The drafting history of the African Charter on Human and Peoples’ Rights<sup>11</sup> clarifies there is no right to life prior to birth. The drafters initially adopted the American Convention on Human Rights right to life provision almost verbatim, but explicitly rejected the section that reads that the right to life shall be protected “in general, from the moment of *conception*.”<sup>12</sup> Instead the Charter simply affirmed: “Every human being shall be entitled to respect for his life and to the physical and moral integrity of his person. No one may be arbitrarily deprived of his right.”<sup>13</sup>

A constitutional provision asserting that the right to life starts from conception would be inconsistent with prevailing international and regional human rights instruments and the jurisprudence of their interpretive bodies and contrary to Zambia’s obligations under international human rights law.

**IN GUARANTEEING THE RIGHT TO LIFE, NATIONAL CONSTITUTIONS OF AFRICAN AND COMMONWEALTH MEMBER COUNTRIES DECLINE TO ADDRESS WHEN LIFE BEGINS**

States have consistently chosen to use language in their constitutions that affirms the right life without qualifications, reinforcing the approach taken by all major international human rights instruments. Every African Constitution, except for one recent outlier, Kenya,<sup>14</sup> protects the right to life without addressing when life begins.<sup>15</sup> Similarly, Kenya aside, not a single Constitution of the fifty-four Commonwealth member states discusses when the right to life begins.

Furthermore, although Kenya’s Constitution refers to when life begins, it does not provide for an absolute right to life from conception. By also affirming a woman’s right to termination of pregnancy to preserve her life or health in Article 26 on the Right to Life, the Kenyan Constitution makes clear that, although a value is being assigned to prenatal life, where a woman’s right to life comes into conflict with the interest in prenatal life, a woman’s rights to life and health take precedence.

## HIGH COURTS AROUND THE WORLD REJECT RECOGNITION OF A PRENATAL RIGHT TO LIFE

High courts in every region of the globe have considered the question of who is accorded a right to life within a given legal system, particularly in the context of laws on abortion. Landmark decisions from high courts around the world assert that, while States have a legitimate interest in the value of prenatal life, there is no prenatal right to life. Taken together, these decisions reinforce the standards set by international and regional human rights bodies that the right to life does not exist before birth, and that any steps a state takes to protect prenatal life must be consistent with women's fundamental rights. The Supreme Court of Nepal,<sup>16</sup> Colombia's Constitutional Court,<sup>17</sup> and South Africa's High Court, Transvaal Provincial Division<sup>18</sup> have all held that there is no constitutional right to life before birth. The United States Supreme Court has also explicitly rejected the claim that a "fetus is a 'person' within the language and meaning of" the U.S. Constitution.<sup>19</sup>

## RECOGNIZING PRENATAL PERSONHOOD CAN HAVE UNFORESEEN CONSEQUENCES THAT CAN CAUSE FURTHER HUMAN RIGHTS VIOLATIONS AND CREATE LEGAL INCONSISTENCIES

Recognizing legal personhood at any state of prenatal development could also have wide ranging, and often unintended, consequences throughout the legal sphere, which could lead to further human rights violations and other legal inconsistencies.

- **Complicating Criminal Laws:** Granting legal personhood status before birth would mean that zygotes, embryos, and fetuses are included as victims throughout the penal code, opening the door to criminal investigation and prosecution of women who suffer miscarriages or stillbirths.<sup>20</sup>
- **Property Laws:** Legal personhood status for prenatal life could have implications for property rights by allowing zygotes, embryos, or fetuses to have inheritance rights that currently are only granted to individuals who are alive after birth for a certain period of time.
- **Registration:** Vital registration, such as a census used to determine the funding and distribution of services and resources or a death registry, could be seriously impacted if zygotes, embryos, or fetuses were counted as legal persons. Pregnant women who miscarry could be required to register the miscarriage through death registries.
- **Reproductive Technologies:** Recognizing legal personhood as beginning at fertilization could have significant consequences for fertility treatment. For example, women undergoing *in vitro* fertilization could be required to implant all fertilized eggs to avoid the destruction or freezing of some embryos. This practice could lead to higher rates of multiple pregnancies and jeopardize both the health of women and fetal development.

## CONCLUSION

A constitutional provision asserting that the right to life starts from conception would be inconsistent with prevailing international and regional human rights instruments, the jurisprudence of their interpretive bodies, and the vast majority of national constitutions, and lays the theoretical foundation for interference with women's health and rights. International and regional standards recognize that granting a prenatal right to life threatens women's health and lives and violates their most basic human rights.

Human rights bodies have addressed this interference in the context of abortion, considering women's human rights to dignity, autonomy, private life, to life and security of the person, and to equality and non-discrimination. In its signature and ratification of a range of regional and international human rights

treaties, the Zambian government has repeatedly committed itself to protecting the human rights of women; the new Zambian Constitution should affirm and honour those commitments.

**We strongly urge the Technical Committee to remove the clause “which begins at conception” from Article 28(1) of the draft Constitution and to simply affirm the fundamental and universal right to life, without stating when life begins.**

At a minimum, should the Committee choose to keep this contentious clause in the Constitution, we would respectfully recommend that the Committee includes a sub-article in the Right to Life provision that explicitly protects women’s access to safe abortion and other key reproductive health services. For example, Art. 28(3) could additionally read: “Notwithstanding clause (1), termination of pregnancy is permitted as authorised under any national law or policy and in accordance with international human rights standards.” Should the conception clause remain in the proposed constitution, this provision is essential to protecting women’s fundamental rights and to affirming Zambia’s commitment—stated clearly in the Preamble to the draft Constitution—to upholding human rights in its new constitutional dispensation. This provision would also ensure that the Constitution is consistent with the terms of reference of the Technical Committee, which require the Committee to draft a Constitution that incorporates the principles and values of human rights, gender equity and gender equality and “rights for all Zambians, (paying particular attention to the rights of ... women ...).”<sup>21</sup>

## **APPENDIX**

### **ANNEX I**

#### ***RIGHT TO LIFE PROTECTIONS IN INTERNATIONAL AND REGIONAL HUMAN RIGHTS TREATIES RATIFIED OR SIGNED BY ZAMBIA***

The following provisions are from the international and regional human rights treaties to which Zambia is a party or signatory. These provisions affirm the importance of the right to life and the inviolability of the person.

##### **INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS<sup>22</sup> (*Accession 10/04/1984*)**

**Article 6.1** Every human being has the inherent right to life. This right shall be protected by law.

**Article 9.1** Everyone has the right to liberty and security of person.

##### **AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS<sup>23</sup> (*Ratified 01/10/1984*)**

**Article 4** Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

**Article 6** Every individual shall have the right to liberty and to the security of his person.

##### **PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA<sup>24</sup> (*Ratified 05/02/2006*)**

**Article 4.1** Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.

##### **CONVENTION ON THE RIGHTS OF THE CHILD<sup>25</sup> (*Ratified 06/12/1991*)**

**Article 6.1** State Parties recognize that every child has the inherent right to life.

**Article 6.2** State Parties shall ensure to the maximum extent possible the survival and development of the child.

##### **AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD<sup>26</sup> (*Ratified 12/02/2008*)**

**Article 5.1** Every child has an inherent right to life. This right shall be protected by law.

**Article 5.2** States Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.

#### ***ADDITIONAL INFORMATION ON DRAFTING AND INTERPRETATION OF KEY HUMAN RIGHTS TREATIES***

##### **International Covenant on Civil and Political Rights**

In addition to the relevant information already provided, the Human Rights Committee, which interprets and monitors state compliance with the Civil and Political Rights Covenant, has consistently emphasized the threat to women's lives posed by prohibitions on abortion that cause women to seek unsafe abortions. It has also repeatedly called upon states to liberalise criminal laws on abortion,<sup>27</sup> a position that would be problematic if the Covenant's protection of the right to life extended before birth.<sup>28</sup> In an authoritative

interpretation of the principle of equality protected by the Convention, the Committee emphasized state responsibility to eliminate women's deaths from clandestine abortion and recognised that laws criminalising abortion could violate women's right to life.<sup>29</sup>

A recent decision by the Human Rights Committee established that denying access to therapeutic abortion violates women's most basic human rights. In the case of *K.L. v. Peru*, the Committee found the state liable for a violation of the right to be free from inhuman and degrading treatment by denying K.L.'s access to an abortion she needed to avoid a risk of serious harm to her health.<sup>30</sup> This decision highlights the conflict that would arise between a constitutional provision protecting life from conception and a country's commitment to protecting key civil and political rights.

The Human Rights Committee further affirmed its stance that denial of an abortion could violate a woman's right to be free from cruel, inhuman, or degrading treatment in the decision of *L.M.R. v. Argentina*. In this case the Committee held the denial of a legal abortion for a rape victim inflicted physical and mental suffering, which violated the woman's right to be free from torture, or cruel, inhuman or degrading treatment, and her right to privacy.<sup>31</sup> Again, this illustrates the potential tension between a constitutional provision protecting life from conception and Zambia's duty to uphold critical civil and political rights enshrined in the Civil and Political Rights Covenant.

### **Convention on the Rights of the Child**

Both the negotiations (*travaux préparatoires*) and the interpretation by its expert treaty body make clear that the Convention on the Rights of the Child (Children's Rights Convention)<sup>32</sup> does not recognise the right to life until birth. Any argument to the contrary is erroneously built upon Paragraph 9 of its Preamble, which provides: "Bearing in mind that, as indicated in the Declaration of the Rights of the Child, 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.'"<sup>33</sup>

The *travaux* make clear that these safeguards "before birth," which are generally interpreted to involve providing nutrition, health and support directed to the pregnant woman, must not affect a woman's choice to terminate an unwanted pregnancy. As originally drafted, the Preamble did not contain the reference to protection "before as well as after birth," although this language had been used in the earlier Declaration on the Rights of the Child. The Holy See led a proposal to add this phrase, at the same time as proponents of this addition "stated that the purpose of the amendment was not to preclude the possibility of an abortion."<sup>34</sup> Although the words "before or after birth" were accepted, their limited purpose was reinforced by the statement that "the Working Group does not intend to prejudice the interpretation of Article 1 or any other provision of the Convention by States Parties."<sup>35</sup> The reference to Article 1 is to the definition of "a child." Article 1 states: "For the purposes of the present Convention a child means every human being below the age of 18 years...."

The Committee on the Rights of the Child, the expert treaty body that interprets and applies the Children's Rights Convention, likewise has not recognized a prenatal right to life. The Committee has expressed repeated concern over girls' access to safe abortion services and the need for states "to provide access to sexual and reproductive health services, *including... safe abortion services*."<sup>36</sup> (emphasis added) In its Concluding Observations on various State reports, the Committee has repeatedly recognized that safe abortion is part of girls' right to adequate health care under Article 24, noting that "high maternal mortality rates, due largely to a high incidence of illegal abortion" contribute significantly to inadequate local health standards for children.<sup>37</sup> The Committee has also explicitly called for "review of [state practices]... under the existing legislation authorising abortions for therapeutic reasons with a view to preventing illegal abortion and to improving protection of the mental and physical health of girls."<sup>38</sup>

Based on the above noted information, the definition of “a child” for purposes of the Convention does not include prenatal life.

### **Convention on the Elimination of All Forms of Discrimination Against Women**

The jurisprudence of the committee on the Elimination of Discrimination against Women (CEDAW Committee), which interprets and monitors state compliance with the convention on the Elimination of All Forms of Discrimination against Women (CEDAW), makes clear that the fundamental principles of non-discrimination and equality require that the rights of a pregnant women be given priority over an interest in prenatal life.

### **International Covenant on Economic, Social and Cultural Rights**

Although the International Covenant on Economic, Social and Cultural Rights<sup>39</sup> does not contain a right to life provision, it does offer strong protections for the right to health. The Committee on Economic, Social and Cultural Rights, which monitors state compliance with the Covenant, interprets the right to health to include a right to maternal and reproductive health, requiring state parties to implement measures to protect and improve maternal health and reduce maternal mortality.<sup>40</sup> The provision of the right to life begins at conception has the potential to pose challenges to Zambia’s commitment to protect and promote the right to health, including maternal and reproductive health.

### **African Charter on the Rights and Welfare of the Child**

The Preamble of the African Charter on the Rights and Welfare of the Child<sup>41</sup> [African Children’s Charter] “reaffirm[s] adherence to the principles of the rights and welfare of the child contained in [the instruments of the Organization of African Unity and] in particular the United Nations Convention on the Rights of the Child.”<sup>42</sup> The purpose of the African Children’s Charter was to reiterate Africa’s commitment to the rights enshrined in the Children’s Rights Convention while providing for additional duties “in keeping with the African concept of rights.”<sup>43</sup> Understood in this context, the African Children’s Charter is an extension of the rights enshrined in the Children’s Rights Convention and, like the Children’s Rights Convention, does not recognize the right to life until birth. The Charter’s language eliminates the ambiguity of the Preamble of the Children’s Rights Convention and makes no reference to the protections needed by the child “before as well as after birth.” Instead, the Charter simply affirms in Article 5 that “every child has an inherent right to life.” Further, it adopts the same neutral definition of “a child”, without reference to life’s beginning point, as contained in the Children’s Rights Convention, stating: “a child means every human being below the age of 18 years.”<sup>44</sup>

### **Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa**

The Protocol emphasizes women’s right to life and offers groundbreaking protections for women’s health. Article 14 explicitly outlines a woman’s right to abortion in a range of circumstances: “States Parties shall take all appropriate measures to . . . protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus. . . .”<sup>45</sup> This language implicitly affirms that the right to life does not begin until birth and cannot be read consistently with any other interpretation of the right to life.

## ANNEX II

### *RIGHT TO LIFE PROTECTIONS IN AFRICAN CONSTITUTIONS*

The majority of African constitutions protect the right to life without addressing when the right to life begins or mentioning termination of pregnancy. Below are examples of constitutional language used to recognize and affirm the right to life:

**BENIN:** Article 15 states generally that “[e]ach individual has the right to life, liberty, security, and the integrity of his person.” Article 8 provides that “[t]he human person is sacred and inviolable. The State has the absolute obligation to respect and protect it. It shall guarantee him a full blossoming. To that end, it shall assure its citizens equal access to health.”<sup>46</sup>

**CAMEROON:** The preamble to the Constitution provides that “every person has a right to life, to physical and moral integrity and to humane treatment in all circumstances.”<sup>47</sup>

**COTE D’IVOIRE:** Article 2 states that the “individual is sacred. All human beings are born free and equal before the law. They enjoy inalienable rights, namely the right to life, freedom, the development of their personality and respect for their dignity. The rights of the individual are inviolable. Public authorities have the obligation to respect, protect and promote the individual. Any sanction leading to the deprivation of human life is forbidden.”<sup>48</sup>

**ETHIOPIA:** Article 14 states that “Every person has the inviolable and inalienable right to life, the security of person, and liberty.” Article 15 provides that “Every person has the right to life.”<sup>49</sup>

**GHANA:** Article 13(1) states “[n]o person shall be deprived of his life intentionally except in the exercise of the execution of a sentence of a court in respect of a criminal offence under the laws of Ghana of which he has been convicted.” Article 15 states that “The dignity of all persons shall be inviolable.”<sup>50</sup>

**LESOTHO:** Article 5(1) states that “[e]very human being has an inherent right to life. No one shall be arbitrarily deprived of his life.”<sup>51</sup>

**MALAWI:** Article 16 states that “[e]very person has the right to life and no person shall be arbitrarily deprived of his or her life” and Article 19 affirms that the “dignity of all persons shall be inviolable.”<sup>52</sup>

**NAMIBIA:** Article 6 affirms that the “right to life shall be respected and protected” and Article 8(1) states that the “dignity of all persons shall be inviolable.”<sup>53</sup>

**NIGERIA:** Section 17(2)(b) provides that “the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced.” The rights to life, dignity of one’s person, and personal liberty are protected in Sections 33, 34, and 35 respectively. 33(1) states that “[e]very person has the right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.”<sup>54</sup>

**RWANDA:** Article 10 states that “the human person is sacred and inviolable” while Article 12 provides that “[e]very person has the right to life. No person shall be arbitrarily deprived of life.”<sup>55</sup>

**SOUTH AFRICA:** Article 10 states that “Everyone has inherent dignity and the right to have their dignity respected and protected.” Article 11 states simply that “[e]veryone has the right to life.”<sup>56</sup>

**TANZANIA:** Article 14 states that “Every person has the right to live and to the protection of his life by the society in accordance with law.”<sup>57</sup>

- <sup>1</sup> Rafael Romo, *Dominican Republic Abortion Ban Stops Treatment for Pregnant Teen with Cancer*, CNN, July 25, 2012, <http://edition.cnn.com/2012/07/25/world/americas/dominican-republic-abortion-teen/index.html>.
- <sup>2</sup> CONSTITUCION POLITICA DE LA REPUBLICA DE HONDURAS, art. 67 (1982).
- <sup>3</sup> WORLD HEALTH ORGANIZATION, GUIDELINES FOR MEDICO-LEGAL CARE FOR VICTIMS OF SEXUAL Violence 2 (2003), available at <http://whqlibdoc.who.int/publications/2004/924154628X.pdf>.
- <sup>4</sup> *Id.*
- <sup>5</sup> *K.L. v. Peru*, Human Rights Committee, Communication No. 1153/2003, U.N. Doc. CCPR/C/85/D/11/53/2003 ¶ 2.5 (2005) [hereinafter *K.L. v. Peru*].
- <sup>6</sup> *L.C. v. Peru*, CEDAW Committee, Communication No. 22/2009, ¶ 8.15, U.N. Doc. CEDAW/C/50/D/22/2009 (2011).
- <sup>7</sup> Universal Declaration of Human Rights, *adopted* Dec. 10, 1948, G.A. Res.217a (III), Article 1, U.N. Doc. A/810 (1948).
- <sup>8</sup> U.N. GAOR 3<sup>rd</sup> Comm., 99<sup>th</sup> mtg., ¶¶ 110-124, U.N. Doc. A/PV/00 (1948)
- <sup>9</sup> International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), UN GAOR, 21<sup>st</sup> Sess., Supp. No. 16, at 52, UN Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 March 1976) [hereinafter Civil and Political Rights Covenant].
- <sup>10</sup> UN GAOR Annex, 12th Session, Agenda Item 33, at 96, UN Doc. A/C.3/L.654; UN GAOR, 12th Session, Agenda Item 33, at 113 UN Doc. A/3764, 1957. The Commission ultimately voted to adopt Article 6, which has no reference to conception, by a vote of 55 to nil, with 17 abstentions. UN GAOR, 12th Session, Agenda Item 33, at 119 (q), UN Doc. A/3764, 1957.
- <sup>11</sup> African (Banjul) Charter on Human and Peoples' Rights, *adopted* June 27, 1981, O.A.U. Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) (*entered into force* Oct. 21, 1986) [hereinafter African Charter].
- <sup>12</sup> American Convention on Human Rights, Art. 4, *adopted* Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (*entered into force* July 18, 1978) (emphasis added).
- <sup>13</sup> *Id.* at Art. 4.
- <sup>14</sup> CONSTITUTION, art 26(2) (2010) (Kenya).
- <sup>15</sup> See the attached Appendix for a non-exhaustive list of examples of the language used in African Constitutions to recognize and affirm the right to life.
- <sup>16</sup> *Lakshmi Dhikta v. Government of Nepal*, Writ No. 0757, 2067 (2007) (Supreme Court of Nepal), at 3 (unofficial translation on file with the Center for Reproductive Rights).
- <sup>17</sup> Women's Link Worldwide, C-355/2006: Excerpts of the Constitutional Court's Ruling that Liberalized Abortion in Colombia, 21 (2007).
- <sup>18</sup> *Christian Lawyers Association of South Africa v. The Minister of Health* 1998 (11) BCLR 1434.
- <sup>19</sup> *Roe v. Wade*, 410 U.S. 115, 157 (1973).
- <sup>20</sup> See, e.g., Jason Foster, *Woman faces charge of killing unborn child during August suicide attempt*, Herald Online, Feb. 21, 2009, [www.heraldonline.com/2009/02/21/1152282/woman-faces-charge-of-killing.html](http://www.heraldonline.com/2009/02/21/1152282/woman-faces-charge-of-killing.html).
- <sup>21</sup> Report of the Technical Committee on Drafting the Zambia Constitution, pp. 2-3, (2012), available at <http://zambianconstitution.org/images/downloads/draft%20report%20of%20the%20technical%20committee.pdf>.
- <sup>22</sup> Civil and Political Rights Covenant, *supra* note 9.
- <sup>23</sup> African Charter, *supra* note 11, art. 18(3).
- <sup>24</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2<sup>nd</sup> Ordinary Sess., Assembly of the Union, *adopted* July 11, 2003 [hereinafter Maputo Protocol].
- <sup>25</sup> Convention on the Rights of the Child, *adopted* Nov. 20, 1989, G.A. Res. 44/25, annex, UN GAOR, 44th Sess., Supp. No. 49, at 166, U.N. Doc. A/44/49 (1989), *reprinted in* 28 I.L.M. 1448 (*entered into force* Sept. 2, 1990) [hereinafter Children's Rights Convention].
- <sup>26</sup> African Charter on the Rights and Welfare of the Child, art. 5(1), OAU Doc. CAB/LEG/24.9/49 (1990), *entered into force* Nov. 29, 1999, [hereinafter African Children's Charter].
- <sup>27</sup> Concluding Observations of the Human Rights Committee: Kenya, 29/4/05, UN Doc. CCPR/CO/83/KEN, Para. 14 (“[Kenya] should review its abortion laws, with a view to bringing them into conformity with the Covenant.”); Concluding Observations of the Human Rights Committee, UN Doc. CCPR/C/79/Add.104; Concluding Observations of the Human Rights Committee Chile, 30/3/1999, UN GAOR, Hum. Rts. Comm., 65th Session, 1740th mtg. Para.15e: Argentina, 15/11/2000, UN Doc. CCPR/CO/70/ARG, Para.14; Concluding Observations of the Human Rights Committee: Costa Rica, 08/04/99, UN Doc. CCPR/C/79/Add.107, Para.11; Concluding

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Observations of the Human Rights Committee: Peru; Concluding Observations of the Human Rights Committee: United Republic of Tanzania, 18/08/98, UN Doc. CCPR/C/79/Add.97, Para.15; Concluding Observations of the Human Rights Committee: Venezuela, 26/04/2001, UN Doc. CCPR/CO/71/VEN, Para.19; Concluding Observations of the Human Rights Committee: Poland, 05/11/2004, UN Doc. CCPR/CO/82/POL, Para.8; Concluding Observations of the Human Rights Committee: Bolivia, 05/05//97, UN Doc. CCPR/C/79/Add.74, Para.22.

<sup>28</sup> Concluding Observations of the Human Rights Committee: Colombia, 03/05/97, UN Doc. CCPR/C/79/Add.76, Para.24; Concluding Observations of the Human Rights Committee: Ecuador, 18/08/98, UN Doc. CCPR/C/79/Add.92, Para.11; Concluding Observations of the Human Rights Committee: Mongolia, 25/05/2000, UN Doc. CCPR/C/79/Add.120, Para.8(b); Concluding Observations of the Human Rights Committee: Poland, 29/07/99, UN Doc. CCPR/C/79/Add.110, Para.11; Concluding Observations of the Human Rights Committee: Senegal, 19/11/97, UN Doc. CCPR/C/79/Add 82, Para.12.

<sup>29</sup> Human Rights Commission, Gen Comment 28: Equality of Rights Between Men and Women (68th Session 2000) at Para.10, reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, 12/05/2004, UN Doc. HRI/GEN/Rev.7.

<sup>30</sup> *K.L. v. Peru*, *supra* note 5, views adopted on Oct. 24, 2005.

<sup>31</sup> *L.M.R. v. Argentina*, H.R. Committee, Communication No. 1608/2007, U.N. Doc. CCPR/C/101/D/1608/2007 (2011).

<sup>32</sup> Children's Rights Convention, *supra* note 25.

<sup>33</sup> *Id.* at Preamble, para. 9.

<sup>34</sup> UN Commission on Human Rights, Question of a Convention on the Rights of a Child: Report of the Working Group, 36th Session, UN Doc. E/CN.4/L/1542 (1980).

<sup>35</sup> UN Commission on Human Rights, Report of the Working Group on a Draft Convention on the Rights of the Child, 45th Session, E/CN.4/1989/48 at p.10 (1989), quoted in Jude Ibegbu, *Rights of the Unborn in International Law* 145 (2000); LJ LeBlanc, *The Convention on the Rights of the Child: United Nations Lawmaking on Human Rights*, University of Nebraska Press, London (1995), p. 69; J Ibegbu, *Rights of the Unborn Child in International Law*, E Mellen Press, Lewiston NY (2000), pp. 146–147.

<sup>36</sup> Committee on the Rights of the Child, General Comment No.4: Adolescent health and development in the context of the Convention on the Rights of the Child (33rd Session 2003) at Para. 31, reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, 12/05/2004, UN Doc. HRI/GEN/Rev.7.

<sup>37</sup> Concluding Observations of the Committee on the Rights of the Child: Guatemala, 9/7/2001, UN Committee on the Rights of the Child, 27th Session, p.40, UN Doc. CRC/C/15/Add.154; Concluding Observations of the Committee on the Rights of the Child: Chad, 24/8/1999, UN GAOR, Committee on the Rights of the Child, 21st Session, 557th mtg. Para.30, UN Doc. CRC/C/15/Add.107; Concluding Observations of the Committee on the Rights of the Child: Nicaragua, 24/8/1999, UN GAOR, Committee on the Rights of the Child, 21st Session, 557th mtg. Para.35, UN Doc. CRC/C/15/Add.108.

<sup>38</sup> Concluding Observations of the Committee on the Rights of the Child: Chad, 24/8/1999, UN GAOR, Committee on the Rights of the Child, 21st Session, 557th mtg. Para.30, UN Doc. CRC/C/15/Add.107; Concluding Observations of the Committee on the Rights of the Child: Nicaragua, 24/8/1999, UN GAOR, Committee on the Rights of the Child, 21st Session, 557th mtg. Para.35, UN Doc. CRC/C/15/Add.108.

<sup>39</sup> International Covenant on Economic, Social and Cultural Rights *adopted* Dec. 16, 1966, G.A. Res. 2200A (XXI), UN GAOR, 21<sup>st</sup> Sess., Supp. No. 16, at 49, UN Doc. A/6316 (1966), 993 U.N.T.S. 3 (*entered into force* Jan. 3, 1976).

<sup>40</sup> Committee on Economic, Social and Cultural Rights, General Comment 14: The Right to the Highest Attainable Standard of Health (Art. 12) (22<sup>nd</sup> Sess., 2000), UN Doc. E/C.12/2000/4 (2001).

<sup>41</sup> African Children's Charter, *supra* note 26.

<sup>42</sup> *Id.* at Preamble.

<sup>43</sup> Malcolm Evans and Rachel Murray, *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2006* (Second Edition) at 44.

<sup>44</sup> African Children's Charter, *supra* note 26, at art. 2.

<sup>45</sup> Maputo Protocol, *supra* note 24, at art. 14(2)(c).

<sup>46</sup> *Constitution of the Republic of Benin* (1990), translated in A.P. Blaustein and G.H. Flanz (eds), *Constitutions of the Countries of the World*, Dobbs Ferry, NY: Oceana Publications, 1992.

<sup>47</sup> *Constitution of the Republic of Cameroon* (1996), reprinted in G.H. Flanz (ed.), *Constitutions of the Countries of the World*, Dobbs Ferry, NY: Oceana Publications, 1997.

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<sup>48</sup> *Constitution of the Republic of Cote d'Ivoire* (2000), available at [http://www.gouv.ci/ci\\_texte\\_1.php](http://www.gouv.ci/ci_texte_1.php) (click on Constitution Aout 2000).

<sup>49</sup> *Constitution of the Federal Democratic Republic of Ethiopia* (1994), reprinted in G.H. Flanz (ed.), *Constitutions of the Countries of the World*, Dobbs Ferry, NY: Oceana Publications, 1996. Also available at <http://www.ethiobar.net>. Article 35(9) addressing the rights of women mentions pregnancy to say that “To prevent harm arising from pregnancy and childbirth and in order to safeguard their health, women have the right of access to family planning education, information and capacity.”

<sup>50</sup> *Constitution of the Republic of Ghana*, Tema: Ghana Publishing Corp. 1992. Also available at [http://www.judicial.gov.gh/constitution/chapter/chap\\_1.htm](http://www.judicial.gov.gh/constitution/chapter/chap_1.htm).

<sup>51</sup> *Constitution of Lesotho* (1993), available at [http://www.gov.ls/documents/Lesotho\\_Constitution.pdf](http://www.gov.ls/documents/Lesotho_Constitution.pdf).

<sup>52</sup> *Constitution of the Republic of Malawi* (1994), available at <http://www.sdn.org.mw/constitut/intro.html>.

<sup>53</sup> *Constitution of the Republic of Namibia* (1990), available at <http://www.orusovo.com/namcon/>.

<sup>54</sup> *Constitution of the Federal Republic of Nigeria* (1999), available at <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>.

<sup>55</sup> *Constitution of the Republic of Rwanda* (2003), available at [http://www.amategeko.net/display\\_rubrique.php?Information\\_ID=1434&Parent\\_ID=30694645&type=public&Langue\\_ID=An](http://www.amategeko.net/display_rubrique.php?Information_ID=1434&Parent_ID=30694645&type=public&Langue_ID=An).

<sup>56</sup> *Constitution of the Republic of South Africa* (1996), available at <http://www.info.gov.za/documents/constitution/index.htm>.

<sup>57</sup> *Constitution of the United Republic of Tanzania* (1998), available at <http://www.tanzania.go.tz/constitution.html>.