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Committee on Economic, Social and Cultural Rights,
Human Rights Treaties Division,
Office of the United Nations High Commissioner for Human Rights,
Palais Wilson - 52,
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Information on State Party: Ireland

30th April, 2015

Dear Members of the Committee on Economic, Social and Cultural Rights,

Family & Life has prepared this submission to assist the members of the Committee in reviewing Ireland's compliance with the International Covenant on Economic, Social and Cultural Rights at its 55th Session in Geneva.

Family & Life is a well-established pro-life and pro-family organisation based in Dublin, with a large network of supporters throughout Ireland. It promotes respect for the value and dignity of human life from conception to natural death. Family & Life was granted ECOSOC special consultative status in 2013.

Family & Life welcomes the opportunity to engage with the Committee on Economic, Social and Cultural Rights as it prepares for its examination of Ireland to assess its performance in protecting and vindicating human rights.

Family & Life notes with disappointment that none of the matters raised in its earlier submission to the Committee were included in the List of Issues, despite the fact that all the matters raised by F&L were directly related to rights protected by the Convention.

Family & Life notes with great concern the fact that the Committee included in the List of Issues a section relating to Ireland's abortion law. Notwithstanding the fact that many pro-abortion organisations made submissions to the Committee in advance of the formulation of the List of Issues, abortion is not a matter that comes within the remit of the Committee. In seeking to bring pressure to bear on

member states in relation to their laws on abortion, the Committee is acting *ultra vires*, and risks bringing the treaty monitoring process, and indeed the entire UN system, into disrepute.

Family & Life would welcome an opportunity to make an oral submission to the Committee at its meeting in Geneva in June and would very much appreciate receiving on that occasion the rationale for the exclusion of the concerns previously raised, all of which were directly related to rights protected by the Convention.

Family & Life would like to take this opportunity to remind the Committee of the issues raised in its earlier submission. (Please note that the issues in relation to AHR under Article 10 have been revised in light of legislative developments).

PART 2: ISSUES THAT SHOULD BE RAISED WITH STATE PARTY

Article 8

Freedom of Association

The Convention provides for the right of freedom of union association. The obvious corollary to this right is the right to *disassociate* from a union in order to join another union or to freely decide to join no union at all.

Yet Irish university students are automatically made members of the students' union (SU) of their respective universities and have no way of disassociating from the SU. This means that they are forced to pay fees towards their university's SU.

This abuse of students' rights to freedom of association is particularly unjust when SUs campaign publicly on controversial matters outside of the field of education, thus alienating students who disagree with the political aims of the SU they are forced to be members of. In these instances the students' rights to freedom of conscience as well as their right to freedom of association are violated.

It is important to point out that the above mentioned rights violation occurs against a constitutional backdrop recognising the right to freedom of conscience and the right to disassociate from a union.

In order to protect the Article 8 rights of Irish university students it is imperative that:

- Universities and university SUs need to inform all students that it is possible to disassociate from the SU
- The SUs must provide a clear pathway for a student to disassociate from the SU and must clearly inform the student when his or her disassociation is complete

- Students who have disassociated from an SU must no longer be held liable for SU fees while the SUs must no longer keep account of the student's personal data

Issue: Irish university students are denied the freedom to decide whether or not to be associated with (and pay membership fees to) a Students' Union.

Article 12(2)(a)

Reduction of Still-Birth and Infant Mortality

The Convention provides for the right of everyone to the highest available standard of physical and mental health and requires State Parties to provide for the reduction of the still-birth rate and of infant mortality and for the healthy development of the child.

But Ireland's efforts to "achieve the full realisation of this right" are hampered by the immunity in tort law enjoyed by medical professionals and institutions as regards the negligent causing of the death of the child *in utero*. Section 58 of the Civil Liability Act 1961 bars parents from suing on foot of the death of their unborn child even in cases of gross medical negligence. This immunity frustrates efforts to reduce the still-birth rate and grants legal immunity to poor health care standards.

In order to fully vindicate Article 12(2)(a) section 58 of the Civil Liability Act 1961 should be amended to protect the development of the child *in utero* from medical negligence.

Issue: Ireland's statute law impedes efforts to guarantee the right to health by reducing the incidence of still-birth.

Article 10

Childcare

The Irish state provides funding under the Early Childhood Care and Education Scheme which provides a free year of pre-school education and childcare for children whose families choose to place them in playschools or daycare centres. These centres are paid a capitation fee by the state.

No comparable funding is provided for pre-school children whose families choose to care for them and educate them at home.

Article 10 of the Convention recognises that "[t]he widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment *and while it is responsible for the care and education of dependent children*." (emphasis added).

Issue: Ireland discriminates against children and families if the parents choose to provide pre-school care and education to the children at home rather than in state-approved facilities.

Maternity Leave
Mothers are entitled to 26 weeks' maternity leave together with 16 weeks additional unpaid maternity leave. Employers are not obliged to pay women on maternity leave. Some mothers qualify for Maternity Benefit, a Department of Social Protection payment of €230 per week for those who have sufficient Pay-Related Social Insurance (PRSI) contributions.

By European standards, Ireland's level of maternity support is low. Ireland does, however, provide extremely high quality healthcare under the Maternity and Infant Care Scheme which is available to every pregnant woman who is ordinarily resident in the state. Mothers are entitled to free in-patient and out-patient public hospital services in respect of the pregnancy and the birth and are not liable for any of the standard in-patient hospital charges.

Issue: Maternity benefit is not payable to all mothers, only those who have been in a position to make PRSI payments.

Children Conceived by AHR
The practice of Assisted Human Reproduction (AHR) is totally unregulated in Ireland and the rights of children conceived using such techniques are frequently disregarded. This violates the commitment to provide protection for all children without discrimination on grounds of parentage or other conditions.

The recently enacted Children and Family Relationships Act gives precedence to the desires of adults over the rights of children. The fact that a child has a genetic link to both a father and a mother, and that this may be of great significance to the child in later life, is inadequately recognised. Children conceived using donated gametes are given only a qualified and defeasible right to know who their genetic parents are, and only after they reach the age of 18.

The various forms of AHR disrespect the dignity of children by reducing them to commodities, to products subject to contract law and to the desires and demands of the commissioning adults. Prospective parents choose what they consider to be the optimum embryo(s) from among a catalogue of alternatives and contract with a third party to have those embryos implanted in a womb.

Since embryonic children are treated as products rather than as persons, a eugenic, "quality control", mindset naturally follows. "Unfit" embryos are usually either discarded, experimented upon or aborted. Their rights are ignored.

Human embryos created for AHR are frequently frozen and stored in case they are wanted for future use. They may spend years in "concentration cans" before being given the chance to be implanted in a womb and grow. Very often these frozen embryos will never even be given such a chance, and will end up being discarded and left to die. Those who commissioned them may decide that they

no longer want them, that they are unwilling to pay the storage fees, or they may die or otherwise lose contact with the facility where the embryos are stored.

Since the children are viewed as products, they are also seen as the object of adults' desires. Hence AHR operates on the faulty basis that if one can afford the relevant payment there is such a thing as a "right to have a child", just as there is a "right" to have a car or holiday or any other "thing".

At the heart of the state's approach to this issue is an attitude that favours adult preferences over the best interests of the child. This is evident from the fact that it ignores a child's right to a mother and father.

Issue: The new law disregards a child's right to a mother and father.

Article 13

Education
States Parties to the Covenant undertake to have respect for the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions.

Reflecting the religious make-up of the Irish population, a large majority of Irish schools, particularly in the primary sector, are denominational, and the vast majority of these are Catholic. In recent years efforts have been made to expand the range of school patrons to ensure that parents who wish have the option to send their children to a non-denominational school. Some of the government's policies in this respect however, pay insufficient regard to the rights of parents who *do* want a "religious and moral education [for] their children in conformity with their own convictions" where those convictions would lead them to choose a denominational school.

Specifically, Catholic parents who wish their children to receive a distinctively and authentically Catholic education have the right to do so, and that the state has a duty to vindicate and support that right.

In seeking to promote inclusivity in the education system, the state has appeared to support proposals that would deny denominational schools the right to maintain their ethos, as they see fit. Denominational schools are already inclusive and welcoming of pupils from many diverse backgrounds (religious, social, and ethnic). This inclusivity is achieved without diluting or undermining the characteristics that make denominational schools distinctive.

The Covenant recognises that denominational schools have a right to maintain a distinct and definite religious ethos.

The ethos of denominational schools that are not divested by their current patrons must be guaranteed and protected.

Christian schools, for example, should not be required to display non-Christian symbols, to celebrate non-Christian festivals, or to adapt hymns and prayers to accommodate non-Christian beliefs.

The government also proposes to repeal section 37 of the Employment Equality Act 1998 which safeguards the right of denominational schools to protect their distinctive ethos. No evidence has been presented to suggest that section 37 is being abused or that schools rely upon it to engage in unjust discrimination.

Rule 68 of the Rules for National Schools protects the denominational character of a school and underpins the legal right and responsibility of patrons to uphold and foster a characteristic spirit or ethos in accordance with the school's patronage. It also rightly recognises the the distinctive nature of religious education, which in denominational schools is privileged in the day-to-day life of the school.

The Minister for Education is considering amending Rule 68. This should be done in such a way as to avoid infringing on the rights of denominational schools and parents who wish to choose such schools for their children.

If a Catholic school cannot fulfil what is described in the existing Rule 68 as the primary duty of an educator then it would cease to be a Catholic school, and arguably, a school at all in any meaningful sense.

A denominational school is entitled to proceed from a religious starting point, which from the state's point of view must be viewed as being equally as valid as that of the secularist. Otherwise, the state has already improperly adopted and is in fact proceeding on the basis of a secularist truth-claim.

Issue: In addressing the legitimate needs and desires of parents who want a non-denominational education for their children, the state needs to do more to safeguard the rights of parents who do want a denominational education and the rights of denominational schools to maintain their distinctive ethos.

PART 3: OBJECTION TO QUESTION 23 IN LIST OF ISSUES

No Right to Abortion Under CESCR

There is no recognised international right to abortion. Neither the CESCR nor any other international human rights treaty mentions abortion, nor is there any customary norm of international law that prohibits a country from restricting and criminalising abortion. [1] As authoritative interpretations of what international treaties mean can only be made by States Parties to a treaty

[1] *See generally* The San Jose Articles: Abortion and the Unborn Child in International Law (an expert statement on this issue), available at http://www.sanjosearticles.com/; Tozzi, P., "International Law and the Right to Abortion", International Organizations Law Group, available at http://www.c-fam.org/docLib/20100420_Intern._Law_FINAL.pdf

collectively, treaty bodies that seek to pressure Ireland to change its abortion laws act in an *ultra vires* manner.

Documents such as the CESCR must be interpreted according to the rules of treaty interpretation, as developed by the Vienna Convention on the Law of Treaties (VCLT). The primary rule of interpretation of a treaty is the "ordinary meaning rule" of VCLT article 31 (1):

> 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 light of its object or purpose.[2]

The VCLT makes clear that where an interpretation of the text is reached under the ordinary meaning rule, legislative records are to be used only to *confirm* that reading. Preparatory work or legislative history is only to be used to interpret the meaning of a text where it is impossible to arrive at an interpretation under the ordinary meaning rule.[3]

The Universal Declaration of Human Rights (UDHR) is the foundational document for international human rights law. It was adopted in 1948, but was codified into law with the adoption of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR)[4].

The UDHR is only a declaratory document, which according to its preamble, provides "a common understanding" of the human rights that Member States pledged to promote and protect in the UN Charter. While the UDHR is not a binding treaty, some of its provisions are widely accepted as being part of customary international law, while many are not. While legal commentators differ on how many of the provisions of the UDHR should be considered customary international law, there is a broad consensus that at least the following prohibitions in the UDHR (and their implicated rights) are part of customary international law: genocide; slavery or the slave trade; summary execution; disappearance; torture or cruel, inhuman, or degrading treatment or punishment; prolonged arbitrary detention; and systematic racial discrimination. [5]

The very first line of the preamble of the UDHR states that:

> recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world

Additionally, Article 6 of the UDHR states, "Everyone has the right to recognition everywhere as a person before the law."

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[2] Vienna Convention on the Law of Treaties, 1155 UNTS 331 (1969).
[3] *See* VCLT article 32.
[4] Both the ICCPR and the ICESCR were adopted by the United Nations General Assembly in 1966. The ICCPR and ICESCR each entered into force in 1976.
[5] *See* Restatement (Third) of the Foreign Rel. Law of the U.S. (1987) § 702, cmt. a.

A sensible, good faith interpretation of this language would be that all members of the human family (in other words, all human beings, including unborn children) have equal and inalienable rights, which include the right to life. In fact, this is precisely the conception of the American Convention on Human Rights (ADHR), which was adopted just before the UDHR and was very influential on its drafting. Article 6 of the ADHR provides for the Right to Life, and states, "[t]his right shall be protected by law and, in general, from the moment of conception." Most of the States Parties to the ADHR were (like Ireland) Catholic nations that brought this conception of the human person (that the unborn child was a human person from conception whose right to life was to be fully protected) to the drafting of the UDHR.

Three arguments against this interpretation can be made. First, that the UDHR is a declaratory, or aspirational document, and not a binding treaty. Second, that the preamble of a document is not operative, but should only be used to confirm an interpretation drawn from the operative body of the document. Finally, it could be argued that Article 1 of the UDHR could be interpreted to grant rights to human beings only from birth.

To respond to these arguments, it is true that the UDHR is not a binding treaty, and only an aspirational document. Further, it is true that a preamble does not create rights, but should be used for the purpose of guiding the treaty's interpretation. In this case, though, the preamble can be used to confirm the interpretation of Article 6 that indeed "everyone" applies to all members of the human family, and not just those who have been born.

As to the third argument, Article 1 of the UDHR states:

> All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

It should first be noted that Article 1 is not as inclusive in its language as the preamble or Article 6. Note that the first sentence does not actually define what members are included as human beings, but merely states that those that are born are free and equal in dignity and rights. At the time of adoption of the UDHR in 1948, nearly every country in the world had complete prohibitions on abortion. There is no purpose to having abortion laws unless a country believes that the unborn child is deserving of at least some protection before birth. This protection could only be interpreted as protecting the right to life on the part of the unborn child, and a corresponding obligation by the government to protect that right. If the unborn child possessed no rights at all, then there would be no purpose to any abortion laws.

As the UDHR is only a declaratory or aspirational document, it is more instructive in making a definitive interpretation on this issue to examine how it was codified into international law, which was accomplished by the adoption of

the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights.

The International Covenant on Civil and Political Rights entered into force in 1971.[6] The preamble of the ICCPR, like the UDHR, speaks of the "rights of all members of the human family" and says that "these rights derive from the inherent dignity of the human person". The relevant article to this discussion is Article 6 - The Right to Life, and two paragraphs of that article bear mentioning:

> Article 6(1): Every human being has the inherent right to life
>
> Article 6(5): Sentence of death shall not be imposed for crimes committed by persons below the age of eighteen years of age and *shall not be carried out on pregnant women*. (Emphasis added).

That Article 6 provides for human rights for the unborn child is confirmed by the good faith reading of the following commentator:

> The ICCPR not only protects human beings during the pre-natal period of life under paragraph (5), it protects them as *holders* of human rights. The provision must be read in context… paragraph (5) is a particularised application of that right [to life] to children in the pre-natal period when the mother is facing the death penalty. ICCPR article 6(5) implicitly recognises that the right-holder is the new being that has come into existence at conception. Paragraph (5) recognises a human right, and the right is held by the child.[7]

Using the ordinary meaning rule to interpret the ICCPR, unborn children are members of the human family as provided in the preamble, a conclusion that is supported by the implicit right to life of the unborn child under paragraph 5 of Article 6.[8] Unlike the UDHR, there is no ambiguity in the article on the right to life; here it simply states that every human being is entitled to that right. Further confirmation of this interpretation is found in the fact that a majority of States Parties to the ICCPR at the time of its adoption in 1971 had laws that prohibited abortion in all cases, thereby affirming an unqualified right to life for the unborn child.

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[6] The ICCPR was opened for signature in 1966 and entered into force on March 23, 1971.

[7] Ambramson, B., "Violence Against Babies: Protection of Pre- and Post-Natal Children Under the Framework of the Convention on the Rights of the Child", p. 78-79, World Family Policy Center, 2006

[8] This is also the interpretation of dozens of international experts who signed The San Jose Articles, *supra* note 1. By first establishing the humanity of the unborn child, they conclude that being a human being, he is part of the human family and entitled to all of the protections as recognised in the UDHR, ICCPR, and other international instruments.

Nevertheless, the Human Rights Committee, the treaty monitoring body tasked with overseeing compliance with the ICCPR, in its 2008 concluding observations, expressed "concern regarding the highly restrictive circumstances under which women can lawfully have an abortion." To remedy this, the Committee suggested that Ireland "should bring its abortion laws into line with the Covenant."

The International Covenant on Economic, Social, and Cultural Rights does not involve the right to life and has no mention of abortion.[9] Any argument that an economic, social, or cultural right of a pregnant mother should supersede the right to life of the unborn child reveals a fundamental misunderstanding of the priorities of human rights.

The Convention on the Rights of the Child[10] is one of the newest of the major international human rights treaties, and provides the most explicit protection for the rights of the unborn child. The ninth paragraph of the preamble of the CRC states:

> *Bearing in mind* that, as indicated in the [1959 United Nations] 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.

Article 1 of the CRC states:

> For the purposes of this Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.

When Article 1 and the ninth preambular paragraph are read together in context and the ordinary meaning rule of the VCLT applied, the logical interpretation is that the unborn child is included as a human being under the CRC.[11] A few further points will confirm this more clearly.

Article 24 of the CRC covers the right to health of the child, and reads in part:

> 1. States Parties recognise the *right* of the child to the enjoyment of the highest attainable standard of health…
>
> 2. States Parties shall pursue full implementation of *this right* and, in particular, shall take appropriate measures:…
>
> (d) To ensure appropriate *pre-natal*… care for mothers. (Emphasis added.)

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[9] The Convention was open for signature in 1966 and entered into force January 3, 1976.

[10] *Convention on the Rights of the Child*, entered into force September 2, 1990.

[11] For a comprehensive, nine-point legal analysis that confirms this interpretation, *see* Abramson, *supra* note 8.

This article obligates the State to ensure pre-natal care, which is included as a component to the right to health of the *child*. Since pre-natal care by definition only applies before birth, children prior to birth have rights under the CRC.

Under the VCLT, we can use the legislative history to confirm whether this interpretation is accurate. In 1980, the UN Commission on Human Rights established a working group to draft what was to become the CRC. This working group adopted the revised 1979 Polish draft as its basic working document. Article 1 of this draft read, "According to the present Convention a child is every human being *from the moment of his birth…*" (Emphasis added). Even more important to this discussion is the fact that this original draft expressly excluded all references to the unborn child as a right-holder, such as the one listed above in the preamble and Article 24. So over the course of the negotiations, the Convention went from excluding all references to rights for the unborn to explicitly including them in several places in the final version.[12]

There is much confusion in the human rights literature concerning what institutions or subjects have authority to interpret international treaties. Many human rights activists, particularly pro-abortion activists, advocate for the position that definitive interpretation of international human rights treaties is a matter for treaty compliance committees, judges, or other non-State actors. The reality is that it is ultimately for the States Parties *collectively* to determine the interpretation of what the rights in a treaty mean, and how they are to be weighed when there is a conflict between them.[13]

This rule was confirmed by several experts during the first session of the Committee on the Rights of the Child. According to Youri Kolosov, a professor of international law and a member of the initial Committee, (who has also served on other treaty monitoring committees), "the rule [is] that only States parties [are] entitled to give a formal interpretation of the Convention."[14] During this same session, another member of the Committee noted that "the Committee was not empowered to interpret the provisions of the Convention."[15] In this context, both members of the committee meant that while a treaty compliance committee has been given some right to interpret the text of a treaty in order to conduct a

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[12] *Supra* note 8, at 168-169: "The delegates made three important decisions in subsequent meetings that changed the draft text. The first occurred later in the 1980 session when the exclusionary "from the moment of his birth" clause was deleted… making draft articles 1 and 13 [right to health] coincide. The second took place in the last session, in 1989, when the delegates added the "before birth" language to the preamble. The third decision was to more expressly extend the child's right to care to the entire pre-natal period, using the more legalistic language as contained in the rest of the convention, and this change took place in the last session."

[13] *Cf.* Joyner, C.C., *International Law in the 21st Century*, Rowman & Littlefield, 2005, p. 114: "In interpreting a treaty text, the task becomes to ascertain what the text means to the parties collectively…"

[14] UN Doc. CRC/C/1991/SR. 14 (October 9, 1991), at para. 28

[15] Marta Santos Pais, *Id.,* at para. 29

dialogue with States, only States Parties have the authority to make an official interpretation that is *binding* on the States Parties.

Finally, as has been stated previously, the best tool to interpret how States Parties understand their obligations under human rights treaties is to look at their relevant domestic laws that cover the rights in a specific treaty. In the case of the unborn child, nearly all States Parties to all of the major human rights treaties offer at least some protection to the right to life of the unborn via their abortion laws, and a majority of states offer significant or full protection to the right to life of the unborn.

The treaty bodies that oversee the monitoring of human rights treaties were never given the power to issue authoritative or binding interpretations of the treaties, which is reserved to the states parties collectively.

A review of the treaty body mandates, and the treaty bodies' early exercise of those mandates, shows they have the following limited powers:

> 1) to monitor the periodic reports of States Parties
> 2) to honour States Parties' requests to send a delegation during the consideration of their State Party's periodic report
> 3) to issue summaries of States Parties' compliance in treaty body annual reports and
> 4) to issue collective, and non-binding, and non-critical comments, suggestions, and recommendations on States Parties' periodic reports.

These limited powers reflect a good faith interpretation of the texts of the treaties.[16]

In fact, States Parties have made numerous statements regarding their stance that general comments are not legally binding, and were not contemplated to be legally binding when treaties were negotiated. None of the statements made by States Parties concerning this issue have claimed that the general comments are binding. According to Article 31(3)(b) of the VCLT, this subsequent unanimous practice informs the context of the treaty.[17] Finally, many prominent

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[16] *See* Opsahl, T., The Human Rights Committee, in *The United Nations and Human Rights: A Critical Appraisal* 369,407-8 (Philip Alston ed., Clarendon Press, Oxford 1992) (arguing that many HRC members understood their role as cooperating with States Parties, and they "strongly oppose[d] the idea that the [HRC] should criticise individual States Parties or determine that they do not fulfill their obligations to implement the [International Covenant on Civil and Political Rights].").

[17] *See e.g., Report of the Human Rights Committee*, 50th Sess., Supp. No. 40, Annex VI, Observations of States Parties Under Article 40, Paragraph 5, of the Covenant, at 135, U.N. Doc.A/50/40 (Oct. 5, 1995) ("The United Kingdom is of course aware that the General Comments adopted by the [Human Rights] Committee are not legally binding."). See also the United States statements that the ICCPR "does not impose on States Parties an obligation to

contemporary proponents for broad treaty body power have conceded repeatedly that the decisions, observations, or recommendations of treaty bodies lack any binding authority, including Michael O'Flaherty, the primary author of the *Yogyakarta Principles.*[18]

Perhaps the most widely accepted definition of customary international law is a rule of international law that "results from a general and consistent practice of states followed by them from a sense of legal obligation."[19] Article 38 of the Statute of the International Court of Justice, a Court established in the United Nations Charter, states that the Court shall apply "international custom, as evidence of a general practice accepted as law".

International custom has three main components: general (not absolute) uniformity and consistency, generality (not necessarily universality) of practice, and a basis for finding that the practice in question has gone beyond mere usage and taken on the form of an obligation.

According to a 2011 report by the Center for Reproductive Rights (CRR), an American abortion advocacy group, 126 countries have restrictive abortion laws, with only 73 countries having liberal abortion laws.[20] Breaking this report down further, 68 countries either completely restrict abortion, or only allow it to save a mother's life. A further 58 countries restrict abortion, excepting to protect the health or save the life of the mother. 15 countries allow abortion for various socioeconomic reasons. Finally, the report lists 58 countries that permit abortion without restriction to reason. It should be noted that this number appears

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give effect to the [Human Rights] Committee's interpretations or confer on the Committee the power to render definitive or binding interpretations" of the ICCPR. *Id* at 131. The "Committee lacks the authority to render binding interpretations or judgments," and the "drafters of the Covenant could have given the Committee this role but deliberately chose not to do so." *Id*.

[18] *See*, *e.g.*, Nowak, M., 'The Need for a World Court of Human Rights' in *Human Rights Law Review* 7:1, 252 (2007) (noting that treaty bodies issue "non-binding decisions on individual complaints as well as…concluding observations and recommendations relating to the State reporting and inquiry procedures."); O'Flaherty, M., and Fisher, J., 'Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles' in *Human Rights Law Review* 8:2, 215 (2008) ("Concluding Observations have a non-binding and flexible nature."); Zampas, C., & Gher, J.M., 'Abortion as a Human Right—International and Regional Standards' in *Human Rights Law Review* 8:2, 253 (2008) (noting that treaty bodies "are not judicial bodies and their Concluding Observations are not legally binding").

[19] Restatement of the Foreign Relations Law of the United States (Third) (1987) § 102(2)

[20] CRR describes itself as "a nonprofit legal advocacy organisation dedicated to promoting and defending women's reproductive rights worldwide." The report is available at http://reproductiverights.org/sites/crr.civicactions.net/files/documents/AbortionMap_2011.pdf

inflated, especially as it has the qualification that these countries have "gestational limits of 12 weeks unless otherwise indicated". So in fact, even by the count of pro-abortion advocates, nearly every country has some significant restriction on abortion. While there is clearly no international consensus on there being a "right" to abortion, there does seem to be an almost universal consensus that unborn life should be protected in some way.

Between 1995 and 2010, the CEDAW Committee pressured no fewer than 83 countries to liberalise their abortion laws.[21] This is nearly half of all of the signatories to the treaty, and clearly shows that by their subsequent state practice, dozens of countries did not interpret the treaty to include abortion or feel obligated to change their laws based on their ratification of the treaty. That a treaty body would insist that so many countries needed to change their laws shows a lack of consensus in this area to begin with. Therefore, based just on statistics of pro-abortion advocacy groups and the CEDAW Committee, it is clear that there is no customary international norm or consensus in the area of abortion.

The unborn child is a living human being from the moment of conception, and is entitled to all of the same rights as other members of the human family. The first among these is the right to life, the most important right, without which no other rights matter. An analysis of the Constitution of Ireland and international law confirm that the unborn child, by being granted explicit or implicit protections, is a rights-holder that is to be treated equally under the law as any other human being.

Any attempt further to "liberalise" abortion in Ireland by amending the law "to provide for exceptions, including in cases of rape, incest and risks to the health of the mother, *inter alia*," as the Committee suggests, is gravely discriminatory to those unborn children that would be affected, for it would effectively treat them as non-persons under the law, and violate their right to life, as guaranteed by Article 40(3) of the Irish Constitution.

[21] Jacobson, T., "CEDAW Committee Rulings Pressuring 83 Party Nations to Legalize Abortion", available at http://www.c-fam.org/docLib/20101022_CEDAWAbortionRulings95-2010.pdf