



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### 113th session

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Item 5 of the provisional agenda

### **Organizational and other matters, including the adoption of the report of the pre-sessional working group on individual communications**

## **Draft general comment No. 36**

### **Article 6: Right to life**

#### **Draft prepared by Yuval Shany and Nigel Rodley, Rapporteurs\***

#### **Issues for consideration during the half-day general discussion in preparation for a general comment on article 6 (right to life) of the International Covenant on Civil and Political Rights, adopted by the Committee at its 113th session (16 March - 2 April 2015)**

1. The Human Rights Committee, in accordance with article 40, paragraph 4, of the International Covenant on Civil and Political Rights, and Rule 73 of its Rules of Procedure (CCPR/C/3/Rev.10), may prepare general comments based on the various articles and provisions of the Covenant with a view to assisting States parties in fulfilling their reporting obligations. This draft is prepared based on that Rule in preparation of a general comment.
  2. The Human Rights Committee decided at its 112th session (7–31 October 2014) to begin the drafting of a general comment on article 6 of the International Covenant on Civil and Political Rights, revisiting and expanding its earlier general comments No. 6 and 14 (from 1982 and 1984, respectively), in the light of experience obtained in the review of State reports and communications and the adoption of general comments on related issues.
  3. The Committee plans to hold a half-day general discussion at its 114th session (29 June- 24 July 2015), giving national human rights institutions, civil society and academia the opportunity to provide relevant information before the Committee undertakes the drafting process.
  4. At present, the Committee's rapporteurs for the general comment, Yuval Shany and Nigel Rodley, contemplate that the questions arising under article 6 to be addressed in the general comment may include the issues listed below, without prejudice to the question
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whether they or other issues would be included in the adopted text of the general comment. Issues organized by paragraph of article 6 are presented first, followed by general issues.

## A. Issues by subparagraph

### Article 6, paragraph 1

5. With regard to article 6, paragraph 1: “Every human being has the inherent right to life”, issues may include:

- (a) The scope and nature of the duty to respect and ensure the right to life;
  - (I) Relationship to other articles of the Covenant that protect human life and the human person, e.g. 7, 9, 20;
  - (II) Relationship to other international human rights instruments, e.g., article 12 of the International Covenant on Economic, Social and Cultural Rights;
  - (III) Protection against dangerous conduct not resulting in deprivation of life;
- (b) Meaning of “inherent right”;
  - (I) Relationship to other international human rights instruments, e.g., preamble to the Universal Declaration of Human Rights;
- (c) Applicability of the article to the unborn and other forms of human existence (frozen embryos, clones etc.);
- (d) The relationship between the right to life and the right to die (e.g., euthanasia).

6. With regard to article 6, paragraph 1: “This right shall be protected by law”, issues may include:

- (a) Meaning of “protected by law”;
  - (I) Relationship to other articles of the Covenant entailing duties to protect rights by law, e.g., article 2(2), 16;
  - (II) Relevance of other rules of international law, e.g., international humanitarian law, international refugee law, international environmental law, international criminal law;
  - (III) Contents of legal protection (e.g., prevention, investigation, prosecution and effective remedy);
  - (IV) Strict control of exceptions (e.g., contents of possible legal exceptions, such as legal defenses and immunities, conditions for legitimate use of lethal force by state authorities);
  - (V) Regulation of possible life-harming practices and circumstances (e.g., gun control, alcohol, tobacco, drugs, violence, traffic, infectious disease, medical malpractice, etc.);
  - (VI) Forms of domestic legal protection (e.g., criminal law/civil law, possibility for direct reliance on the Covenant, legislation/judge made law);
- (b) Possible exceptions to the duty to protect life by law (e.g., suicide, abortion);
  - (I) Relationship of such possible exceptions to other articles of the Covenant, e.g., article 7, 17.

7. With regard to article 6, paragraph 1: “No one shall be arbitrarily deprived of his life”,

- (a) Meaning of “deprivation of life”, and whether it includes anything other than deliberate killings and other acts or omissions intentionally or inevitably leading to loss of life;
- (b) Meaning of “arbitrary deprivation”;
  - (I) Substantive requirements of non-arbitrariness;
  - (II) Relevance of other provisions of the Covenant (e.g., article 7, 14, 20);
  - (III) Relevance of other rules of international law, including *jus ad bellum* and *jus in bello* and instruments regulating weapons of mass destruction and counter-terrorism;
  - (IV) Relevance of legal protections afforded by domestic law;
  - (V) Relevance of methods of execution (e.g., injection, gas, stoning);
  - (VI) Legitimate and non-legitimate reasons for deprivation of life (e.g., self-defense, excessive use of force by state officials, use of lethal force in connection with detention powers, use of lethal force in connection with protection of property);
  - (VII) Relevant *non refoulement* obligations;
  - (VIII) The need to meet necessity and proportionality requirements in assessing arbitrariness of deprivation in different fields (e.g., criminal sentences, law enforcement, armed conflict, medical treatment etc.).

#### **Article 6, paragraph 2**

8. With regard to article 6, paragraph 2: “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide”, issues may include:

- (a) Meaning of “not abolished” (e.g., moratorium *de jure/ de facto*);
- (b) Meaning of “most serious crimes”;
- (c) Meaning of “law in force at the time of commission” (e.g., substantive/procedural retroactivity);
  - (I) Relationship to other articles of the Covenant, e.g. 14, 15;
  - (II) Relationship to the Second Optional Protocol;
  - (III) Relationship to the Genocide Convention;
- (d) Applicability of the paragraph to extradition proceedings;
- (e) The scope of the prohibition on the reintroduction of the death penalty;
- (f) The scope of the prohibition on mandatory death sentences;
- (g) Whether there is a need to periodically review the list of “most serious crimes”.

9. With regard to article 6, paragraph 2: “This penalty can only be carried out pursuant to a final judgment rendered by a competent court”, issues may include:

- (a) Meaning of “final judgment”;
  - (I) Relationship of this paragraph to article 6, paragraph 4;
  - (II) Relevance of recourse to international review procedures in ascertaining finality;

- (b) Meaning of a "competent court";
  - (I) Relationship of this paragraph to other articles of the Covenant, e.g. article 14;
  - (II) Applicability to military justice, including in cases covered by reservations regulated in article 2 to Second Optional Protocol;
- (c) The extent of required judicial control over the manner of execution.

**Article 6, paragraph 3**

10. With regard to article 6, paragraph 3: "When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide", issues may include:

- (a) Scope and nature of the obligations assumed under the Genocide Convention, which are relevant to this paragraph;
- (b) Regulation of substantive inconsistencies between article 6 and the Genocide Convention;
- (c) Potential jurisdictional competition between dispute settlement procedures under the Covenant and the Genocide Convention.

**Article 6, paragraph 4**

11. With regard to article 6, paragraph 4: "Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence", issues may include:

- (a) Meaning of "pardon or commutation";
  - (I) Relevant authorities who may grant pardon or commutation;
  - (II) Procedural safeguards governing the process of reconsideration of sentence;
- (b) The duty to facilitate the exercise of the right to seek pardon or commutation (e.g., duty to inform the convict; legal aid etc.).

12. With regard to article 6, paragraph 4: "Amnesty, pardon or commutation of the sentence of death may be granted in all cases", issues may include:

- (a) Meaning of "amnesty";
- (b) The duty on state authorities to consider amnesty, pardon or commutation *proprio motu*.

**Article 6, paragraph 5**

13. With regard to article 6, paragraph 5: "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women", issues may include:

- (a) Relationship between paragraph 5 and the prohibition on 'arbitrary deprivation of life';
  - (I) Possible extension of protection to persons with mental disabilities;
  - (II) Possible extension of protection to lactating mothers;
  - (III) Possible extension of protection to older persons;

(b) Relationship between paragraph 5 and other international treaties (e.g., article 37 of the Convention on the Rights of the Child, articles 76-77 of the First Additional Protocol to the Geneva Conventions, article 6 of the Second Additional Protocol.

#### **Article 6, paragraph 6**

14. With regard to article 6, paragraph 6: “Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant”, issues may include:

- (a) Relationship between paragraph 6 and the Second Optional Protocol;
- (b) The relationship between paragraph 6 and article 7 of the Covenant.

### **B. Cross-cutting issues**

15. Cross-cutting issues may include:

- (a) Division of labor between article 6 and other articles of the Covenant;
  - (b) Absolute or non-absolute character of clauses;
  - (c) Derogability in times of emergency;
  - (d) Permissibility of reservations;
  - (e) Application in international armed conflict and non-international armed conflict;
  - (f) Application to non-State actors and multi-national actors;
  - (g) Application to enforced disappearances;
  - (h) Extraterritorial application of article 6;
  - (i) Best practices in the implementation of article 6;
  - (j) Procedural safeguards;
  - (k) Remedies, including the duty to investigate, prosecute and provide reparation, compensation and satisfaction;
  - (l) Special protection afforded to certain individuals and populations, including detainees, minorities, women, children, older persons, migrants, and persons with disabilities;
  - (m) Discrimination in the application of the right to life;
  - (n) Standards of review and burden proof applied in reviewing the implementation of article 6;
  - (o) Indicators.
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