

# The UN Human Rights System's Stillbirth Scandal

By Susan Yoshihara, Ph.D.

## INTRODUCTION

Every day around the world, 800 women and 7,000 children die in childbirth.<sup>1</sup> This is tragic, and rightfully their deaths have garnered attention at the highest levels. Yet 7,100 more children are stillborn every day to devastated parents, but they have been erased from the international agenda. This brief paper examines one of the United Nations entities responsible.

Twenty years ago, UN human rights experts deliberately removed the issue of stillbirth from the human rights agenda while at the same time inserting abortion, which was never included in a UN treaty. Thus, the UN human rights system discarded an important tool for ending the tragedy of 2.6 million stillbirths every year, and abandoned its duty to protect the rights of all people.

Ninety-five percent of these deaths occur in lower- and middle-income countries, yet the UN development, relief, and rights agencies have ignored and even quashed the issue. By acceding to the 1966 International Convention on Economic Social and Cultural Rights (ICESCR), 170 nations obligated themselves to reducing the stillbirth rate. Article 12.2 (a) of the treaty states:

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

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(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;<sup>2</sup>

Yet, in 35 years, the committee responsible for monitoring nations' compliance with the treaty only mentioned the stillbirth rate once, in 1988, in its concluding observations to Chile.<sup>3</sup>

Beginning in 1998, treaty monitoring bodies began reinterpreting the various UN human rights treaties with new rights never intended by the nations that negotiated and ratified them. One such "right" was abortion.<sup>4</sup> In 2000, the Committee on Economic, Social, and Cultural Rights, which monitors compliance with ICESCR, announced they would no longer consider stillbirth as part of the treaty.<sup>5</sup> In a general comment describing how the committee interpreted the treaty's article on the rights, the committee dismissed the issue of stillbirth and redefined it as including sexual and reproductive health.<sup>6</sup>

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In 2000, the Committee on Economic, Social, and Cultural Rights, which monitors compliance with ICESCR, announced they would no longer consider stillbirth as part of the treaty.

The committee said, "The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child" no longer included stillbirth. In a footnote, it justified this move saying that WHO no longer measured stillbirth rates. The committee said, "According to WHO, the stillbirth rate is no longer commonly used, infant and under-5 mortality rates being measured instead."<sup>7</sup>

The committee went on to redefine the mandate to reduce stillbirths, saying it "may be understood as requiring measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information."

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The committee went on to redefine the mandate to reduce stillbirths, saying it "may be understood as requiring measures to improve child and maternal health, sexual and reproductive health services."

The committee said, "Reproductive health means that women and men have the freedom to decide if and when to reproduce and the right to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice as well as the right of access to appropriate health-care services that will, for example, enable women to go safely through pregnancy and childbirth."

Family planning is not mentioned in the treaty, nor is the number or spacing of children. The right to appropriate health care to undergo pregnancy and childbirth "safely" is the closest the committee's re-interpretation comes to the actual obligation of states.

What is mentioned in the treaty is that "Special protection should be accorded to mothers during a reasonable period

before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.”

The 170 countries that are party to the treaty are required to submit regular reports to the Committee on how the government is protecting and fulfilling the rights. States must make their first report within two years of acceding to the treaty, and every five years after that. The Committee, a group of experts acting in their personal capacity, examines each report and addresses its concerns and recommendations to the State party in the form of concluding observations.

A 2018 WHO/UNICEF report identified 52 nations as failing to have a stillbirth reduction target. Of those, 50 are party to the Convention. Yet the committee has not asked any of them about their stillbirth rate, not even after 2018 when WHO began to issue guidance to nations alerting them to the need to track stillbirths.<sup>8</sup>

More alarming is the fact that the committee has pressured 76 countries on 371 occasions to liberalize abortion.<sup>9</sup> This apparently due to its reinterpretation of article 12.2 (a), the one that dropped stillbirth and added “sexual and reproductive health services.”

Other human rights committees have been similarly quiet on stillbirth but vociferous on abortion.<sup>10</sup> The committee that monitors the International Covenant on Civil and Political Rights (ICCPR) has never mentioned stillbirth, but has pressured 112 countries on 527 occasions to liberalize abortion, which is not mentioned in the treaty. The same committee issued a general comment on that treaty’s “right to life” article in 2018 stating that abortion is part of the right to life based upon the false assumption that maternal deaths can be prevented by liberalizing abortion. The committee that monitors the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), has mentioned stillbirth on just four occasions, though it has pressured more than 90 nations to liberalize abortion on 634 occasions.<sup>11</sup> The committee that monitors compliance with the Convention on the Rights of the Child (CRC), has mentioned stillbirth four times, and pressured 96 nations to liberalize abortion 536 times.<sup>12</sup> The committee that monitors compliance with the Convention Against Torture has never mentioned stillbirth, but has pressured 23 countries 423 times on abortion. The committee that monitors the newest UN human rights treaty, the Convention on the Rights of Persons with Disabilities (CRPD) has never brought up stillbirth even though research has shown how it is associated with fetal abnormalities. It has, however, pressured countries to liberalize

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laws so that unborn children with fetal abnormalities may be aborted. It has done so 93 times in its 14-year tenure.

The skewed emphasis toward ending the life of “unwanted” children has changed the UN human rights system in a fundamental way. It downplays the humanity and “wantedness” of the unborn child. Parents, siblings, grandparents, and families lamenting the death of a dearly wanted unborn (or stillborn) child should not be treated as threats to the ideological ascendancy of the dominant point of view. They are the bearers of rights that for too long have been set aside in the political pursuit of another agenda. That agenda will not make way without a contest.

Nations must hold the UN human rights system, and the Committee on Economic Social and Cultural Rights in particular, accountable. States party to the treaty should insist that the committee reverse its unfortunate 2000 general comment. The committee should issue, as soon as possible, clearly-defined guidelines reiterating the international obligation of States parties to reduce the stillbirth rate, beginning with tracking and reporting the incidence of stillbirth at the country level.

## Endnotes

- 1 UNICEF. Healthy Mothers, Healthy Babies: Taking Stock of Maternal Health, UNICEF, New York. June 2019
- 2 UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966
- 3 UN Committee on Economic, Social and Cultural Rights (CESCR): Concluding Observations, Chile. CE-SCR.E/1988/14. “Members of the Committee asked to what extent health care was accessible to the population as a whole, what efforts the Government was making in regard to health and hygiene at work, what the situation was in regard to stillbirths and infant mortality, what criteria the Government had used to established that in health matters Chile was in a transitional phase between underdevelopment and development, and what had been the findings of a WHO survey conducted in Chile.”
- 4 See “Rights by Stealth: the Role of the UN Human Rights Treaty Bodies in the Campaign for an International Right to Abortion,” Douglas Sylva and Susan Yoshihara, the National Catholic Bioethics Quarterly, vol.7, no.1.
- 5 The Committee on Economic, Social and Cultural Rights is a body of human rights experts tasked with monitoring the

implementation of the Covenant. It consists of 18 independent human rights experts, elected for four-year terms, with half the members elected every two years.

- 6 General Comment No. 14 on the right to the highest attainable standard of health (2000), Committee on Economic, Social and Cultural Rights E/C.12/2000/4
- 7 Ibid.
- 8 Afghanistan, Angola, Armenia, Benin, Burkina Faso, Burundi, Chad, China, Comoros, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Gambia, Ghana, Guinea, Guinea-Bissau, Iran, Jordan, Kyrgyzstan, Lebanon, Lesotho, Liberia, Libya, Madagascar, Mali, Mauritania, Morocco, Mozambique, Myanmar, Niger, Pakistan, Palestine, Papua New Guinea, Philippines, Rwanda, Senegal, Sierra Leone, Somalia, South Sudan, Sudan, Swaziland, Timor Leste, Togo, Tunisia, Turkmenistan, Uganda, Uzbekistan, Viet Nam, Zambia, Zimbabwe have not established stillbirth reduction targets. Of these, Mozambique and South Sudan are not parties to the Convention on Economic Social and Cultural Rights. <https://www.healthynewbornnetwork.org/hnn-content/uploads/Final-Country-Progress-Report-v9-low-res.pdf> (Accessed April 2020)
- 9 C-Fam analysis, current as of March 2020.
- 10 C-Fam analysis, current as of March 2020.
- 11 Concluding observations of CESCR mentioning stillbirths: Kenya in 2017: “Amend the Employment Act of 2007 to extend maternity leave benefits to adoptive mothers and those who suffer miscarriages or have stillborn babies”; Marshall Islands in 2018: “...address the issues of environmental damage and intergenerational health impacts, in particular on Marshallese women and girls, who disproportionately suffer from thyroid and other cancers as well as other reproductive health problems that are a cause of the large number of stillbirths and congenital birth defects in the State party”; Republic of Korea in 2018: expressed support for “Labour Standards Act, revised in 2012 and 2014, extending maternity leave to women experiencing miscarriage or stillbirth prior to the sixteenth week of pregnancy”; United Kingdom in 2008: “The Committee notes that women of Traveller communities experience high numbers of miscarriages and stillbirths, and have the highest maternal mortality rate among all ethnic groups.”
- 12 Concluding observations of CRC mentioning stillbirths: Georgia in 2017: “Strengthen efforts to decrease rates of infant mortality and stillbirth by, inter alia, improving ante- and postnatal care, enhancing the capacity of health-care providers all over the country, and implement and apply the

OHCHR technical guidance on the application of a human rights-based approach to the implementation of policies and programs to eliminate preventable mortality and morbidity of children under 5 years of age”; Italy in 2011: “The Committee is further concerned that, compared to their Italian counterparts, foreign mothers experience higher rates of stillbirths and perinatal mortality, and are more likely to need treatment in emergency departments or hospitals; this is due, in part, to the fact that undocumented foreign mothers do not undergo the necessary obstetric treatment and tests prior to and during pregnancy, given the criminalization of undocumented foreigners”; Philippines in 2005: “As regards reporting of newborn deaths and stillbirths, the Committee recommends that the State party facilitate access to civil registrars, particularly in the remote areas of the country”; Philippines in 2009: “The Committee also remains concerned at the deficiencies in registering and reporting newborn deaths and stillbirths.”

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## ABOUT THE AUTHOR

**Dr. Yoshihara** is Senior Vice President for Research at C-Fam.

Susan Yoshihara Ph.D.  
*Editor*

Rebecca Oas Ph.D.  
*Managing Editor*

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805 3<sup>rd</sup> Avenue, Suite 1440  
New York, New York 10022

info@c-fam.org  
www.c-fam.org