

The right to life is the most important of all

From The Age, 27 July 2007

By Rita Joseph

CHILDREN at risk of abortion are to be deprived of the protection of the law if Victorian Government Labor MP Candy Broad is successful in her private member's bill to decriminalise abortion.

Such an attack on laws that protect unborn children contravenes the 1948 Universal Declaration of Human Rights, which recognised the child before birth as having human rights to be protected by the rule of law. The International Court of Justice has proclaimed that the principles contained in the declaration are now considered to be legally binding on states both as customary international law and as fundamental principles of humanity.

The concept of legal protection for the child before birth has a long tradition established and maintained with consistency and unbroken continuity throughout the entire body of international human rights and humanitarian foundation instruments.

The UN General Assembly on November 20, 1959 reaffirmed unanimously and explicitly the Universal Declaration's "recognition" of the rights of the child before birth. The concept of formal universal recognition of the child before birth as a legitimate subject of inherent and inalienable human rights, including entitlement to legal protection, is critical. The nature of inherent and inalienable human rights means they can never be denied by courts of law or legislatures.

In every premeditated abortion, deprivation of life is the intended outcome for the child. Despite the current ideologically driven campaign to decriminalise abortion, arbitrary deprivation of life, under modern international human rights law, is still strictly prohibited. "No one may be deprived of their life arbitrarily," says Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR).

States that have ratified the ICCPR must at all times take positive steps to effectively protect the right to life, a legal duty that is equally applicable to the child before birth as to the child after birth. That the right to life is inalienable means that at no time are states permitted to engage in or condone the arbitrary taking of a human life.

Candy Broad's bill seeks explicitly to disenfranchise children at risk of abortion from human rights protection. Such a limitation of or exception from an inalienable right, the right to life, is inadmissible under the provisions of the ICCPR.

Article 4 of the ICCPR stipulates that no government can detract from the right to life, not even in times of "public emergency".

Article 50 of the ICCPR states that "the provisions of the present covenant shall extend to all parts of federal states without any limitations or exceptions".

The Commonwealth of Australia has acceded to the ICCPR. Therefore Broad's bill is inadmissible under international human rights law. She has introduced invalid limitations and exceptions to the right to life. Her bill contravenes Article 6 of the ICCPR, which protects the right to life of all members of the human family and was understood right from its first draft to include the unborn child.

The unborn child's right to life is especially protected under Article 6(5) of the ICCPR. The explanatory notes written at the time the covenant was negotiated state this explicitly: "The

principal reason for providing in paragraph 4, now Article 6(5), of the original text that the death sentence should not be carried out on pregnant women was to save the life of an unborn child." The state, to protect the child's inherent right to life, must prohibit and prevent the death penalty for the unborn child's mother. Just so, the logical imperative of the corollary of this directive requires that the state, also "to save the life of an unborn child", must prohibit and prevent use of abortion or use of any other form of death penalty imposed on an unborn child.

The ICCPR recognises in Article 6(5) that the pregnant woman does indeed carry within her womb another human being who is entitled, by virtue of the child's immaturity, to special protection from the death sentence.

This article, prohibiting execution of pregnant women, acknowledges that the child, from the state's first knowledge of that child's existence, is to be protected.

Broad's bill also contravenes the Convention on the Rights of the Child (Articles 3, 9, 18, 20, 21, 37 and 40), which requires that the "best interests of the child" principle be applied to each and every "proposed or existing law or policy or administrative action or court decision directly or indirectly affecting the well-being of children".

The bill also violates the indivisibility principle, which requires human rights protection of both the mother and her unborn child; and prohibits the individual state from abandoning laws that protect the unborn child on the grounds that it has a priority obligation to protect "the abortion choice" of the child's mother.

Human rights documents specifically condemn "choices" that entail lethal damage to the child's health and development. Abortion "choices" as human rights violations by adults in positions of power over children in positions of dependency are logically incompatible with protection of the child before birth.

When the indivisibility principle is applied, the individual state's misperceived duty to provide expectant mothers with abortion "services" cannot be performed at the neglect of the more fundamental duty to uphold the rights of their children to "special safeguards and care including appropriate legal protection before as well as after birth". The right to life is "the supreme right" and "basic to all human rights".

Rita Joseph is a researcher who has long campaigned for the rights of the child.