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Draft general comment No. 36

Article 6: Right to life

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I. General remarks

1. This general comment replaces earlier general comments No. 6 (16th session) and 14 (23rd session) adopted by the Committee in 1982 and 1984, respectively).
2. Article 6 recognizes and protects the right to life of all individuals. It is the supreme right from which no derogation is permitted. The right to life has profound importance both for individuals and for society as a whole. It is most precious for its own sake, but also serves as a basic right, facilitating the enjoyment of all other human rights.
3. The right to life concerns the entitlement of individuals to be free from acts and omissions intended or expected to cause their unnatural or premature death, as well as their legitimate expectation to enjoy a dignified existence. Article 6 guarantees this right for all individuals, including persons suspected or convicted of serious crimes, such as terrorist crimes.
4. Paragraphs 2, 4, 5 and 6 of article 6 of the Covenant set out specific safeguards for ensuring that where national or international legal instruments do not totally prohibit the death penalty, it shall be exercised only in the most exceptional cases and under the strictest limits. Additional limitations on the ability of States parties to apply the death penalty are found in article 6, paragraph 1. The provisions of Paragraph 3 regulate specifically the relationship between Article 6 of the Covenant and the Convention on the Prevention and Punishment of the Crime of Genocide ('the Genocide Convention').
5. Deprivation of life involves a deliberate or otherwise foreseeable and preventable infliction of life-terminating harm or injury that goes beyond mere damage to health, body integrity or standard of living. Examples of deprivations of life regulated by article 6



include the carrying out of a death penalty, extra-judicial killings, murder, road-traffic deaths, death resulting from medical malpractice, assisted suicide, euthanasia and infanticide. Deprivation of life also represents a more serious attack against the lives of individuals than general threats or attacks directed against their personal security. Still, article 6 may require States parties to address threats to life and life-threatening harms and injuries that do not result in loss of life.

6. Disappearances constitute a unique and integral series of acts and omissions intended to remove an individual from the protection of the law, resulting in a flagrant violation of the right to life or constituting a grave threat thereto. States parties must take adequate measures to prevent the disappearance of individuals and establish prompt and effective procedures to investigate thoroughly, by independent and impartial procedures, cases of disappearance, with the aim of minimizing their adverse effects on the right to life.

7. Unlike the American Convention on Human Rights, the Covenant does not explicitly refer to the rights of unborn children, including to their right to life. In the absence of subsequent agreements regarding the inclusion of the rights of the unborn within article 6 and in the absence of uniform State practice which establishes such subsequent agreements, the Committee cannot assume that article 6 imposes on State parties an obligation to recognize the right to life of unborn children. Still, States parties may choose to adopt measures designed to protect the life, potential for human life or dignity of unborn children, including through recognition of their capacity to exercise the right the life, provided that such recognition does not result in violation of other rights under the Covenant, including the right to life of pregnant mothers and the prohibition against exposing them to cruel, inhuman and degrading treatment or punishment. Thus, any legal restrictions on the ability of women to seek abortion must not jeopardize their lives or subject them to severe physical or mental pain or suffering. States parties whose laws generally prohibit voluntary terminations of pregnancy must, nonetheless, maintain legal exceptions for therapeutic abortions necessary for protecting the life of mothers, inter alia by not exposing them to serious health risks, and for situations in which carrying a pregnancy to term would cause the mother severe mental anguish, such as cases where the pregnancy is the result of rape or incest or when the fetus suffers from fatal abnormalities. Furthermore, States parties should not regulate pregnancy or abortion in a manner that would compel women to seek clandestine illegal abortions that could endanger their lives. For example, they should not criminalize pregnancies by unmarried women or apply criminal sanctions against women undergoing abortion or against physicians assisting them in doing so. Nor should States parties introduce excessively burdensome or humiliating requirements for seeking permission to undergo abortion, including the introduction of lengthy mandatory waiting periods before a legal abortion can be carried out. The duty to protect the lives of women against the health risks associated with the termination of undesirable pregnancies requires State parties to provide women, and, in particular, adolescents, with information about reproductive options, with access to contraception and with access to adequate prenatal health care.

8. Although, for reasons similar to those mentioned in paragraph 7, the Covenant does not directly regulate questions relating to the right to life of frozen embryos, eggs or sperms, stem cells or human clones. States parties may regulate the protection of these forms of life or potential life, while respecting their other obligations under the Covenant.

9. The Covenant does not define the moment of death – in particular, whether it should be determined by the end of cardiovascular or cerebral activity. In the Committee's view such determinations ought to be undertaken by medical professionals on the basis of the available scientific data, and in light of applicable ethical considerations.

10. While generally respecting personal autonomy and the importance of freely exercising rights under the Covenant, States parties should presume that individuals

planning or attempting to commit suicide may experience a temporary crisis that hinders their ability to take rational decisions with long term implications, and they should take adequate measures to prevent suicides, especially among vulnerable population groups, without violating their other Covenant obligations. For example, they should seek to limit access by suicidal individuals to firearms. States parties may also allow medical professionals to assess on a case-by-case basis whether or not to accommodate, on a highly exceptional basis and as a method of last resort, explicit, unambiguous, free and informed requests for the termination of life-prolonging treatment made by mortally wounded or terminally ill adults, who experience intolerable pain and suffering and wish to die with dignity. The assessment of such requests must be based on medical, psychological and ethical considerations, and any decision taken must be subject to robust legal and institutional safeguards in order to prevent pressure and abuse.

11. States parties have the duty to respect the right to life and refrain from engaging in conduct resulting in deprivation of lives. When taking lawful measures that may nonetheless result in deprivation of life, such as police raids targeting violent criminals or military operations during armed conflicts, State authorities must adequately plan their actions and introduce appropriate safeguards in order to minimize the risk posed to human life. They must also take all suitable measures, which can reasonably be expected from them, to protect the right to life of individuals against deprivations caused by persons or entities not acting on behalf of the State.

12. When private individuals or entities are empowered or authorized by a State party to employ lethal force, the State party remains responsible for their compliance with the provisions of article 6, and must ensure their actual adherence to article 6. Among other things, it must rigorously limit the powers afforded to private actors, and provide strict and effective measures of monitoring and control in order to ensure that the powers granted are not misused, and do not lead to arbitrary deprivations of life. For example, States parties should ensure that persons involved in past human rights violations are excluded from private security forces employing lethal force. They must also provide victims of arbitrary deprivation of life by private actors an effective remedy.

13. The use of lethal force in military operations is primarily regulated by international jus ad bellum and international humanitarian law. Still, States parties engaged in the study, development, acquisition or adoption of new weapons, and means or methods of warfare must always consider their impact on their right to life. For example, the development of new lethal autonomous robotics lacking in human compassion and judgment, raises difficult legal and ethical questions, including question relating to legal responsibility for their use. The Committee is therefore of the view that such weapon systems should not be put into operation before a normative framework has been established with a view to ensuring that their use conforms with article 6 and other relevant norms of international law.

14. The threat or use of weapons of mass destruction, including nuclear weapons, is prima facie incompatible with respect for the right to life. States parties must take all feasible measures to stop the proliferation of weapons of mass destruction and to prevent their development and use.

15. States parties should also study and monitor the impact on the right to life of less-lethal weapons which are designed for use by law-enforcement agents and soldiers charged with law-enforcement missions, including electro-muscular disruption devices (Tasers), rubber-coated metal bullets, and attenuating energy projectiles. The use of such weapons must be strictly regulated and restricted only to security agents who have undergone the necessary training. Furthermore, such less-lethal weapons can only be employed in situations of exceptional nature in which other less harmful measures have proven to be, or

clearly are inadequate. For example, State parties should not resort to them in routine situations of crowd control and demonstrations.

II. The Prohibition against Arbitrary Deprivation of Life

16. Although it inheres in every human being by virtue of membership in the human family, the right to life is not absolute. By requiring that deprivations of life must not be arbitrary in nature, Article 6, paragraph 1 implicitly recognizes that some deprivations of life may be justified in some cases. For example, the use of lethal force against a person who poses an immediate threat to the lives of others when no other, less harmful, means of protection are or could have been available does not prima facie constitute an arbitrary deprivation of life.

17. The second sentence of paragraph 1 requires that the right to life be protected by law, while the third sentence requires that no one should be arbitrarily deprived of life. The two requirements overlap in that a deprivation of life that lacks a legal basis or is otherwise inconsistent with life-protecting laws and procedures is, as a rule, arbitrary in nature. For example, a death sentence issued following a trial conducted in violation of domestic law of criminal procedure will generally be both arbitrary and unlawful, as would be an act of extrajudicial killing in violation of the laws of armed conflicts.

18. A deprivation of life may be authorized by domestic law and still be arbitrary. The notion of “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability, and due process of law as well as elements of reasonableness, necessity, and proportionality. For example, in order not to be qualified as arbitrary, the application of lethal force in self-defense must be reasonable and necessary in view of the threat posed by the attacker; it must represent a method of last resort after non-lethal alternatives, including warnings, have been exhausted or deemed inadequate; the amount of force applied cannot exceed the amount strictly needed for responding to the threat; the force applied must be carefully directed, as far as possible, only against the attacker; and the threat responded to must be extreme, involving imminent death or serious injury. The deliberate use of lethal force for law enforcement purposes which is intended to address less extreme threats, such as protecting private property or preventing the escape from custody of a suspected criminal or a convict who does not pose a serious and imminent threat to the lives or bodily integrity of others, cannot be regarded as a proportionate use of force.

19. States parties are expected to take reasonable long-term measures intended to prevent arbitrary deprivations of life by their law-enforcement organs, such as police training, mandatory reporting of lethal incidents, and the equipping of police forces responsible for crowd control with effective non-lethal means. In particular, all operations of law enforcement agents should comply with relevant international standards, including the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), and law enforcement agents should undergo appropriate training designed to inculcate these standards so as to ensure, in all circumstances, the fullest respect for the right to life.

20. The Covenant does not provide an enumeration of permissible grounds for deprivation of life. Still, article 6, paragraphs 2, 4 and 5 implicitly recognize that countries which have not abolished the death penalty and that have not ratified the Second Optional Protocol may continue to apply the death penalty with regard to the most serious crimes subject to a number of strict conditions. Other procedures regulating activity that may result in deprivation of life, such as conditions for use of lethal weapons by the police or protocols for new drug treatment, must be established by law, accompanied by effective institutional

safeguards designed to prevent arbitrary deprivations of life, and be compatible with other provisions of the Covenant.

21. The deprivation of life of individuals through acts or omissions that violate provisions of the Covenant other than article 6 is, as a rule, arbitrary in nature. This includes, for example, the killings of demonstrators exercising their right of freedom of assembly; gender-related violence involving the application of lethal force against women on account of discriminatory attitudes; and enforced disappearances – a practice that violates numerous substantive and procedural provisions of the Covenant, and which often constitutes a particularly aggravated form of arbitrary deprivation of life.

22. Persons with disabilities, including psychosocial and intellectual disabilities, are entitled to special measures of protection against deprivation of their life so that they will continue to enjoy the right to life on equal basis with others. In criminal proceedings involving the application of the death penalty in those countries which have not yet abolished it, and in any subsequent pardon or commutation proceedings, the relevant State organs must afford considerable weight to the extent in which persons with disabilities could defend themselves on an equal basis with others, and, in appropriate cases, to their level of moral culpability for the crime they were charged with, and their ability to understand the reasons for their punishment.

III. The Duty to Protect Life

23. The second sentence of paragraph 1 provides that the right to life “shall be protected by law”. This implies that a legal framework must exist in order to ensure the enjoyment of the right to life by all individuals. It also implies that State are under an obligation to take appropriate positive measure in order to protect life from all possible threats, including from threats emanating from private persons and entities.

24. The duty to protect by law the right to life entails that any substantive ground for deprivation of life must be prescribed by law, and defined with sufficient precision to avoid overly broad or arbitrary interpretation or application. Since deprivation of life by the authorities of the State is a matter of the utmost gravity, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities and the States parties must ensure full compliance with all of the relevant legal provisions. The duty to protect by law the right to life also requires States parties to prescribe and regulate measures necessary to protect lives, and to organize all State organs and governance structures through which public authority is exercised in a manner consistent with the need to respect and ensure the right to life. This protective legal framework must include effective criminal prohibitions on all forms of arbitrary deprivations of life, including extrajudicial killings, murder, homicide, disproportionate use of firearms, negligent manslaughter, disappearance, femicide, infanticide, honor killings, lynching, terrorism, violent hate crimes, blood feuds, death threats and other manifestations of violence or incitement to violence that are likely to result in a deprivation of life. The criminal sanctions attached to these crimes must be commensurate with their gravity.

25. The duty to take positive measures to protect the right to life derives from the general duty to ensure the rights recognized in the Covenant, which is articulated in article 2, paragraph 1, when read in conjunction with Article 6, as well as from the specific duty to protect the right to life by law which is articulated in the second sentence of article 6. State parties are thus required to undertake positive measures in response to foreseeable threats to life originating from private persons and entities, which do not impose on them unreasonable or disproportionate burdens. Hence, State parties must take adequate preventive measures in order to protect individuals against being murdered or killed by criminals and organized crime or militant groups, including armed or terrorist groups. State

parties should also disband private armies and vigilante groups responsible for extrajudicial killings, reduce the proliferation of illegal weapons, and clear areas in which land mines were laid. Adequate measures of protection, including ongoing supervision, must further be taken by States parties in order to prevent, investigate, punish and remedy arbitrary deprivation of life by lawful organizations, such as public transportation service-providers, hospitals and private security firms. States parties should also take appropriate measures to protect individuals against deprivations of life by other States operating within their territory, and to ensure that all activities taking place in whole or in part within their territory, but having a direct, foreseeable and significant impact on individuals outside their territory, including activities taken by corporate entities, be consistent with the right to life.

26. The duty to protect the right to life requires States parties to take exceptional measures of protection towards vulnerable persons, including women, children, members of ethnic and religious minorities, and of indigenous peoples, displaced persons, and lesbian, gay, bisexual, transgender and inter-sex (LGBTI) persons, persons with albinism, alleged witches, asylum seekers and refugees, and individuals whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence. For example, States parties must respond urgently and effectively to threats to the lives of human rights defenders, journalists, prominent public figures, witnesses to crime, and victims of domestic violence. Special measures of protection of vulnerable individuals may include the assignment of around-the-clock police protection, the issuance of protection and restraining orders against potential aggressors and, in exceptional cases, and only with the free and informed consent of the threatened individual, protective custody.

27. States parties also have a heightened obligation to take effective measures to protect the lives of individuals incarcerated by the State, since by arresting, detaining and imprisoning individuals States parties assume the responsibility to care for their life, and they may not rely on lack of financial resources or other logistical problems to reduce this responsibility. The duty to protect all incarcerated individuals includes providing prisoners with the necessary medical care to combat life-threatening diseases, to regularly monitor their health, and to protect them from inter-prisoner violence. A similar heightened duty to protect applies to individuals held in State-run mental health facilities, military camps, refugee and internally displaced persons camps and orphanages, and to individuals held in private incarceration facilities operating with the State's support. State parties are deemed to violate the right to life of persons who died while in their custody, unless it can be shown that there is no causal relationship between their death and their incarceration.

28. The duty to protect life also imposes on States parties a due diligence obligation to take long-term measures to address the general conditions in society that may eventually give rise to direct threats to life. These general conditions may include high levels of criminal and gun violence, pervasive traffic and industrial accidents, the prevalence of life-threatening diseases, such as AIDS or malaria, extensive substance abuse, widespread hunger and malnutrition and extreme poverty and homelessness. States parties should also take adequate measures to protect the environment against life-threatening pollution, and work to mitigate other risks associated with natural catastrophes, such as droughts. When adopting long-term measures designed to ensure the enjoyment of the right to life, States parties should aim to facilitate and promote adequate conditions for a dignified existence for all individuals. Long-term measures required for ensuring the right to life may include facilitating access by individuals to basic goods and services such as food, health-care, electricity, water sanitation, and promoting the development of life-saving and life-extending drugs and treatments, and of effective emergency health services and emergency response operations (including fire-fighters, ambulances and police forces). Furthermore, States parties should adopt action plans for attaining long-term goals designed to realize more fully the right to life of all individuals, including the introduction of strategies to fight the stigmatization associated with diseases, including sexually-transmitted diseases, which

hamper access to medical care; promotion of education to non-violence and de-radicalization programs; development of witness protection programs; raising awareness against domestic violence and improving access to medical examinations and treatments designed to reduce maternal and infant mortality. States parties should also develop contingency plans designed to increase preparedness for natural and man-made disasters, which may adversely affect enjoyment of the right to life, such as hurricanes, tsunamis, industrial pollution, radio-active accidents and cyber-attacks. Although article 6, paragraph 1 of the Covenant imposes on State parties both short-term and long-term obligations, individuals claiming to be victims of a violation of the Covenant under article 1 of the Optional Protocol to the Covenant can only invoke short-term obligations, as the status of victims is reserved to those individuals whose rights under the Covenant were directly violated by acts or omissions attributable to the States parties, or are under an imminent prospect of a direct violation.

29. An important element of the protection afforded to the right to life by the Covenant is the obligation to investigate and prosecute allegations of deprivation of life by State authorities or by private individuals and entities, including allegations of excessive use of lethal force. This obligation arises both from the general duty to ensure the rights recognized in the Covenant, which is articulated in article 2, paragraph 1, when read in conjunction with Article 6, and from the duty to provide an effective remedy to victims of human rights violations and their families, which is articulated in article 2, paragraph 3 of the Covenant, when read in conjunction with article 6, paragraph 1. Investigations and prosecutions of alleged deprivations of life should be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations. They should explore, inter alia, the legal responsibility of superior officials for violations of the right to life committed by their subordinates. Given the importance of the right to life, States parties should refrain from addressing possible violations of article 6 merely through administrative or disciplinary measures, and a criminal investigation, which should lead if enough incriminating evidence is gathered to a criminal prosecution, is normally required. Immunities and amnesties provided to perpetrators of intentional killings and to their superiors, leading to de facto impunity, are, as a rule, incompatible with the duty to respect and ensure the right to life, and to provide victims with an effective remedy.

30. Investigations into allegations of violation of article 6 must always be independent, impartial, prompt, thorough, effective, credible and transparent, and in the event that a violation is found, a remedy must be provided that would include, in view of the particular circumstances of the case, adequate measures of compensation, rehabilitation and satisfaction, including guarantees for non-repetition. Where relevant, the investigation should include a rigorous autopsy of the victim's body. The State party should take, among other things, appropriate measures to establish the truth relating to the events leading to the deprivation of life, including revealing the reasons for targeting certain individuals and the procedures employed by State forces before, during and after the time in which the deprivation occurred, and identifying bodies of individuals who had lost their lives. It should also disclose relevant details about the investigation to the victim's next of kin and make public its findings, conclusions and recommendations, unless absolutely prevented from doing so due to a compelling need to protect the public interest or the legal rights of directly affected individuals. An investigation into alleged violations of the right to life should commence when necessary *ex officio* – that is, even in the absence of a formal complaint. States should cooperate in good faith with international mechanisms of investigation and prosecutions looking into possible violations of article 6.

31. Loss of life occurring in custody, especially when accompanied by reliable reports of an unnatural death, create a presumption of arbitrary deprivation of life by State

authorities, which can only be rebutted through the conduct of a proper investigation. States parties also have a heightened duty to investigate allegations of violations of article 6 whenever State authorities have used or appear to have used firearms outside the immediate context of an armed conflict, for example, when live fire had been used against demonstrators, or when civilians were found dead by firearms outside the theatre of military operations in circumstances fitting a pattern of alleged violations of the right to life by State authorities.

32. The duty to respect and ensure the right to life requires States parties to refrain from deporting or extraditing individuals to countries in which there are substantial grounds for believing that a real risk exists that they would be deprived of their life in violation of article 6 of the Covenant. Such a risk must be personal in nature and cannot derive merely from the general conditions in the receiving State. For example, it would be contrary to article 6 to extradite an individual from a country that abolished the death penalty to a country which retained the death penalty on the basis of a warrant for a capital offence without adequate assurances for not applying the death penalty. Similarly, it would be inconsistent with article 6 to deport an individual to a country in which a fatwa had been issued against him by local religious authorities, without verifying that the fatwa is not likely to be followed; or to deport an individual to an extremely violent country in which he has never lived, has no social or family contacts and cannot speak the local language. In cases involving allegations of risk to the life of the removed individual emanating from the authorities of the receiving State, the situation needs to be assessed *inter alia*, based on the intent of the authorities of the receiving State, the pattern of conduct they have shown in similar cases, and the availability of credible assurances about their intentions. When the alleged risk to life emanates from non-state actors or foreign States operating in the territory of the receiving State, credible assurances for protection by the authorities of the receiving State may be sought and internal flight options could be explored. When relying upon assurances of treatment upon removal, the removing State should put in place effective mechanisms for ensuring compliance by the receiving State with the issued assurances from the moment of removal onwards.

33. The obligation not to extradite or deport pursuant to article 6 of the Covenant is broader than the scope of the principle of non refoulement under international refugee law, since it may also require the protection of aliens not entitled to refugee status. States parties must, however, allow all asylum seekers claiming a real risk of a violation of their right to life in the State of origin access to refugee or other individualized status determination procedures that could offer them protection against refoulement.

IV. Imposition of the death penalty

34. Paragraphs 2, 4, 5 and 6 of article 6 regulate the imposition of the death penalty by those countries which have not yet abolished it.

35. Paragraph 2 of article 6 strictly limits the application of the death penalty, firstly, to States parties that have not abolished the death penalty, and secondly, to the most serious crimes. Given the anomalous nature of regulating the application of the death penalty in an instrument enshrining the right to life, the contents of paragraph 2 should be narrowly construed.

36. States parties that have abolished the death penalty, through amending their domestic laws, acceding to the Second Optional Protocol to the Covenant or adopting another international instrument obligating them to abolish the death penalty, are barred from reintroducing it. Furthermore, States parties may not transform an offence, which upon ratification of the Covenant, or at any time thereafter, did not entail the death penalty, into a capital offence. Nor can they remove legal conditions from an existing offence with

the result of permitting the imposition of the death penalty in circumstances in which it was not possible to impose it before. States parties which abolished the death penalty cannot deport or extradite persons to a country in which they are facing criminal charges that carry the death penalty, unless credible assurances against the imposition of the death penalty have been obtained. In the same vein, the obligation not to reintroduce the death penalty for any specific crime, requires States parties not to extradite or deport an individual to a country in which he or she is expected to stand trial for a capital offence not carrying the death penalty in the removing State, unless credible assurances against imposition of the death penalty have been obtained.

37. The term “the most serious crimes” must be read restrictively and appertain to crimes of extreme gravity, such as those involving premeditated murder or genocidal killings. Crimes not resulting directly and intentionally in death, such as drug offences, attempted murder, corruption, armed robbery, piracy, abduction, repeated evasion of compulsory military service and sexual offences, although serious in nature, do not manifest the extraordinary high levels of violence, utter disregard for human life, blatant anti-social attitude and irreversible consequences that could conceivably justify the imposition of the death penalty as a form of legal retribution. In the same vein, a limited degree of involvement or complicity in the commission of even the most serious crimes, such as providing the physical means for the commission of murder or not preventing it, cannot justify the imposition of the death penalty. States parties are under an obligation to constantly review their criminal laws so as to ensure that the death penalty can be imposed, if at all, only for the most serious crimes and for their chief perpetrators only.

38. Under no circumstances can the death penalty ever be applied as a sanction against conduct whose very criminalization violates the Covenant, including adultery, homosexuality, apostasy establishing opposition groups, or insulting a head of state. States parties that retain the death penalty for such offences commit a serious violation of their obligations under article 6 read alone and in conjunction with article 2, paragraph 2 of the Covenant.

39. In all cases involving the application of the death penalty, the personal circumstances of the offender and the particular circumstances of the offence, including its specific aggravating or attenuating elements must be considered by the sentencing court. Hence, mandatory death sentences that leave domestic courts with no discretion on whether or not to designate the offence as a crime of the most serious nature and on whether or not to issue the death sentence in the particular circumstances of the case, are arbitrary in nature. The availability of a right to seek pardon or commutation on the basis of the special circumstances of the case or the accused is not an adequate substitute for the need for judicial discretion in the application of the death penalty.

40. Under no circumstances can the death penalty be imposed as part of a policy of genocide against members of a national, ethnical, racial or religious group. Article 6, paragraph 3 reminds all States parties who are also parties to the Genocide Convention of their obligations to prevent and punish the crime of genocide, including the obligation to prevent and punish all deprivations of life authorized by domestic law, which constitute part of a crime of genocide.

41. Article 6, paragraph 2 also requires States parties to ensure that any death sentence would be “in accordance with the law in force at the time of the commission of the crime”. This application of the principle of legality complements and reaffirms the application of the principle of *nullum peona sine lege* found in article 15, paragraph 1 of the Covenant. As a result, the introduction of the death penalty or new capital offences after a crime has been committed can never produce retroactive results. Nor can the imposition of the death penalty be based on unclearly defined criminal provisions, whose application to the convicted individual would depend on essentially subjective criteria, and which would not

be reasonably foreseen. At the same time, the abolition of the death penalty should apply retroactively to individuals charged or convicted of a capital offence in accordance with the *lex mitior* principle, which finds expression in the third sentence of article 15, paragraph 1 requiring States parties when imposing sentences to benefit offenders of lighter penalties adopted after the commission of the offence. The need to retroactively apply legislation abolishing the death penalty or certain capital offences is also dictated by the impossibility of justifying the need for imposing the death penalty after the legislature has deemed this penalty to be no longer appropriate.

42. Like any other deprivation of life, application of the death penalty for the most serious crimes must be done in a manner consistent with all other provisions of the Covenant. This includes conformity with all aspects of article 7 of the Covenant governing the manner of execution. Hence, the use of execution methods, such as stoning, injection of untested lethal drugs, firing squad, gas chambers, burning and burying alive, and decapitation are cruel, degrading and inhuman and thus contrary to article 7 and *ipso facto* article 6, paragraphs 1 and 2 of the Covenant. Public executions are a degrading form of punishment, and are thus also incompatible with articles 6 and 7 of the Covenant. Failure to provide individuals awaiting the application of the death penalty with timely notification about the date of their execution constitutes another form of ill-treatment, which renders the subsequent carrying out of the death penalty contrary to articles 6 and 7 of the Covenant. Extreme delays in the implementation of a death penalty sentence, which exceed any reasonable period of time necessary to exhaust all legal remedies, may also involve the violation of articles 6 and 7 of the Covenant, especially when the conditions of detention are exceptionally harsh or stressful, and when the individual in question is particularly vulnerable due to factors such as age or mental state.

43. Violation of the fair trial guarantees provided for in article 14 of the Covenant in proceedings resulting in the imposition of the death penalty also violate *ipso facto* article 6 of the Covenant. Unfair trial proceedings in death penalty cases include the use of forced confessions; inability of the accused to question witnesses, lack of effective representation during all stages of the criminal proceedings, including criminal interrogation, preliminary hearings, trial and appeal, failure to respect the presumption of innocence manifesting itself in the accused being placed in a cage or handcuffed during the trial; lack of an effective right of appeal; inability to access legal documents essential for conducting the legal defense or appeal, such as access to official prosecutorial applications to the court, the court's judgment or the trial transcript; excessive delays in the trial or the appeal process; and general lack of fairness of the criminal process, or lack of independence or impartiality of the trial or appeal court. The issuance of a death penalty without a trial, for example in the form of a religious fatwa which the State plans to carry out or allows to be carried out, also violates both article 14 and 6 of the Covenant.

44. Other serious procedural flaws, not covered by article 14 of the Covenant, may nonetheless render the imposition of the death penalty contrary to article 6. For example, a failure to promptly inform detained foreign nationals charged with a capital crime of their right to consular notification pursuant to the Vienna Convention on Consular Relations, and failure to afford individuals about to be deported to a country in which their lives are claimed to be at real risk with the opportunity to invoke available appeal procedures may violate article 6, paragraph 1 of the Covenant.

45. The application of the death penalty to convicts whose guilt has not been proven beyond reasonable doubt also constitutes an arbitrary deprivation of life. States parties must therefore take all feasible precautions in order to avoid wrongful convictions in death penalty cases, including re-examination of past convictions on the basis of new evidence, including new DNA evidence, and consideration of the implications on conviction in

capital offences of new studies suggesting the prevalence of false confessions and the unreliability of eyewitness testimony.

46. The application of the death penalty must also meet the non-discrimination requirements of article 2(1) and 26 of the Covenant. Data about the disproportionate representation on death row of members of religious or ethnic minorities or foreign nationals may suggest that the application of the death penalty has an unequal effect on members of such groups and it may be, as a result, contrary to article 6, paragraphs 1 and 2.

47. According to the last sentence of article 6, paragraph 2, the death penalty can only be carried out pursuant to a judgment of a competent court. Such a court should be established by law within the judiciary before the commission of the offence, and it must be independent of the executive and legislative branches. Although military courts may enjoy functional independence when adjudicating ordinary military crimes, the Committee is of the view that it is unlikely that military courts would be regarded in the eyes of a reasonable observer as sufficiently independent and impartial when trying the most serious capital crimes, since such crimes inevitably involve issues of exceptional political sensitivity. As a result, offences carrying the death penalty need, as a rule, to be tried before civilian courts affording all fair trial guarantees. Furthermore, the Committee does not consider courts of customary justice, such as tribal courts, as judicial institutions offering sufficient fair trial guarantees that would enable them to try the most serious capital crimes.

48. Any penalty of death can only be carried out pursuant to a final judgment, after all judicial appeal procedures have been exhausted, and after all other petitions to available non-judicial avenues have been attempted, including supervisory review by prosecutors, and requests for a private pardon (*Diyyai*) from family members of crime victims. Furthermore, death sentences should not be carried out as long as international interim measures requiring a stay of execution are in place. Such interim measures are designed to allow review of the sentence before international monitoring bodies, international courts, human rights courts and commissions, and the UN Treaty Bodies, and States have a good faith duty to comply with them even in the absence of a specific treaty provision to that effect.

49. States parties are required pursuant to Article 6, paragraph 4, to allow individuals sentenced to death to seek pardon or commutation, to ensure that amnesties, pardons and commutation can be granted to them in appropriate circumstances, and to ensure that sentences are not carried out before requests for pardon or commutation have been conclusively decided upon. No category of convicts can be a priori excluded from such measures of relief, nor should the conditions for attainment of relief be ineffective, exceptionally burdensome, discriminatory in nature or applied in an arbitrary manner. Article 6, paragraph 4 does not prescribe a particular procedure for the exercise of the right to seek pardon or commutation and States parties consequently retain discretion in spelling out the relevant procedures. Still, such procedures should be specified in domestic legislation, and they should not afford the families of victims a preponderant role in determining whether the death sentence should be carried out. Furthermore, pardon or commutation procedures must offer certain essential guarantees, including clarity about the processes followed and the substantive criteria applied; a right for individuals sentenced to death to initiate pardon or commutation procedures and to make representations about their personal or other relevant circumstances; a right to be informed in advanced when the request will be considered; and a right to be informed promptly about the outcome of the procedure.

50. Article 6, paragraph 5 prohibits the application of the death penalty to minors and pregnant women. Whereas for minors, the provision pertains to the time of the offence and, by necessary implication, also to the time in which the sentence is to be carried out, for pregnant women, it pertains only to the time of carrying out the sentence. The special

protection afforded to minors stems from a recognition of their limited ability to defend themselves, their reduced moral culpability, and their diminished ability to understand the reasons for the sentence due to their immaturity. It also reflects concerns about the exceptional harshness of depriving a minor of the remainder of his or her life. The special protection afforded to pregnant women stems from an interest in protecting the rights and interests of affected family members, including the the unborn fetus and the fetus's father.

51. Similar rationales, such as limited ability to defend oneself, reduced moral culpability, diminished ability to understand the reasons for the sentence, exceptional harshness of deprivation of life in certain circumstances and the need to respect the rights and interests of others, would normally require State parties to refrain from applying the death penalty to other categories of individuals. These include individuals with serious mental disabilities, lactating mothers, individuals at a very advanced age and individuals who have suffered in the past serious human rights violations, such as torture victims. The carrying out of the death penalty with respect to such vulnerable individuals could constitute an arbitrary deprivation of life, contrary to article 6, paragraph 1.

52. Article 6, paragraph 6 reflects the position that States parties that are not yet totally abolitionist should be on an irrevocable path towards complete abolition of the death penalty *de facto* and *de jure*, in the foreseeable future. The death penalty cannot be reconciled with full respect for human dignity, and abolition of the death penalty is both desirable, and necessary for the enhancement of human dignity and progressive development of human rights, including the right to life. It would appear to run contrary to the object and purpose of article 6, paragraph 5 for States parties to increase *de facto* the rate and extent in which they resort to the death penalty, and to reduce the number of pardons and commutations they grant.

53. Although the allusion to the conditions for application of the death penalty in article 6, paragraph 2 suggests that when drafting the Covenant the States parties did not regard the death penalty as a cruel, inhuman or degrading punishment *per se*, subsequent agreements by the State parties or subsequent practice establishing such agreements, may lead at some point in time in the future to the conclusion that the death penalty runs contrary to article 7 of the Covenant under all circumstances. The increasing number of ratifications of the Second Optional Protocol, as well as that of other international instruments prohibiting the imposition or carrying out of the death penalty, and the growing number of non-abolitionist States that have nonetheless introduced a *de facto* moratorium on the exercise of the death penalty, suggest that considerable progress may have been made towards establishing an agreement among the State parties to consider the death penalty as a cruel, inhuman or degrading form of punishment. Such a legal development ought to be welcomed as it is consistent with the pro-abolitionist spirit of the Covenant, which manifests itself, *inter alia*, in the texts of article 6, paragraph 6 and the Second Optional Protocol.

IV. Relationship of article 6 with other articles of the Covenant

54. The standards and guarantees of article 6 both overlap and interact with other provisions of the Covenant. Some forms of conduct amount independently to a violation of article 6 and another article, such as applying the death penalty in response to a crime not constituting the most serious crime, which may violate both article 6, paragraph 2 and article 7. At other times, the contents of article 6, paragraph 1, are informed by the contents of other articles. For example, application of the death penalty may amount to an arbitrary deprivation of life under article 6 by virtue of the fact that it represents a punishment for exercising freedom of expression, in violation of article 19.

55. Article 6 also reinforces the obligations of States parties under the Covenant and the Optional Protocol to protect individuals against reprisals for having cooperated or communicated with the Committee, including obligations to take the necessary measures to respond to death threats and to provide adequate protection to human rights defenders whose lives are under threat. Such measures should reflect, inter alia, the importance attributed to the work of human rights defenders in promoting human rights.

56. Torture and ill-treatment, which may seriously affect the physical and mental health of the mistreated individual could also generate the risk of deprivation of life. Furthermore, criminal convictions entailing the death penalty, which are based on information procured by torture or ill-treatment of interrogated persons, would violate articles 7 and 14, paragraph 3(g) of the Covenant, as well as article 6.

57. Returning individuals to countries where there are substantial grounds for believing that they face a real risk to their lives may cause them severe mental suffering in violation of articles 6 and 7 of the Covenant. In addition, making an individual sentenced to death believe that the sentence was commuted only to inform him later that it was not, and placing an individual on death row pursuant to a death sentence that is void ab initio, may run contrary to both articles 6 and 7.

58. The arbitrary deprivation of life of individuals may cause their relatives severe mental suffering, which could amount to a violation of their own rights under article 7 of the Covenant, as would failure to provide such relatives with information on the circumstances surrounding the deprivation of life, including the date in which the carrying out of the death penalty is anticipated, and the location of the body. For similar reasons, relatives of executed individuals should be able to receive back their body for burial.

59. The right to life guaranteed by article 6 of the Covenant, including the right to protection of life under article 6, paragraph 1, may overlap with the right to security of person guaranteed by article 9, paragraph 1. Extreme forms of arbitrary detention that are themselves life-threatening, such as enforced disappearances, and failure to respect the important procedural guarantees found in article 9, paragraphs 3 and 4, designed inter alia to prevent disappearances, may violate the right to personal liberty and personal security as well as the right to life.

60. A particular connection exists between article 6 and article 20, which prohibits any propaganda to war and certain forms of advocacy constituting incitement to violence. Failure to comply with the obligations under article 20, may also constitute a failure to take the necessary measures to ensure the right to life under article 6.

61. Article 24, paragraph 1, of the Covenant entitles every child “to such measures of protection as are required by his status as a minor on the part of his family, society and the State.” This article requires adoption of special measures designed to protect the life of every child, in addition to the general measures required by article 6 for protecting the lives of all individuals. When taking special measures of protection, State parties should be guided by the best interests of the child, and by the need to ensure the survival and development of all children.

62. In light of article 2, paragraph 1, of the Covenant, States parties have obligations to respect and to ensure the rights under article 6 of all persons who are found within their territory and all persons subject to their jurisdiction, power and effective control. Given that the act of detention brings a person within a state’s effective control, States parties must respect and protect the right to life of all individuals detained inside or outside their territory. Furthermore, States parties must respect and protect the lives of individuals residing in territories, which are under their effective control, such as occupied territories, and in territories over which they have assumed an international obligation to apply the Covenant. They are also required to respect and protect the lives of all individuals located

on marine vessels or aircrafts hoisting the State parties' flag or registered by them, and of those individuals who due to a situation of distress in sea found themselves in an area of the high seas over which particular State parties have assumed de facto responsibility, including pursuant to the relevant international norms governing rescue at sea.

63. With regard to article 4 of the Covenant, the Committee first observes that, like the rest of the Covenant, article 6 continues to apply also in situations of armed conflict to which the rules of international humanitarian law are applicable. While rules of international humanitarian law may be relevant for the interpretation and application of article 6, both spheres of law are complementary, not mutually exclusive. Uses of lethal force authorized and regulated by and complying with international humanitarian law are, in principle, not arbitrary. By contrast, practices inconsistent with international humanitarian law, entailing a real risk to the lives of civilians and persons hors de combat, including the targeting of civilians and civilian objects, failure to apply adequate measures of precaution to prevent collateral death of civilians, and the use of human shields, violate article 6 of the Covenant. Furthermore, State parties should, subject to compelling security considerations, disclose the criteria for attacking with lethal force individuals or objects whose targeting is expected to result in deprivation of life, including the legal basis for specific attacks, the process of identification of military targets and combatants or persons taking a direct part in hostilities, the circumstances in which relevant means and methods of warfare have been used, and whether less lethal alternatives for attaining the same military objective were considered.

64. Article 6 is included in the list of non-derogable rights of article 4, paragraph 2 of the Covenant. Hence, the fundamental guarantees against arbitrary deprivation of life continue to apply in all circumstances. The existence and nature of a public emergency which threatens the life of the nation may, however, be relevant to a determination of whether a particular act or omission leading to deprivation of life is arbitrary and to a determination of the scope of positive obligations that can be reasonably incurred by the State party. Although some other rights may be subject to derogation, derogable rights which support the application of article 6, and, in particular, the right to fair trial in death penalty cases and duty to take all feasible measures to investigate, prosecute, punish and remedy violations of the right to life, must not be diminished by measures of derogation.

65. Given the peremptory and non-derogable nature of article 6, the Committee is of the view that reservations to it cannot be accepted. In particular, it would be incompatible with the object and purpose of the Covenant for a State party to reserve the right to engage in arbitrary deprivation of life of persons, or to apply the death penalty outside the strict limits provided in Article 6, paragraphs 2,4 and 5 of the Covenant.

66. Wars and other mass violence events continue to be a scourge of humanity resulting in the loss of lives of many thousands of innocent human beings every year. Efforts to avert the risks of war and to strengthen international peace and security, would count among the most important conditions and guarantees for safeguarding the right to life.

67. States parties engaged in aggressive wars contrary to the United Nations Charter violate ipso facto article 6 of the Covenant. Moreover, States parties that fail to take measures to peacefully resolve their international conflicts so as to avoid the need to deploy military force do not comply in full with their positive obligation to ensure the right to life. At the same time, all members of the international community are reminded of their responsibility to protect lives and to oppose widespread and systematic attacks on the right to life, including military aggression, international terrorism and crimes against humanity, while respecting all of their obligations under the United Nations Charter.