Reclaiming the right to life for children of rape or incest

In recent years, the UN Committee on the Rights of the Child (CRC Committee) has condemned selective abortion as discrimination against children and as a serious violation of their rights, affecting their survival.¹

The Committee denounces selective abortion of girl children on the grounds of gender discrimination, and condemnation also extends to abortion on the grounds of “multiple discrimination (e.g., related to ethnic origin, social and cultural status, gender and/or disabilities)” ²

The Committee on the Rights of the Child is signalling here a re-emerging recognition of the need to protect children at risk of abortion. Selective abortion includes those abortions based on discrimination related to the social and cultural status of the children of rape and incest and to the social and cultural status of their mothers.

These children together with their mothers are entitled to adequate programs of practical assistance including pre-natal and postnatal health care as well as personal and social security such as emergency safe housing and financial support.

There are two sets of reasons that militate against aborting children who are conceived through rape or incest. One set is based on fundamental principles of international human rights law. The other set of reasons is pragmatically humanitarian, based on the child’s potential to be loved and to love, and so to bring healing and love to an abused mother.

Protective laws against arbitrary deprivation of life for unborn children

In every premeditated abortion, deprivation of life is the intended outcome. Despite the current massive ideologically-driven campaign to decriminalize abortion around the world, 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).

¹ UN Committee on the Rights of the Child (CRC), General Comment No 7 (2005) under Right to Non-discrimination.
² Ibid.
means that the law must strictly control and limit the circumstances in which the State may condone deprivation of life.

Under international human rights law, the sovereign state’s legislature remains the primary defender of the human rights of unborn children. Politicians must conform to universal human rights obligations to provide protective laws against abortion which constitutes arbitrary deprivation of life in breach of international human rights law, as established via the Nuremberg principles and judgments and their codification in the International Bill of Rights.

It is part of the Nuremberg record of the trial testimony (*RuSHA/Greifelt Case 1947-8*) that from this very foundation of modern international human rights law, unborn children are considered to be human beings entitled to the protection of the law: “…protection of the law was denied to the unborn children…” Nuremberg prosecutor, James McHaney, called abortion an “inhumane act” and an “act of extermination” and established that even if a woman’s request for abortion was “voluntary”, abortion is still “a crime against humanity”.

The 1948 *Universal Declaration of Human Rights (UDHR)* recognizes that the child “by reason of his physical and mental immaturity” is entitled to “special safeguards and care including appropriate legal protection before as well as after birth.” This immaturity is not to be allowed to diminish in any way the child’s inherent humanity. The right to life, as protected under Article 3 of the Universal Declaration, is equally valid for the child before birth as for the child after birth, “without any discrimination whatsoever”.

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3 UN Resolution 95(1): Affirmation of the Principles of International Law recognized by the Charter of the Nuremberg Tribunal. Resolution 95 (1) of the United Nations General Assembly, 11 December 1946. The UN committee on the codification of international law was directed to establish a general codification of "the principles recognized in the Charter of the Nuremberg Tribunal and in the judgment of the Tribunal".


5 See the series of research papers by John Hunt which include:


6 The UN General Assembly, November 20, 1959, reaffirmed explicitly the UDHR’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 for it is the nature of inherent and inalienable human rights that they can never be de-recognized by courts of law or legislatures.

7 UN Declaration on the Rights of the Child, Principle 1: “Every child without any exception whatsoever is entitled to these rights ...”