

Alternative Report Concerning Honduras

For Consideration by the Human Rights Committee at its 120th Session

Submitted by:

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and

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INTRODUCTION

This report is jointly submitted by the Center for Family and Human Rights (C-Fam)¹ and Alianza Por La Familia/ Comité Provida Honduras (Alianza Por La Familia)². C-Fam is a New York based organization accredited by the United Nations' Economic and Social Council and registered at the Organization of the American States, which researches and publishes writings on international law and policy. Alianza Por La Familia, a Honduran NGO, works for the defense of the family and for the national promotion and defense of human dignity from conception to natural death.

C-Fam and Alianza Por La Familia are grateful for the opportunity to participate in the dialogue between the State Party and the Human Rights Committee (henceforth "the committee"), particularly as the International Covenant on Civil and Political Rights (henceforth "the Covenant") does not foresee any civil society participation or other non-governmental involvement in the State Parties' reporting process to the committee established in Article 40 of the Covenant.

As a matter of law, State Parties fulfill their obligation to report under Article 40 once they submit their reports to the committee. Because of this, C-Fam and Alianza Por La Familia note the decision of the State Party to engage the committee beyond what the Covenant foresees and are grateful for the opportunity for this submission and for the State Party's gesture of permitting civil society's participation in the dialogue.

C-Fam and Alianza Por La Familia wish to highlight some of the elements included in the committee's document titled "List of Issues" (UNDOC: CCPR/C/HND/Q/2) due to their specific nature and related competencies. This report highlights how the State Party's laws and policies pertaining to the protection of life and of the family are consistent with the Covenant.

The Vienna Convention on the Law of Treaties (VCLT)—the most authoritative interpretative canon of international law widely considered a part of customary international law—guides our interpretation of the treaty. According to the VCLT (Article 31), treaties must be interpreted in "good faith" according to the "ordinary" meaning of the terms of the treaty, as they were understood at the time of the treaty's negotiation and its overall "object and purpose." We also interpret the Covenant so that the obligations it contains are consistent--where possible--with the obligations of the State Party in other human rights treaties and the Universal Declaration of Human Rights.

SUMMARY

The State Report (UNDOC: CCPR/C/HND/Q/2) documents the efforts of the state to progressively implement the Covenant. This submission will highlight actions undertaken by the State Party to protect children in the womb as well as measures to protect the family.

The List of Issues document prepared by the committee includes references to controversial policies that are not required by the Covenant. If implemented, such policies may jeopardize children's right to life and their right to know and to be cared for by his/her mother and father. They may even endanger their health and wellbeing.

In particular, the committee's suggestion that the state permit the destruction of innocent human beings in their mother's womb through abortion, as well as suggestions concerning relations

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between individuals who identify as lesbian, gay, bisexual, transsexual, or otherwise (LGBT), which include the conferral of matrimonial or quasi-matrimonial rights and adoption rights on relations between individuals of the same sex, are matters that are not addressed in the Covenant's text and were never contemplated by its framers. They were not part of any domestic legal framework at the time the Covenant was negotiated, and the *travaux preparatoire* of the Covenant do not contain any traces that States wished to establish any obligations regarding such matters.

Article 6 of the Covenant enshrines a presumption in favor of protecting human life in the womb. The same presumption can be found across a multiplicity of human rights' treaties, and it is made explicit in the Convention on the Rights of the Child, which extends the protections of the covenant to children "before as well as after birth" (CRC Preamble). The State Party should be commended for prescribing criminal penalties for the destruction of innocent human beings in their mother's womb through abortion.

Also, the State Party protects children after birth. As detailed in the State Party Report, multiple instruments and resources were recently put in place to socially and economically empower the most vulnerable children, including through policies in the field of education, family reunification, and the prevention of child pregnancies (UNDOC: CCPR/C/HND/2, paras 107 – 123).

The List of Issues document suggested that the State Party holds an obligation to sanction relations between individuals of the same sex, including granting adoption rights and other special rights based on the protection of subjective sexual preference and sexual behavior. But no such obligation can be gleaned from the Covenant's text or its *travaux preparatoire*.

While the State Party legally enshrined the notion of "sexual orientation" in law and took extraordinary actions to address violent acts against individuals who identify as LGBT even beyond other forms of violence (UNDOC: CCPR/C/HND/2, paras. 100 – 102), it showed commendable caution by not assigning any new additional rights to individuals who identify as LGBT based on their sexual preferences and behavior, such as the right to marry a person of the same sex, or legal protections and privileges for relations between individuals of the same sex on par with the protections reserved for the family by international law.

The State Party documented its efforts to protect the family, defined by the Covenant as "the natural and fundamental group unit of society" and "entitled to protection by society and the State" (ICCPR, Article 23). Consistent with this, the State Party not only recognized the "right of men and women of marriageable age to marry and to found a family" enshrined in the Covenant, but it also promotes marriage and celebrates the family (UNDOC: CCPR/C/HND/2, para. 106, "Measures to Promote marriage").

The List of Issues document refers to prostitution as "sex work" and calls on the State Party to prohibit discrimination against "sex-workers." It should be stressed that the Covenant does not include any obligation to make prostitution legal. By referencing victims of prostitution as "sex-workers" the List of Issue suggests that proscribing a practice proved detrimental to human dignity and dangerous for the health and wellbeing of individuals and society is not consistent with the Covenant, however, this is not true. An obligation to prescribe prostitution is much easier to infer from the Covenant.

We ask that if the committee chooses to issue any further recommendations to the State Party, it do so in a way consistent with the binding obligations negotiated and agreed by Sovereign States in the Covenant.

I. THE RIGHT TO LIFE

The committee requested information on the “measures taken to bring the legislation on abortion into line with the Covenant, including addressing the criminalization of voluntary termination of pregnancy (CCPR/C/HND/Q/2, para. 9).” It cited its own previous concluding observations (CCPR/C/HND/CO/1, para. 8) rather than the text of the treaty or its *travaux préparatoire*.

a. The Covenant contains a presumption in favor of the right to life for children in the womb, even if it does not specify how it should be positively implemented by State Parties.

The Covenant nowhere excludes the embryo, the fetus, the child in the womb, the child after birth, adults, the elderly, or any other human being at any stage of life from the protections of the Covenant.

The Covenant affirms in its Preamble the “inherent dignity” and the “equal and inalienable rights of all members of the human family.” The use of the phrase “all members of the human family” was deliberately chosen to be as inclusive as possible. If dignity is “inherent” then it cannot depend upon characteristics such as the developmental stage or health of a child in the womb.

The *travaux préparatoire* of the Covenant show that already in the earliest stages in 1947, the drafters of the Covenant rejected a positive obligation to permit abortion in cases of rape, fetal disability, or for therapeutic reasons. At that time, member states complained that this violated the right to life.³ Even that rejected proposal did not exclude children in the womb from the protections of the Covenant, but rather carved out a derogation from the right to life for children in limited circumstances.

A proposal to include a positive obligation to protect children in the womb from the moment of conception—as is the case with the American Convention on Human Rights—was excluded from a draft of Article 6 ten years later in 1957. However, this cannot be interpreted as excluding children in the womb from the right to life, since at the same time there was a universal agreement to forbid the application of the death penalty to pregnant women.⁴ Indeed, while many delegates expressed that the right to life applied to children in the womb during negotiations, not a single delegation at any stage in the discussions of Article 6 denied that the child in the womb should be entitled to the Covenant’s protections.

The proposal likely failed because of the technical difficulty of articulating the right to life in the prenatal phase, especially in light of the diverse derogations that some negotiating delegations allowed at the time.⁵ But there is no indication it was omitted because the right to life was not understood to apply to children in the womb. The omission of the proposal should be interpreted as leaving the positive definition and application of the right to life in the prenatal phase to domestic legislation due to the divergence of views during the Covenant’s negotiation without excluding children in the womb from the right to life.⁶

Finally, the Covenant’s provisions should be read in a manner consistent with the obligations of the State Party under:

³ Finegan, Thomas, *International Human Rights Law and the "Unborn": Texts and Travaux Préparatoires*, Tulane Journal of International & Comparative Law, Winter 2016, Vol. 25 Issue 1, p. 13.

⁴ *Ibid.*, p. 14-23 (on the *travaux préparatoire* for the Covenant).

⁵ *Ibid.*, p. 15.

⁶ *Ibid.*, p. 20 (explaining that no delegate objected to the paragraph excluding the application of the death penalty to pregnant mothers on the ground that it protected children in the womb).

- The Convention on the Rights of the Child, which recognizes the right of the child to protection “before as well as after birth” (Preamble), as well as;
- The American Convention on Human Rights, which literally protects life “from the moment of conception” (Article 4.1). Honduras signed this Convention in 1969, and ratified it in 1977.

Experts in international law and health reject claims that abortion is a human right under any circumstance. This is demonstrated in the expert document “The San José Articles,” which describes UN entities’ actions that present abortion as a right as unlawful and *ultra vires*.⁷ Such acts are incapable of contributing to the establishment of any new obligations on States according to the legal principle *ex injuria jus non oritur* (unlawful acts cannot give rise to legal obligations).

In its previous concluding observations (UNDOC: CCPR/C/HND/CO/1), the committee expressed “its concern at the unduly restrictive legislation on abortion, particularly in cases where the life of the mother is endangered (Article 6 of the Covenant).” It also recommended that, “The State party should amend its legislation to help women avoid unwanted pregnancies and ensure that women need not resort to clandestine abortions, which could endanger their lives. The State party should also amend its legislation on abortion in order to bring it into line with the Covenant.”

Such a recommendation cannot serve as legal basis for a right to abortion. Article 40 of the Covenant provides that the committee “shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties.” Such comments are neither described as binding nor authoritative in the Covenant or its *travaux préparatoire*.

In fact, no United Nations treaty authorizes a treaty body to issue interpretations of the treaty that are binding on States Parties, including the 2016 concluding observations of the Committee against Torture⁸, and of the Committee on the Elimination of Discrimination against Women⁹, that similarly suggested the State Party should decriminalize abortion in “certain circumstances.”

b. Honduran law protects the right to life of children in the womb.

The Constitution of the Republic of Honduras, Article 65, states that “the right to life is inviolable.” Article 67 provides: “The unborn shall be considered as born for all rights accorded within the limits established by the law.”

As recently explained by Honduran National Commissioner on Human Rights, Roberto Herrera Cáceres, the State Party’s Constitution “protects the unborn, considering him/her as already born for

⁷ “San José Articles. Abortion and the Unborn Child in International Law”. The first five articles are especially relevant in this context: “As a matter of scientific fact a new human life begins at conception.” (Article 1); “Each human life is a continuum that begins at conception and advances in stages until death. Science gives different names to these stages, including zygote, blastocyst, embryo, fetus, infant, child, adolescent and adult. This does not change the scientific consensus that at all points of development each individual is a living member of the human species.” (Article 2); “From conception each unborn child is by nature a human being.” (Article 3); “All human beings, as members of the human family, are entitled to recognition of their inherent dignity and to protection of their inalienable human rights. This is recognized in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and other international instruments.” (Article 4). Finally, “There exists no right to abortion under international law, either by way of treaty obligation or under customary international law. No United Nations treaty can accurately be cited as establishing or recognizing a right to abortion.” (Article 5). Each article is accompanied by an explanatory footnote. The articles and footnotes are available in their entirety at: <http://sanjosearticles.com/>

⁸ UNDOC: CAT/C/HND/CO/2, para. 47 and 48.

⁹ UNDOC: CEDAW/C/HND/CO/7-8, in part. para. 37, lett. a, b, c. para.

any favorable legal effect.”¹⁰ Mr. Cáceres’ comments were occasioned by the recently failed attempts to remove abortion from the new criminal code¹¹.

The criminal code presently in force at the level of the State Party protects life from conception in all circumstances. Articles 126 – 132 define abortion as the death of a human being at any of his/her developmental stage between conception and birth, and these articles sentence those who procure an abortion to three to ten years in prison. The maximum sentence for a mother who voluntarily terminates the life of her child in the womb through procured abortion is six years.

A similar regime is contained in the new criminal code.

In May 2017, the Honduran College of Physicians expressed its support for the continued prohibition of abortion¹². “There is no reason capable of justifying the intentional elimination of a human being who still has not manifested all the potential benefit he/she may bring to himself, to his/her family, and to society – present and future – as a whole,” the doctors declared. Honduran doctors condemned any use of medicine not directed at “promoting, caring for, and protecting life,” “from the moment of conception until death.”

The physician’s declaration left no room for arguments that abortion might be necessary in certain circumstances, including where the life of the mother may be at risk in the course of a pregnancy because of the “vast present knowledge of genetic impairments and of prenatal development.”

This declaration also remarked that from a scientific perspective the life of an individual human person begins at conception: when 23 single chromosomes from an egg combine with 23 from a sperm and a unique individual member of the human species begins their existence. To be consistent and effective, the fundamental human rights enshrined in international law should apply equally to all individuals from the moment of conception.

According to the doctors, human life and all its expressions must be “recognized and valued as universal goods.” They warned against the modern misuse of science by saying, “Not all that is possible is beneficial for either the individual, his environment, or society.”

From a legal perspective, not all that is possible is a human right.

According to the College of Physicians of the State Party, the new criminal code should not continue criminalizing abortion in all circumstances, and it should explicitly prohibit the following “other attacks on human life at its early and prenatal stages:” “b. genetic manipulation; c. attacks on human life in its early postnatal stages; d. attacks on suffering human life; e. attacks on the final stages of human life; f. attacks on the genetic heritage that defines and typifies individuals of the human species, and that is considered a universal good; g. attacks on the natural environment surrounding the development of individuals of the human species.”¹³

¹⁰ See: Derecho a la vida/aborto: Ombudsman recomienda tomar en cuenta el derecho internacional así como criterios y controles científicos, June 3, 2016, available at: <http://conadeh.hn/derecho-a-la-vida-aborto-ombudsman-recomienda-tomar-en-cuenta-el-derecho-internacion-asi-como-criterios-y-controles-cientificos/>.

¹¹ See: Orlandi M., “UN Tries and Fails to Convince Honduras to Legalize Abortion, May 2016, available at: https://c-fam.org/friday_fax/un-tries-fails-convince-honduras-legalize-abortion/.

¹² Colegio Médico de Honduras, “Posicionamiento del Colegio Médico ante la despenalización del aborto,” May 9, 2017, accessible at: <http://www.colegiomedico.hn/comunicados.html>.

¹³ *Ibid.*, par.1, let. i).

The protection of children in the womb by the State Party is sanctioned by Article 12 of the Code on Children and Adolescents,¹⁴ which provides that “All human beings have a right to life from the moment of conception.” The code further establishes that “The State shall protect this right by adopting measures necessary for a gestational period, birth, and following development of the person to happen in conditions that are compatible with human dignity.” Abortion does not fit into this provision.

I. THE FAMILY

At paragraph six of the List of Issues document, the committee asks the State Party to provide information on “measures taken to ensure respect for the rights of same-sex couples, and on the steps taken towards the legal recognition of same-sex couples, including with respect to adoption rights.”¹⁵

State Parties to the Covenant can choose to sanction—or not to sanction—relations between individuals of the same sex. Nothing in the Covenant can be construed as an obligation to recognize such unions. Moreover, domestic sanction for such relations cannot result in their entitlement to the singular protections that international human rights law reserves for the family.

Also importantly, State Parties must ensure that if they choose to sanction relations between individuals of the same sex with some legal benefits or privilege, then the legal regime must not infringe upon or undermine the rights of the family or the rights of the child.

a. International law reserves singular protections for the natural family to which relations between individuals of the same sex are not entitled.

As the civil society platform “The Family Articles” states¹⁶, international law and policy defines the family as “the natural and fundamental group unit of society.” As such, it is “entitled to protection by society and the State” and it is a proper subject of human rights. The family is a pre-judicial entity.¹⁷ That is why it is “entitled” to protection by society and the state.¹⁸

¹⁴ Código de la Niñez y la Adolescencia, 1996, Article 12: “Todo ser humano tiene derecho a la vida desde el momento de su concepción. El Estado protegerá este derecho mediante la adopción de las medidas que sean necesarias para que la gestación, el nacimiento y el desarrollo ulterior de la persona se realicen en condiciones compatibles con la dignidad humana.” Following Article 13 consistently demands the State to offer assistance and support to both mother and child, before and after birth (“Corresponde al Estado, por medio de las entidades de Salud Pública, brindarle a la madre y al niño, en las etapas prenatal, natal y postnatal, atención médica especializada y, en caso de necesidad, apoyo alimentario.”)

¹⁵ CCPR/C/HND/Q/2, para. 6.

¹⁶ This section reflects verbatim the civil society platform, THE FAMILY ARTICLES, sponsored by C-Fam, available at www.civilsocietyforthefamily.org.

¹⁷ See Girgis, Sherif and George, Robert and Anderson, Ryan T., What is Marriage? (November 23, 2012). Harvard Journal of Law and Public Policy, Vol. 34, No. 1, pp. 245-287, Winter 2010. Available at SSRN: <http://ssrn.com/abstract=1722155>.

¹⁸ The Universal Declaration of Human Rights (UDHR) defines the family as “the natural and fundamental group unit of society” and declares that it is “entitled to protection by society and the State” UDHR 16. The International Covenant on Civil and Political Rights (ICCPR 23), the International Covenant on Economic, Social, and Cultural Rights (ICESCR 10.1), and the Convention on the Rights of the Child (CRC, Preamble) reflect the UDHR verbatim in their provisions. These binding international norms have not gone unheeded. At least 111 countries have constitutional provisions that echo Article 16 of the UDHR. See World Family Declaration, available at <http://worldfamilydeclaration.org/WFD>. By virtue of these provisions in international law the family is a proper subject of human rights and is a bearer of rights in international human rights law. See Charter of the Rights of the Family, (October 22, 1983), available at: http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_19831022_family-rights_en.html. See also The Family and Human Rights (December 16, 1998), available at:

Article 23 of the Covenant establishes that the family is formed through the union of a man and a woman who exercise their right to freely “marry and found a family.” This can only apply to relations between men and women. It does not apply to relations between individuals of the same sex and other social and legal arrangements between adults that are not equivalent or analogous to the family. Such relations are incapable of constituting a family for purposes of the Covenant. Therefore, relations between individuals of the same sex and other social and legal arrangements that are neither equivalent nor analogous to the family are not entitled to the protections singularly reserved for the family in international law and policy.

The meaning of the provisions of the Covenant and other international instruments regarding the right to marry and found a family is unambiguous. These provisions preclude that they apply to relations between individuals of the same sex because they explicitly refer to men and women and their equality before, during, and after marriage.

International law recognizes and protects the fundamental human right to marry and found a family. The UDHR (Article 16) ties the founding of the family to marriage and affirms that “men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family.

Textually, the UDHR 16 language on the right of *men and women* to marry and found a family mirrored verbatim in the Covenant (Article 23) and the ICESCR (Article 10) predicates that “*they are entitled to equal rights* as to marriage, during marriage, and at its dissolution” (emphasis added). This is reflected in the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW 16), which refers to equality within marriage as between “men and women” and “husband and wife” in the context of the family. The European Convention on Human Rights (ECHR 12) and the Inter-American Convention on Human Rights (IACHR 17) also reflect the language of the UDHR on the right to marry and found a family verbatim.¹⁹

Moreover, it is impossible that UN member states intended these provisions to apply to relations between individuals of the same sex. Even aside from the absence of any reference to such a reading of the provisions of the Covenant in the *travaux préparatoire*, at the time when the Covenant was negotiated, like all UN treaties afterwards with the single exception of the Convention on the Rights of Persons with Disabilities (CRPD), so-called same-sex “marriage”, unions, or any legal status for relations between individuals of the same sex did not exist anywhere in the world. The first nation to give any type of legal status to relations between individuals of the

http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_20001115_family-human-rights_en.html. The outcomes of United Nations conferences have recognized as much. The Programme of Action of the 1994 International Conference on Population and Development, for example, referred to the “rights of families” (UN document A/CONF.171/13, paragraph 5.4). Similarly, the Programme of Action of the 1995 World Summit for Social Development recognized that the family is “entitled to receive comprehensive protection and support” (UN document A/CONF.166/9, paragraph 80).

¹⁹ The European Court of Human Rights has interpreted its provisions on marriage and family—which are identical to those contained in the Universal Declaration of Human Rights and the Covenant—as referring only to the union of a man and a woman. Even though the Court has repeated more than once that relations between individuals of the same sex are entitled to some form of legal recognition it has also specified that States are not required to sanction relations between individuals of the same sex as if they can constitute a family. *See* ECHR, *Chapin and Charpentier v. France*, no. 40183/07 (Judgment (Merits and Just Satisfaction), 9 June 2016. Available at: <http://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-163436%22%5D%7D>). *See also*: von Krempach J.C., “There will be no “Obergefell” Decision at the European Human Rights Court”, June 14, 2016, *Turtle Bay and Beyond*, available online: https://c-fam.org/turtle_bay/will-no-obergefell-decision-european-human-rights-court/. *See also* *Hämäläinen v. Finland*, no. 37359/09, § 71, ECHR 2014; *Schalk and Kopf v. Austria*, no. 30141/04, § 101, ECHR 2010; *Rees v. UK*, no. 9532/81, § 49, ECHR 1986).

same sex was Denmark in 1989. Homosexual marriage never existed in any legal regime until 2002 in the Netherlands.

Moreover, granting social and legal status to relations between individuals of the same sex does not alter the obligations of the State towards the family under the Covenant. It does not entitle such relations to the same benefits and privileges as the family.

b. Honduran law protects the family.

The Constitution of the State Party explicitly protects the family, as the union between a man and a woman.

Article 112, “recognizes the right of a man and a woman, who have the natural quality of such, to marry, as well as the legal equality of spouses.” The article continues, “The only valid marriage is the one officiated in front of a competent public authority, and in compliance with the requirements provided by the Law. *De facto* unions are recognized between individuals who could also marry.”

Article 112 further states: “Marriage and *de facto* union between individuals of the same sex are prohibited. Same sex marriages, or *de facto* unions officiated or recognized abroad are not valid in Honduras.” This amendment was adopted as recently as 2004, to preclude any distortion of the text of the law to read into it homosexual marriage or other legal recognition for relations between individuals of the same sex on par with the family.²⁰

c. There is no right to adopt under the Covenant.

Even if State Parties decided to introduce legal regimes granting certain social and legal benefits to relations between individuals of the same sex, the same individuals are not automatically entitled to adopt children.

A right to adopt for relations between individuals of the same sex is not an international human rights obligation of the State Party. Adults, married and unmarried, do not have a *right* to adopt children under the Covenant. This applies equally to individuals who identify as lesbian, gay, bisexual, transsexual, or otherwise (LGBT). Such a right is not consistent with the Covenant and the State Party’s obligations under the Convention on the Rights of the Child and other binding human rights instruments. Adoption cannot be considered a benefit bestowed by the government to which all individuals are equally entitled.

Because of the specific needs and vulnerabilities of children, governments should discriminate between those that are suited and those that are not suited to care for the health and wellbeing of children to ensure their protection. In Honduras, Chapter IV of the Code of the Family regulates adoption. Among other requirements, the adoptive parents must have been married for at least three years to be considered suitable candidates. This is consistent with the explicit provision within the Convention on the Rights of the Child that the family, as “natural environment for the growth and

²⁰ “Se reconoce el derecho del hombre y de la mujer, que tengan la calidad de tales naturalmente, a contraer matrimonio entre si, así como la igualdad jurídica de los cónyuges. Sólo es válido el matrimonio civil celebrado ante funcionario competente y con las condiciones requeridas por la Ley. Se reconoce la unión de hecho entre las personas igualmente capaces para contraer matrimonio. La Ley señalará las condiciones para que surta los efectos del matrimonio. Se prohíbe el matrimonio y la unión de hecho entre personas del mismo sexo. Los matrimonios o uniones de hecho entre personas del mismo sexo celebrados o reconocidos bajo las leyes de otros países no tendrán valides en Honduras.” Constitution of the Republic of Honduras, Article 12, as amended by Decree 176/2004 and ratified by Decree No. 36/2005.

well-being of all its members and particularly children,” should be protected and assisted by the State.²¹

By limiting adoption to proven marriages, the State Party takes care to ensure vulnerable children are not thrust into further situations of instability. The same concerns explain the required “evidence of the suitability” of the prospective parents (at least three), which must be issued by community, religious or governmental authorities from the couple’s place of residence.

The self-evident truth of the benefit of the family—intended as the union between a man and a woman—to its individual members and society at large enshrined in international law is validated by the best available social science and research, which makes use of the most reliable data and widest possible samples, particularly in the case of children.

Children thrive in families formed by the marriage of a man and a woman in a stable and enduring relationship. No other structure or institution delivers the same quality outcomes for children.²² The likelihood of child experiencing school failure, lower levels of education, behavioral problems, drug use, and loneliness increases if a he/she is not raised by their biological parents in a stable family environment. In addition, other negative outcomes for the child include physical, sexual, and emotional abuse.²³

The benefits of the family for individuals and communities are repeated across borders and all segments of society regardless of social and economic status, including among minorities.²⁴

d. Legal recognition for relations between individuals of the same sex or other social and legal arrangements that are neither equivalent nor analogous to the family threaten the rights of the child.

Children have a fundamental human right to know and be cared for by their mother and father under international law. It is the basis for rights of the child in the context of family reunification and adoption (ICCPR, 23, 24, CRC 2, 3, 5, especially 7, 8, 9, 10, 18, 27). It is also tied to the “prior” right of parents to educate children in line with their convictions and the right of the child to a cultural and religious identity (UDHR 26.3, ICCPR 18, CRC 2, 3, 5, 14, 20, 29, 30).

When adoption and stepchild adoption laws give legal guardianship of a child to persons to whom they are not biologically related in the context of so-called same-sex marriages and homosexual unions or other social and legal arrangements that are not equivalent or analogous to the family, children are thrust into situations where their identity is undermined and threatened.

²¹ For more see: “The Family Articles,” in particular note 9, available at: www.civilsocietyforthefamily.org.

²² (Regnerus M., “How different are the adult children of parents who have same-sex relationships? Findings from the New Family Structures Study”. Soc Sci Res. 2012 Jul;41(4):752-70. Findings of this research are also at the website: <http://www.familystructurestudies.com>).

²³ Ibid. Regnerus, M.; *see also* Sullins, Donald Paul, Emotional Problems among Children with Same-Sex Parents: Difference by Definition (January 25, 2015). British Journal of Education, Society and Behavioural Science 7(2):99-120, 2015. Available at SSRN: <http://ssrn.com/abstract=2500537>; and Sullins, Donald Paul, Child Attention-Deficit Hyperactivity Disorder (ADHD) in Same-Sex Parent Families in the United States: Prevalence and Comorbidities (January 21, 2015). British Journal of Medicine & Medical Research 6(10): 987-998, 2015, Article no. BJMMR.2015.275, ISSN: 2231-061. Available at SSRN: <http://ssrn.com/abstract=2558745>.

²⁴ See: Fernando Pliego Carrasco, Tipos de familia y bienestar de niños y adultos: El debate cultural del siglo XXI en 13 países democráticos, Universidad Nacional Autónoma de México, Instituto de Investigaciones Sociales 2013. Findings of this research are also observable at the website: <http://www.tiposdefamilia.com/libro>.

This kind of legal regimen directly threatens and undermines the right of the child to know his/her mother and father. Children are particularly vulnerable physically, intellectually, and emotionally. Such legal regimes may also threaten children's health and wellbeing because of well-known health risks that result from the lifestyles of individuals who identify themselves as LGBT.²⁵

Individuals who identify as lesbian, gay, bisexual, and transsexual suffer from exponentially higher rates of ill health from a host of sexually transmitted infections (STI) and other risks, including substance abuse, depression, and suicide.²⁶ UN agencies and the development community more broadly, including USAID and UNAIDS, recognize the inherent risks of homosexual acts and the homosexual lifestyle generally, but they fail to recommend that individuals change their behavior,²⁷ despite such behavior is not protected by international law and therefore cannot trump sovereign prerogatives.²⁸

e. "Sexual orientation and gender identity" are not categories recognized in binding human rights instruments and States have no obligations to enshrine them as legal categories to prevent unjust discrimination.

State Parties to the Covenant have no obligation to enact laws that give individuals any special benefits or protections on the basis of their sexual preferences and behavior or to sanction an individual's feeling about their gender identity. All human beings possess the same fundamental rights by virtue of their inherent dignity and worth.²⁹

Human rights by definition belong to all people because of their humanity. Individuals who identify as LGBT have no special additional human rights beyond those of other citizens by virtue of their perceived sexual orientation and gender identity or their sexual behavior.

To posit "sexual orientation and gender identity" as categories of non-discrimination would require that subjective sexual preference and their expression enjoy the same level of protection as freedom of religion in international law. This is simply not the case.

International law does not protect unfettered sexual autonomy in the same way it protects religious freedom. Sexual autonomy is only protected by international law in the context of the right to freely marry and found a family³⁰ and the equal right of men and women to decide freely and responsibly on the number and spacing of children.³¹

²⁵ For a comprehensive description of the health risks inherent in LGBT lifestyles and behaviors see the official website of the U.S. Center for Disease Control and Prevention at: <https://www.cdc.gov/lgbthealth/>.

²⁶ O'Leary D, "The Syndemic of AIDS and STDS Among MSM", *Linacre Quarterly*, Volume 81, Issue 1 (February, 2014), pp. 12-37, available at: <http://www.maneyonline.com/doi/full/10.1179/2050854913Y.0000000015>; Beyrer, Chris, et al. "Global epidemiology of HIV infection in men who have sex with men." *The Lancet* 380.9839 (2012): 367-377, available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3805037/>;

²⁷ *Implementing Comprehensive HIV and STI Programmes with Men Who Have Sex with Men, Practical Guidance for Collaborative Interventions* (September 2015), authored by UNFPA, The Global Forum on MSM and HIV, UNDP, UNAIDS, WHO, United States Agency for International Development, the US President's Emergency Plan for AIDS Relief, and the Bill & Melinda Gates Foundation, available at: <http://www.unfpa.org/publications/implementing-comprehensive-hiv-and-sti-programmes-men-who-have-sex-men#sthash.CUITAFmo.dpuf>.

²⁸ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Article 2.7 ("Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII").

²⁹ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Preamble and Article 1.

³⁰ UDHR 16, ICCPR 23 and 24, CESCR 10.

³¹ CEDAW 16.

Sovereign States are free to either permit sodomy as a legitimate exercise of sexual autonomy or prohibit it on moral, health, or other grounds, as more than seventy countries do today. The Convention does not enshrine any obligations in this regard. Nor does it require States to enshrine the notions of “sexual orientation and gender identity” as legal categories of non-discrimination.

While the Covenant recognizes a right to be free of interference in one’s privacy and family,³² this right cannot be understood to encompass unfettered sexual autonomy. At the time these instruments were negotiated and adopted by UN member states many countries outlawed sodomy. Many countries also restricted or penalized other forms of sexual conduct between consenting adults, including adultery and fornication, quite aside from sodomy.

Therefore, the right to privacy and family life cannot include the right of consenting adults to engage in any kind of sexual conduct whatsoever, and can only be understood to protect the exercise of the right of men and women to freely marry and found a family. Neither is there a colorable argument that these categories have been elevated as customary international norms.

There is no consensus among UN member states on the use of the term “sexual orientation and gender identity.” UN declarations and resolutions that mention these categories are all non-binding in nature, and they have never been adopted on a consensual basis.

Moreover, while treaty bodies—including this committee—have stated their support for including “sexual orientation and gender identity” as categories of non-discrimination alongside race and religion, they do not have the power to alter the obligations of State Parties under the Covenant.

f. The Covenant does not contain any obligations to enact “gender identity” laws

In the List of Issues document the committee also requests “information on efforts to adopt a gender identity law.” There is no textual support or any historical record to indicate that State parties ever intended the Covenant to require gender identity laws.

The promotion of this notion is particularly egregious in the context of children because of the interest of the booming transgender industry on supplying millions of children around the world with powerful and expensive treatment and drugs. These drugs will have lasting effects on their health for their entire life. It is especially egregious when one notes the fluidity of the notions of “gender identity.”

In 2016, a special report on sexuality and gender, which resulted from a review of hundreds of scientific articles on lesbian, gay, bisexual, and transsexual (LGBT) health, and combined findings from the biological, psychological, and social sciences, found that there is no scientific support for the widespread notion that persons who experience same-sex attraction or gender dysphoria are “born that way.”³³

According to the authors of the report, Lawrence S. Mayer and Paul R. McHugh of the Johns Hopkins University School of Medicine, there is no scientific support for teaching children that they have a sexual orientation and gender identity that they must discover and act upon in order to fulfill themselves, or that gender identity laws improve the wellbeing of individuals who experience

³² UDHR 17; ICCPR 17.

³³ Lawrence S. Mayer, M.B., M.S., Ph.D. and Paul R. McHugh, M.D., “Sexuality and Gender: Findings from the Biological, Psychological, and Social Sciences,” *The New Atlantis*, Fall 2016, available at: http://www.thenewatlantis.com/docLib/20160819_TNA50SexualityandGender.pdf.

gender dysphoria. McHugh worked for twenty-five years as the psychiatrist-in-chief at the Johns Hopkins Hospital.

Mayer and McHugh highlighted how individuals who identify as LGBT including those experiencing gender dysphoria, report that their perceived sexual orientation and gender identity can and often do change over time, and that biological and genetic factors are widely recognized as unable to account for sexual orientation and gender identity.

Popular notions of sexual orientation and gender identity are constantly expanding, making it harder to define any discrete class of persons. In 2014, Facebook listed fifty-six gender identity categories for its users to choose from when creating their user profiles, including categories like “trans,” “gender fluid,” and “bigender.”³⁴ By 2015, the list reached seventy-one gender options.³⁵

Even pro-LGBT groups are unable to define “sexual orientation and gender identity” in an objective and meaningful way. The American Psychological Association (APA) says sexual orientation and gender identity is a *continuum* of diverse factors like attraction, behavior, identity, and membership in a community and it recognizes that biology and genetics are unable to account for sexual orientation and gender identity.³⁶

It seems hardly appropriate for a largely unknown committee of experts in Geneva to suggest that countries should enact gender identity laws in light of this lack of scientific certainty.

g. The State Party’s actions to protect children in vulnerable situations.

The Universal Declaration of Human Rights and binding international human rights treaties recognize that many children are deprived of their family and must be provided with adequate protection, by providing that “[m]otherhood and childhood are entitled to special care and assistance” and that “all children, whether born in or out of wedlock, shall enjoy the same social protection” (UDHR, Article 25). This provision requires that children be protected regardless of whether they are living with their intact family. It does not entitle adults in a homosexual relation to adopt children.

Commendably, the State Party has reported undertaking several steps to fulfill its obligation to protect children in vulnerable situations.

Among others: it “systematically reduced the rate of unregistered births” (UNDOC: CCPR/C/HND/2, para 82); it established offices to help document migrant children and to return

³⁴ Will Oremus, Here Are All the Different Genders You can Be on Facebook (Slate, Feb 13, 2014). The list includes: Agender, Androgyne, Androgynous, Bigender, Cis, Cisgender, Cis Female, Cis Male, Cis Man, Cis Woman, Cisgender Female, Cisgender Male, Cisgender Man, Cisgender Woman, Female to Male, FTM, Gender Fluid, Gender Nonconforming, Gender Questioning, Gender Variant, Genderqueer, Intersex, Male to Female, MTF, Neither, Neutrois, Non-binary, Other, Pangender, Trans, Trans*, Trans Female, Trans* Female, Trans Male, Trans* Male, Trans Man, Trans* Man, Trans Person, Trans* Person, Trans Woman, Trans* Woman, Transfeminine, Transgender, Transgender Female, Transgender Male, Transgender Man, Transgender Person, Transgender Woman, Transmasculine, Transsexual, Transsexual Female, Transsexual Male, Transsexual Man, Transsexual Person, Transsexual Woman, Two-Spirit. Full article available at:

http://www.slate.com/blogs/future_tense/2014/02/13/facebook_custom_gender_options_here_are_all_56_custom_options.html

³⁵ Facebook’s 71 gender options come to UK users, Rhiannon Williams, The Telegraph, June 2014, available at: <http://www.telegraph.co.uk/technology/facebook/10930654/Facebooks-71-gender-options-come-to-UK-users.html>.

³⁶ American Psychological Association, Sexual Orientation and Homosexuality: Answers to Your Questions for a Better Understanding, What Is Sexual Orientation?, <http://www.apa.org/topics/lgbt/orientation.pdf>

them to their family (UNDOC: CCPR/C/HND/2, para. 86) and it amended the criminal code to add the crime of fraudulent adoption (UNDOC: CCPR/C/HND/2, para. 105). Furthermore, the State Party adopted a “Public Policy on Comprehensive Early and Childhood Development,” a “System for Comprehensive Care for Early Childhood Parenting with Love,” and the “National Policy on Prevention of Violence Against Children and Young People.” Finally, it will allocate 80 million lempiras (more than US\$ 3 million) to the Children Welfare Agency this year (UNDOC: CCPR/C/HND/2, paras. 107, 108).

With reference to migrant children (UNDOC: CCPR/C/HND/2, paras 114, 115, 116), and to street children (UNDOC: CCPR/C/HND/2, paras 117, 118), the State Party’s has made several efforts to comply with its obligations stemming from the covenant and international law more broadly.

III. SEX-WORK AND HUMAN TRAFFICKING

In the List of Issues document, the committee suggests that the State Party report on measures to “effectively address discrimination and ensure the security and integrity of (...) sex-workers.”

The term “sex-work,” as well as reference to “sex-workers,” are not part of the obligations enshrined in the Covenant and do not enjoy international consensus. This terminology suggests a view of prostitution that trivializes the selling of the human body for sexual purposes as a common and respectable profession. This would be inconsistent with the laws of a majority of the world’s nations, where prostitution is criminally prescribed.³⁷

State Parties to the Covenant have no obligation to enact laws that give individuals a right to sell their bodies and to engage in prostitution. On the contrary, an obligation to prohibit the practice and to help individuals/victims of prostitution to escape sexual slavery is more reasonably derived from the Covenant’s prohibition of slavery and servitude (Covenant, Article 8). Prostitution is increasingly described as a form of “modern-day slavery.”

Already in 1995, a report by the International Organization for Migration suggested legalization of prostitution does not decrease trafficking in the region.³⁸ More recent scientific analysis confirms that “On average, countries where prostitution is legal experience larger reported human trafficking inflows.”³⁹ This is not surprising because when legal barriers disappear so do the social and ethical barriers to treating women as sexual merchandise.⁴⁰ On the contrary, there is solid evidence that

³⁷ See, for instance: <http://chartsbin.com/view/snb>.

³⁸ International Organization for Migration, *Trafficking and Prostitution: The Growing Exploitation of Migrant Women From Central and Eastern Europe*, May 1995, Available at: <https://ec.europa.eu/justice/grants/results/daphne-toolkit/en/file/221/download?token=iHYF1IEj>

³⁹ Cho, Seo-Young and Dreher, Axel and Neumayer, Eric (2013) Does legalized prostitution increase human trafficking? *World development*, 41, pp. 67-82, available at:

https://eprints.lse.ac.uk/45198/1/Neumayer_Legalized_Prostitution_Increase_2012.pdf

⁴⁰ As studies show, in the Netherlands, the sex industry increased by 25 percent after legalization. In Victoria, Australia, the number of legal brothels doubled, while illegal brothels increased by 300 percent. A 200-400 percent increase in street prostitution has been reported in Auckland, New Zealand, since prostitution was decriminalized. After prostitution was legalized in Germany, the numbers of trafficked women increased dramatically. This, as well as other comprehensive arguments, and data against legalization of prostitution, can be found in: Raymond, Janice G., *Ten Reasons for not Legalizing Prostitution And a Legal Response to the Demand for Prostitution*, *Journal of Trauma Practice*, 2, 2003; pp 315 – 332, and available online at: <http://www.embracedignity.org/uploads/10Reasons.pdf>. A 2013 article in the German “Der Spiegel” describes this failure, and points out that legalization of prostitution does not decrease human trafficking (<http://www.spiegel.de/international/germany/human-trafficking-persists-despite-legality-of-prostitution-in-germany-a-902533.html>).

criminalization of prostitution resulted in the shrinking of the prostitution market and the decline of human trafficking inflows.⁴¹

Victims of prostitution, who understand firsthand the degradation and harm of modern-day slavery, are most troubled by the recent call for its legalization and by the adoption of “sex-work” language.⁴²

The U.S. Government adopted a principled and evidenced-based position against legalized prostitution in a December 2002 National Security Presidential Directive based on overwhelming evidence that prostitution is inherently harmful and dehumanizing and fuels trafficking in persons, a form of modern-day slavery.⁴³

While the State Party does not outlaw prostitution, it is addressing the issue of commercial sexual exploitation and of human trafficking (paras. 46 – 56). More action is needed in this direction. Children are at particularly high risk, as the State Party is one of the world’s principle sources of children subjected to sex trafficking and forced labor. As the State Party remains a principal source and transit country for men, women, and children subjected to sex trafficking and forced labor, the focus of policies should be to ensure that the perpetrators of these crimes are prosecuted and punished.

Policies to strengthen the family and to help parents take care of their children are also essential to prevent new victims. It is women and children made vulnerable by precarious family situations who are the prime targets of traffickers regardless of whether that precariousness results from war, terrorism, poverty, drug and alcohol abuse, divorce and family breakdown, physical violence or other causes.⁴⁴

⁴¹ Cho, Dreher, Neumayer, Does legalized prostitution increase human trafficking?, pp. 22 – 25.

⁴² https://c-fam.org/friday_fax/amnestys-prostitution-stance-challenged/

⁴³ See “The Link Between Prostitution and Sex Trafficking”, Bureau of Public Affairs, Washington, DC, November 24, 2004, available at: <https://2001-2009.state.gov/r/pa/ei/rls/38790.htm#8>.

⁴⁴ These are the conclusions reached by trafficking experts, and survivors, who gathered at a high-level event organized in conjunction with the 61st session of the Commission on the Status at the United Nations Headquarters. The panelists presented policies to protect and strengthen the family as a keystone for human trafficking prevention strategy. A full recording of the event, “Root Causes of Trafficking in Persons - Key Role of the Family for Protection and Prevention,” can be accessed online at: <http://webtv.un.org/search/root-causes-of-trafficking-in-persons-key-role-of-the-family-for-protection-and-prevention-commission-on-the-status-of-women-csw61-13-24-march-2017/5361007032001?term=root%20causes%20of%20trafficking>.

CONCLUSIONS

- 1. The State Party continues to offer protections for children in the womb. The committee should welcome this as consistent with the Covenant's broad protections for the right to life in Article 6.**
- 2. The State Party does not violate the Covenant by reserving protections for the family that it does not extend to relations between individuals of the same sex, nor by allowing adoption exclusively to proven marriages. It should be commended for ensuring children are provided a stable family environment for their integral human development. The State Party is not required to enact gender identity laws.**
- 3. The State Party must ensure that it will continue to address the scourge of sexual exploitation and of human trafficking, and that it will further help individuals in vulnerable situations, especially women and children, escape sexual slavery.**