



THE RIGHT TO LIFE

SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS
COMMITTEE ON THE REVISED DRAFT GENERAL COMMENT NO.
36

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1. INTRODUCTION

Following the Human Rights Committee's (the Committee) finalization of its first reading, in July 2017 during its 120th session, of the Draft General Comment No. 36 on Article 6 (Right to Life) of the International Covenant on Civil and Political Rights (ICCPR, hereafter: the Covenant), and its invitation to provide written comments on this draft, Amnesty International welcomes the opportunity to provide the following submission on the right to life. These comments supplement Amnesty International's preliminary observations submitted prior to the general day of discussion held in July 2015.¹

The organization would like to reaffirm at the outset its strong support for this initiative. The General Comment provides a key opportunity for the Committee to clarify important principles underlying the right to life so as to help ensure better implementation of this right.

Rather than commenting on every issue addressed in the revised draft adopted by the Committee, the present submission aims to inform the current process by providing Amnesty International's main observations and recommendations. It follows, to the maximum extent possible, the order of the revised draft and therefore should not be seen as implying an order of prioritization of the issues commented on. In addition to the Committee's practice, which forms the primary source of interpretation of Article 6 of the Covenant, this document also draws on pertinent international and regional standards, rulings, decisions and observations, as well as in some cases decisions of domestic courts and other sources, with a view to providing supplemental authority for the Committee's consideration.

Finally, and as a preliminary remark, Amnesty International would like to welcome the use of a gender-neutral language in the revised draft; however, we would like to suggest that during further revisions particular attention is paid to achieving this throughout the whole General Comment. For example, while in most cases "he or she" or "him or her" is used, paragraphs 34 and 59 still use "him" only, and in 1 instance in paragraph 34 it is only "he".

¹ See Amnesty International, *The UN Human Rights Committee's Proposed General Comment on the Right to Life*, Amnesty International's Preliminary Observations (Index: IOR 40/1644/2015), www.amnesty.org/en/documents/ior40/1644/2015/en/

2. OBSERVATIONS IN RELATION TO SPECIFIC PARAGRAPHS AND THEMES

2.1 PART I: GENERAL REMARKS

2.1.1 INTERPRETATIVE PRINCIPLES (PARAGRAPH 3)

Amnesty International welcomes the acknowledgement in [paragraph 3](#) that the right to life should not be interpreted narrowly. However, given the accepted, fundamental nature of the right to life, **we submit that the general rule as to its interpretation should be stated positively, rather than in the present negative terms.**² Furthermore, as part of such an interpretation, the Committee should acknowledge the indivisibility and intrinsic linkages among all rights, in particular the inter-dependence between the right to life and a range of economic, social and cultural rights as has been widely recognized by many other treaty bodies³, special procedures⁴, regional human rights bodies⁵ and a number of national courts across the world with respect to rights to health,⁶ housing⁷, work⁸ and working conditions⁹, livelihood¹⁰, food¹¹, water and sanitation¹², social

² See also *Judge v. Canada*, Human Rights Committee, Communication No. 829/1998, para. 10.5 (“It would appear logical, therefore, to interpret the rule in article 6, paragraph 1, in a wide sense, whereas paragraph 2, which addresses the death penalty, should be interpreted narrowly.”). See, also African Commission on Human and Peoples’ Rights, General Comment No. 3 on the African Charter on Human and Peoples’ Rights on the right to life (Article 4) (2015) [hereinafter African Commission, General Comment 3 (2015)], para. 41 (“The right to life should be interpreted broadly.”) and para. 3 (“This requires a broad interpretation of States’ responsibilities to protect life.”).

³ For example, the Committee on Economic, Social and Cultural Rights has stressed that “[h]ealth is a fundamental human right indispensable for the exercise of other human rights”, including – and especially – the right to a dignified life; see Committee on Economic, Social and Cultural Rights, General Comment 14 (Right to Health), UN Doc. E/C.12/2000/4 (2000), para 1. See also the Committee on the Rights of the Child, General Comment 15, Right of the Child to the Highest Attainable Standard of Health (art. 24), UN Doc. CRC/C/GC15 (2013), paras 16-18.

⁴ The Special Rapporteur on the right to physical and mental health has stated that access to health care is required for the full enjoyment of the right to life (UN General Assembly, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, 69th Sess, UN Doc. A/69/299 (2014), para 2. The Special Rapporteur on the right to adequate housing has stated that people who are homeless or living in inadequate housing describe their experiences in terms of their struggle for dignity and life; see Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, UN Doc. A/71/310 (2016), para. 8.

⁵ *Inter-American Court of Human Rights: Case of the “Juvenile Reeducation Institute” v. Paraguay*, Judgment of 2 September 2004, paras 149, 159, 168, 172; *Yakye Axa Indigenous Community v. Paraguay* (Merits, Reparations and Costs), Judgment of 17 June 2005, paras 161-167; *European Court of Human Rights: Cyprus v. Turkey*, Application No. 25781/94, para. 219; *Nitecki v. Poland*, Application No. 65653/01, para. 1.

⁶ For example, **India**: *Laxmi Mandal v. Deen Dayal Harinagar Hospital and Others*, WP(C) 8853/2008, Judgment of 4 June 2010, High Court of Delhi, paras 20-21; *Francis Coralie Mullin v. The Administrator, Union*, (1981) 1981AIR 746, para 6; **Argentina**: *Reynoso, Nida Noemí c/INSSJP/amparo*, May 16, 2006 (Supreme Court of Argentina); *Campodonico de Beviacqua, Ana Carina v. Ministerio de Salud y Banco de Drogas Neoplasticas*, Supreme Court of Argentina, 24 October 2000; **Brazil**: *Viera v. Porto Alegre* (RE 271286 AgR/RS) (2000); **Bangladesh**: *Rabia Bhuiyan v. Ministry of Local Government, Rural Development*, 59 DLR (AD) 176 (2007); *Dr. Mohiuddin Farooque v. Bangladesh* 48 DLR (1996) 438; **Colombia**: *Sala Segunda de Revisión, Sentencia T-760 (2008)* (Colombia), Judgment T-760/08 (2008); **United Kingdom**: *Burke, R (on the application of) v. General Medical Council and Ors*, [2005] EWCA Civ 1003, paras 39, 53; **Mexico**: *Case “Special Care Unit 13” (Pabellón 13)* regarding patients with HIV-AIDS brought against the National Institute of Respiratory Diseases (INER) and other authorities (AR 378/2014); **Ecuador**: *Mendoza & Ors v. Ministry of Public Health Resolution No. 0749-2003-RA* (2004) (Constitutional Court of Ecuador); **El Salvador**: *Mr Jorge*

security¹³ and education.¹⁴ Finally, Amnesty International repeats its recommendation that the General Comment reaffirms and clarifies that the right to life needs to be interpreted expansively, including a right to live in dignity.

We also welcome the acceptance, and the revised wording on the right “to enjoy a life with dignity”, as well as the more general formulation of “most serious crimes”, without singling out any specific area of concern. However, we suggest to stress further that the right to life protections apply to any person, including any person suspected or accused of any crime and at any stage in judicial proceedings. Also, for purposes of consistency and clarity throughout the General Comment and in-line with the Committee’s practice according to which the right to life does not apply prenatally,¹⁵ we recommend to clarify that the right to life applies only after birth.

2.1.2 DEPRIVATION OF LIFE (PARAGRAPHS 6 AND 7)

DEFINITION (PARAGRAPH 6 AND 7)

We welcome the deletion of the phrase “infliction” from [paragraph 6](#), which would have excluded situations where the deprivation of life resulted from neglect or failure of a state to adopt reasonable measures necessary for life, including with respect to economic, social and cultural rights.

However, it would also be important to clarify in [paragraph 6](#) that the deprivation of life includes situations where individuals are deprived of access to the goods and services necessary for survival and to lead a dignified life.¹⁶ This is relevant to the duty of states to regulate the conduct of third-parties with respect to the right to life, as elaborated on in paragraph 25, such as what would amount to arbitrary deprivation of life by private lawful entities, including private hospitals.

However, the qualification of “deliberate or otherwise foreseeable and preventable” life-terminating harm goes beyond a definition and is wording normally used to establish state or individual responsibility. We recommend that it be deleted or potentially replaced, at maximum, by the sole requirement that the harm be “foreseeable”. This narrow interpretation of the right to life fails to reflect the interdependence of this right with other human rights, particularly economic, social and cultural rights, such as the right to health, to just and fair conditions of work, including occupational health and safety, or to an adequate standard of living, including the rights to

Odir Miranda Cortez v. la Directora del instituto Salvadoreño del Seguro Social, File No. 348-99 (2001) (Constitutional Court of El Salvador); *Venezuela Cruz del Valle Bermúdez y otros v MSAS s/amparo. Expediente N° 15.789. Sentencia N° 196* (Supreme Court of Venezuela) (1999).

⁷ *Chamoli Singh & Ors. v. State of Uttar Pradesh & Anr.* (1996; 2 SCC 549).

⁸ Committee on Economic, Social and Cultural Rights, General Comment 18, The Right to work (Article 6 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/GC/18 (2006), paras 1 and 31.

⁹ *Bandhua Mukti Morcha v. Union of India* (1984) 3 SCC 161 (condemning bonded labour).

¹⁰ *Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors* (1985; 3 SCC 545).

¹¹ *Shantistar Builders v. Narayan Khimalal Totame* (1990; 1 SCC 520 at 527, pr.9); *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria* (155/96).

¹² *Civil Association for Equality and Justice v. City of Buenos Aires, Chamber for Administrative Matters of the City of Buenos Aires* (2007); *Perumatty Grama Panchayat v. State of Kerala* (2003); Committee on Economic, Social and Cultural Rights, General Comment 15 (Right to Water, Art. 11 and 12 of the Covenant), UN Doc. E/C.12/2002/11 (2003), para. 3.

¹³ Committee on Economic, Social and Cultural Rights, General Comment 18, The Right to work (Article 6 of the International Covenant on Economic, Social and Cultural Rights), UN Doc. E/C.12/GC/18 (2006), para. 1 (social security as being necessary to guarantee human dignity).

¹⁴ *Chamoli Singh & Ors. v. State of Uttar Pradesh & Anr.* (1996; 2 SCC 549).

¹⁵ The history of the negotiations on the Covenant indicates that an amendment was proposed and rejected that stated: “The right to life is inherent in the human person from the moment of conception, this right shall be protected by law.” UN GAOR Annex, 12th Session, Agenda Item 33, at 96, UN Doc. A/C.3/L.654; UN GAOR, 12th Session, Agenda Item 33, at 113, UN Doc. A/3764, 1957. The Commission ultimately voted to adopt Article 6, which has no reference to conception, by a vote of 55 to nil, with 17 abstentions. See also Human Rights Committee: Concluding Observations: Chile, UN Doc. CCPR/C/79/Add.104, para. 15; Concluding Observations: Argentina, UN Doc. CCPR/CO/70/ARG, para. 14; Concluding Observations: Costa Rica, UN Doc. CCPR/C/79/Add.107, para. 11; Concluding Observations: Peru, UN Doc. CCPR/C/PER/CO/5, para. 14; Concluding Observations: United Republic of Tanzania, UN Doc. CCPR/C/79/Add.97, para. 15; Concluding Observations: Venezuela, UN Doc. CCPR/CO/71/VEN, para. 19; Concluding Observations: Poland, UN Doc. CCPR/CO/82/POL, para. 8; Concluding Observations: Bolivia, UN Doc. CCPR/C/79/Add.74, para. 22; Concluding Observations: Colombia, UN Doc. CCPR/C/79/Add.76, para. 24; Ecuador, CCPR/C/79/Add.92, para. 11; Concluding Observations: Mongolia, UN Doc. CCPR/C/79/Add.120, para. 8(b); Concluding Observations: Poland, UN Doc. CCPR/C/79/Add.110, para. 11; Concluding Observations: Senegal, UN Doc. CCPR/C/79/Add.82, para. 12; Concluding Observations: Ireland, CCPR/C/IRL/CO/4, para. 9; General Comment 28, Article 3 (The equality of rights between men and women), UN Doc. CCPR/C/21/Rev.1/Add.10 (2000), paras 10, 20; see also *K.L. v. Peru*, Communication No. 1153/2003, UN Doc. CCPR/C/85/D/1153/2003 (2005) (in which the Committee found a violation of Article 7 of the ICCPR in the refusal of medical authorities to carry out a therapeutic abortion); *L.M.R. v. Argentina*, Communication No. 1608/2007, UN Doc. CCPR/C/101/D/1608/2007 (2011).

¹⁶ See for example, para. 3 of the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, stating: “The right to life does not actually belong to one or the other category of human rights, civil and political or economic, social and cultural. It has dimensions of both. One can be deprived of life by acts of States such as extrajudicial killings, but equally by being deprived of access to food, water, sanitation and a safe and secure place to live.” See Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, UN Doc. A/71/310 (2016), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/253/02/PDF/N1625302.pdf?OpenElement>

food, water, sanitation and adequate housing. It would appear to conflict with the Committee's own practice, as well as that of a great number of regional and national judicial and quasi-judicial authorities that have addressed the normative scope of the right to life pursuant to their own jurisdictional competencies (see references provided above in section 2.1.1.).

These inter-linkages, and the fact that Article 6 often requires that positive measures be taken, has been recognized by this Committee.¹⁷ By the same token, it is regrettable that the notion of "standard of living", in what is now **paragraph 7**, creating a life-threatening situation has been dropped without adequate replacement, and not in line with the recognition of the concept of life with dignity¹⁸ elsewhere in the revised draft.

Furthermore, paragraphs 6 and 7 do not address life-threatening situations as such, as a distinct category apart from threats expressed by state or private actors, or life-threatening situations where physical harm or injury have actually occurred. We recommend that such situations are explicitly recognized in **paragraph 7**. In addition, General Comment 35, paragraph 9, of this Committee makes clear that when it comes to death threats, there is an overlap between Article 9(1) and Article 6 of the Covenant.¹⁹

2.1.3 PRIVATE PERSONS AND ENTITIES (PARAGRAPHS 7 AND 11)

For our observations and further details on this issue, relevant to **paragraphs 7 and 11**, please see section 2.3.1 below.

2.1.4 THIRD PARTIES OTHER THAN PRIVATE PERSONS AND ENTITIES (PARAGRAPH 7)

For our observations and further details on this issue, relevant to **paragraphs 7**, please see section 2.3.2 below.

2.1.5 ENFORCED DISAPPEARANCE (PARAGRAPH 8)

Amnesty International welcomes the revised draft paragraph on enforced disappearances which better reflects the different state obligations to prevent, prosecute, sanction and provide full reparations for such crime.

Amnesty International recommends that the General Comment recognizes the autonomous character of an enforced disappearance and clearly requires states to ensure that it constitutes a separate offence under their criminal law, punishable with appropriate penalties that take into account its extreme seriousness.²⁰

Also, while we welcome the explicit language on necessary investigations, **the General Comment should more clearly indicate that enforced disappearance must be investigated and prosecuted within the ordinary civilian criminal justice system.**²¹

The General Comment should further incorporate language from the practice of the Committee and other mechanisms, which have already stated that **enforced disappearance is a continuous violation as long as the fate and whereabouts of the person have not been determined.**²²

¹⁷ E.g. Human Rights Committee: Concluding Observations: Democratic People's Republic of Korea, UN Doc. CCPR/CO/72/PRK (2001), para. 12; Concluding Observations: Canada, UN Doc. CCPR/C/79/Add.105 (1999), para. 12; see also *Naidenova et al. v. Bulgaria*, Communication No. 2073/2011, UN Doc. CCPR/C/106/D/2073/2011 (2012). For further interlinkages between the right to life and economic, social and cultural rights, see Committee on Economic, Social and Cultural Rights: General Comment 14: The Right to the Highest Attainable Standard of Health (2000) (Contained in UN Doc. E/C.12/2000/4), para. 3; General Comment 22 on the right to sexual and reproductive health, UN Doc. E/C.12/GC/22 (2016); General Comment 7: The right to adequate housing, UN Doc. E/1998/22 (1997), para. 4. See also Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, UN Doc. A/71/310 (2016), para. 10, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/253/02/PDF/N1625302.pdf?OpenElement>.

¹⁸ See now also African Commission, General Comment 3 (2015), para. 3.

¹⁹ "The right to personal security also obliges States parties to take appropriate measures in response to death threats against persons in the public sphere, and more generally to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors."

²⁰ See International Convention for the Protection of All Persons from Enforced Disappearance, Articles 4, 7; Inter-American Convention on Forced Disappearance of Persons, Article III; UN Declaration on the Protection of All Persons from Enforced Disappearance, UN Doc. A/RES/47/133, para. 4.

²¹ See *Kholdova v. Russian Federation*, Human Rights Committee, Communication No. 1548/2007, para. 10.5; International Convention for the Protection of All Persons from Enforced Disappearance, Article 11(3); Inter-American Convention on Forced Disappearance of Persons, Article IX; UN Declaration on the Protection of All Persons from Enforced Disappearance, UN Doc. A/RES/47/133, para. 16.2.

Finally, the revised draft should clarify that victims of enforced disappearances include any individual who has suffered harm as the direct result of the crime, which include family members and others.

2.1.6 ACCESS TO ABORTION (PARAGRAPH 9)

We welcome the Committee's removal of the language that appeared to imply that a right to life applies prenatally. We recommend that the Committee maintains these deletions as they are imperative to affirming that the right to life does not apply before birth, in line with the Committee's analysis and practice over the years.²³ These deletions also align with the fact that no international human rights body has ever recognized the foetus as a subject of protection under the right to life of this or other provisions of international human rights treaties, including the Convention on the Rights of the Child.²⁴ The ICCPR's *travaux préparatoires* likewise demonstrate that the proposition that the protection of the right to life applies before birth was rejected.²⁵

We also welcome that the Committee changed the references to "mothers" in the original draft to "pregnant women" in the revised draft, which signifies the Committee's acknowledgement that referring to women as "mothers" portrays them in a stereotypical way, often leading to denial of their sexual and reproductive rights (contrary to CEDAW's Article 5(a), which requires states to dismantle harmful gender stereotypes) by conflating pregnancy (a biological fact) with motherhood (a social role presumably assumed by choice). Furthermore, **we recommend that the text makes clear that the protection of pregnant women also includes pregnant girls.**

We welcome the Committee's explicit recognition that denial of access to abortion can violate Covenant rights, including pregnant women's right to life and other Covenant rights, including the right to be free from cruel, inhuman and degrading treatment or punishment. However, **we recommend that the Committee add references to the rights to privacy, to be free from gender-based violence and to freedom from discrimination to the other Covenant rights that are implicated by denying access to abortion,** in recognition of the Committee's past observations that criminalizing abortion violates these rights, as well as the interdependence of Covenant rights.²⁶ **We further suggest stating that abortion regulations must not**

²³ See *Katwal v. Nepal*, Human Rights Committee, Communication No. 2000/2010, para. 11.3; International Convention for the Protection of All Persons from Enforced Disappearance, Article 8(1)(b); Inter-American Convention on Forced Disappearance of Persons, Article III; UN Declaration on the Protection of All Persons from Enforced Disappearance, UN Doc. A/RES/47/133, para. 17; Working Group on Enforced or Involuntary Disappearances, General Comment on Enforced Disappearance as a Continuous Crime, UN Doc. A/HRC/16/48 (2011), para. 39.

²⁴ See Human Rights Committee, Concluding Observations: Ireland, UN Doc. CCPR/C/IRL/CO/4, para. 9 (The Committee critiqued the Irish Constitution which grants the right to life of the "unborn" on an equal footing with a pregnant woman's right to life, recognizing the impact that this has on women's access to abortion, and that the Committee specifically called for reform of this Constitutional provision and for liberalization of the state's abortion law.).

²⁵ An argument to the contrary is erroneously built upon paragraph 9 of the Convention on the Rights of the Child Preamble, which provides: "Bearing in mind that, as indicated in the Declaration of the Rights of the Child, 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth'." The history of negotiations by states on the treaty clarifies that these safeguards "before birth" must not affect a woman's choice to terminate an unwanted pregnancy. As originally drafted, the Preamble did not contain the reference to protection "before as well as after birth," although this language had been used in the earlier Declaration on the Rights of the Child. The Holy See led a proposal to add this phrase, at the same time as it "stated that the purpose of the amendment was not to preclude the possibility of an abortion" (UN Commission on Human Rights, Question of a Convention on the Rights of a Child: Report of the Working Group, 36th Session, UN Doc. E/CN.4/L.1542 (1980)). Although the words "before or after birth" were accepted, their limited purpose was reinforced by the statement that "the Working Group does not intend to prejudice the interpretation of Article 1 or any other provision of the Convention by States Parties." (UN Commission on Human Rights, Report of the Working Group on a Draft Convention on the Rights of the Child, 45th Session, UN Doc. E/CN.4/1989/48, p. 10).

²⁶ The history of the negotiations on the Covenant indicates that an amendment was proposed and rejected that stated: "the right to life is inherent in the human person from the moment of conception, this right shall be protected by law." UN GAOR Annex, 12th Session, Agenda Item 33, at 96, UN Doc. A/C.3/L.654; UN GAOR, 12th Session, Agenda Item 33, at 113, UN Doc. A/3764, 1957. The Commission ultimately voted to adopt Article 6, which has no reference to conception, by a vote of 55 to nil, with 17 abstentions.

²⁷ **Right to Privacy:** See *Human Rights Committee: K.L. v. Peru*, Communication No. 1153/2003, UN Doc. CCPR/C/85/D/1153/2003 (2005), para. 6.4; *L.M.R. v. Argentina*, Communication No. 1608/2007, UN Doc. CCPR/C/101/D/1608/2007 (2011), para. 9.3; **Right to be Free from Discrimination:** *Human Rights Committee:* General Comment 28, Equality of rights between men and women (Article 3), UN Doc. CCPR/C/21/Rev.1/Add.10 (2000), para. 20. This Committee has also regularly confirmed that lack of availability of reproductive health information and services, including abortion, undermine women's right to non-discrimination; see Concluding Observations: Colombia, UN Doc. CCPR/C/79/Add.76 (1997), para. 24; Concluding Observations: Argentina, UN Doc. CCPR/CO.70/ARG (2000), para. 14; Concluding Observations: Philippines, UN Doc. CCPR/C/PHL/CO/4 (2012), para. 13; Concluding Observations: Paraguay, UN Doc. CCPR/C/PRY/CO/3 (2013), para. 13; Concluding Observations: Peru, UN Doc. CCPR/C/PER/CO/5 (2013), para. 14; and Concluding Observations: Ireland, UN Doc. CCPR/C/IRL/CO/4 (2014), para. 9. See also *Committee on the Elimination of Discrimination against Women*, General Recommendation 24 (Article 12 of the Convention (Women and Health)), UN Doc. A/54/38/Rev.1 (1999), para. 14; "Statement of the Committee on the Elimination of Discrimination against Women on sexual and reproductive health and rights: Beyond 2014 ICPD review," 57th Session, (2014), www.ohchr.org/Documents/HRBodies/CEDAW/Statements/SRHR26Feb2014.pdf. (The Committee has explicitly stated that failure of a State party to provide services and the criminalization of some services that only women require is a violation of women's reproductive rights and constitutes discrimination against them.); *Human Rights Committee, Whelan v. Ireland*, UN Doc. CCPR/C/119/D/2425/2014, (2017) (denial of abortion when a woman's pregnancy was identified as involving a fatal foetal impairment subjected the woman to cruel, inhuman and degrading treatment and violated her rights to privacy and to non-discrimination.) **Right to a life free from gender-based violence:** See *Committee on the Elimination of Discrimination against Women*, General Recommendation 35 (gender-based violence against women, updating general recommendation no.19) (2017), paras 15, 18. **Interdependence of Rights:** See *Committee on Economic, Social and Cultural Rights*, General Comment 22 (right to sexual and reproductive health (Article 12)), UN Doc. E/C.12/GC/22 (2016), para. 10. ("The right to sexual

reinforce existing discrimination and harmful gender stereotyping (in accordance with CEDAW's Article 5(a), which requires states to dismantle harmful gender stereotypes). Harmful gender stereotypes and restrictive gender norms underlie criminal and otherwise restrictive abortion laws, punishing women for not complying with their ascribed role as "mothers".²⁷ Additionally, the CEDAW Committee has found that denial of access to abortion may be based on gender stereotypes about the traditional roles of women as mothers and caregivers, which constitute gender discrimination and undermine gender equality.²⁸ That Committee has also expressed concern about situations where abortion is legal but stigmatized, which may lead women to resort to unsafe and clandestine abortions.²⁹

We further welcome the Committee's explicit focus on states' obligation to provide access to safe abortion; **we recommend that the Committee strengthens the language/emphasis on the obligations of the state to protect the right to life of women and girls and prevent unsafe abortion by decriminalizing abortion and ensuring access to safe and legal abortion services, abortion-related information and post-abortion care.**

We welcome the Committee's removal of the reference to "waiting periods" in relation to barriers to abortion. We also acknowledge that the Committee changed the reference from "humiliating and excessive burdensome requirements" to "humiliating and unreasonably burdensome requirements on women seeking to undergo abortion". However, **we recommend that the words "humiliating", "burdensome" and "unreasonably" be removed as they are not defined in the Covenant, and they are vague and difficult to consistently apply. Moreover, we recommend that the Committee simply refer to "barriers" (as opposed to the term "requirements")**, as this is consistent with language used by the Committee on Economic, Social and Cultural Rights (in interpreting the right to health, including sexual and reproductive health)³⁰ and UN agencies such as WHO and UNFPA.³¹ Additionally, legal, administrative and other requirements for abortion are an ongoing problem worldwide, leading women and girls to being denied access to abortion even when they are legally entitled to them.

The right to health and states' obligations to realize women's and girls' rights and work towards gender equality, both in law and in practice, require repealing or reforming discriminatory laws, policies and practices in the area of sexual and reproductive health.³² This specifically includes removal of all barriers interfering with women's and girls' access to comprehensive sexual and reproductive health services, goods, education and information.³³

The Committee could go further and reemphasize that legal, policy and procedural barriers can severely impact women's and girls' right to life, health, privacy, and to be free from torture and other cruel, inhuman and degrading treatment or punishment and from discrimination.³⁴ Notably, with respect to

and reproductive health is also indivisible from and interdependent with other human rights. It is intimately linked to civil and political rights underpinning the physical and mental integrity of individuals and their autonomy, such as the right to life; liberty and security of person; freedom from torture and other cruel, inhuman or degrading treatment; privacy and respect for family life; and non-discrimination and equality.)

²⁷ See Human Rights Committee: *K.L. v. Peru*, Communication No. 1153/2003, UN Doc. CCPR/C/85/D/1153/2003 (2005), para. 6.4; *L.M.R. v. Argentina*, Communication No. 1608/2007, UN Doc. CCPR/C/101/D/1608/2007 (2011), para. 9.3. In both communications, the Committee found that gender stereotyping had negatively affected the ability of the victims to access abortion. See also *Amanda Jane Mellet v. Ireland*, Communication No. 2314/2013, UN Doc. CCPR/C/116/D/2324/2013, (concurring opinion of Committee Member Sarah Cleveland) (2016), para. 14 ("The author also articulates an alternative basis for a finding of gender discrimination – that Ireland's legal regime is based on traditional stereotypes regarding the reproductive role of women, by placing the woman's reproductive function above her physical and mental health and autonomy. The fact that the State party may have pointed to a facially nondiscriminatory purpose for its legal regime does not mean that its laws may not also be informed by such stereotypes. Indeed, the State's laws appear to take such stereotypes to an extreme degree where, as here, the author's pregnancy was nonviable and any claimed purpose of protecting a foetus could have no purchase. Requiring the author to carry a fatally impaired pregnancy to term only underscores the extent to which the State party has prioritized (whether intentionally or unintentionally) the reproductive role of women as mothers, and exposes its claimed justification in this context as a *reductio ad absurdum*.").

²⁸ See *LC v. Peru*, Committee on the Elimination of Discrimination against Women, Communication No. 22/2009 (2011), para. 8.15.

²⁹ See Committee on the Elimination of Discrimination against Women: Concluding Observations: Hungary, UN Doc. CEDAW/C/HUN/CO/7-8 (2013), para. 30; Concluding Observations: Ghana, UN Doc. CEDAW/C/GHA/CO/6-7 (2014), para. 38(d).

³⁰ See Committee on Economic, Social and Cultural Rights, General Comment 22, UN Doc. E/C.12/GC/22 (2016) (using the term "barrier" throughout).

³¹ See WHO, *Safe Abortion: Technical and Policy Guidance for Health Systems* (2nd edition), p. 17, 2012; UNFPA, *Access to Safe Abortion: Progress and Challenges since the 1994 International Conference on Population and Development (ICPD)*, p. 3, 2014, www.unfpa.org/sites/default/files/resource-pdf/Safe_Abortion.pdf.

³² See Committee on Economic, Social and Cultural Rights, General Comment 22, UN Doc. E/C.12/GC/22 (2016), para. 28.

³³ See Committee on Economic, Social and Cultural Rights, General Comment 22, UN Doc. E/C.12/GC/22 (2016), paras 28, 34, 43, 46, 48, 54, 57 and 63.

³⁴ For example, the CEDAW Committee, CRC Committee, Committee against Torture, Committee on the Rights of Persons with Disabilities and Human Rights Committee have urged states to repeal third-party authorization requirements – such as those required from spouses, judges, parents, guardians, or health authorities – for reproductive health services, classifying these requirements as forms of discrimination against women and barriers to women's access to reproductive health services. See, e.g., CEDAW Committee: Concluding Observations: Indonesia, UN Doc. CEDAW/C/IDN/CO/5, para. 17, 2007; Concluding Observations: Cook Islands, UN Doc. CEDAW/C/COK/CO/1, para. 35, 2007; Concluding Observations: Burkina Faso, UN Doc. CEDAW/C/BFA/CO/6, para. 38; Human Rights Committee: Concluding Observations: Bolivia, UN Doc. CCPR/C/BOL/CO/3 (2013), para. 9(b); Committee on the Rights of Persons with Disabilities, General Comment 1 (Article 12: Equal recognition

adolescents, the Committee on the Rights of the Child confirmed in its General Comment 20 that “[t]here should be no barriers to commodities, information and counselling on sexual and reproductive health and rights, such as requirements for third-party consent or authorization.”³⁵ That Committee further urged “States to decriminalize abortion to ensure that girls have access to safe abortion and post-abortion services, review legislation with a view to guaranteeing the best interests of pregnant adolescents and ensure that their views are always heard and respected in abortion-related decisions.”³⁶

We welcome the Committee’s rephrasing of the general reference to “health risks” associated to specifically refer to “health risks associated with unsafe abortion”, as to avoid the implication that abortion is inherently unsafe or risky. To the contrary, it is one of the safest medical procedures when provided by trained health care providers. This phrase precedes the Committee’s call for “ensur[ing] access for women, men and in particular adolescents to information and education about reproductive options, and to a wide range of contraceptive methods.” **While it is essential to emphasize states’ obligations to provide this type of information and education, we recommend further emphasizing that such information must be of quality, evidence-based and up-to-date, reflecting present standards of science.**

We furthermore recommend that the Committee emphasize states’ obligations to ensure that all persons have access to the full range of quality sexual and reproductive information, education and services, that align with the rights to privacy, confidentiality, informed consent and non-discrimination in access.

We are concerned that the Committee added the following qualifying language (“when taking such measures is expected to significantly increase resort to unsafe abortions”), at the end of the sentence calling for removal of criminal penalties for pregnancies by unmarried women and for women who obtain abortions and physicians who provide them. This is because all forms of criminalization of abortion have been shown to lead women and girls to resort to unsafe abortions.³⁷ Further, when health care workers fear criminal penalties, they either decline to provide abortions or apply the law in a much stricter manner, thus having a “chilling effect” on women’s and girls’ access to abortion.³⁸ **We therefore recommend deleting this qualifying language, replacing the reference from “physicians” to “medical providers”, and keeping the rest of the sentence contained in square brackets.**

2.1.7 SUICIDE (PARAGRAPH 10)

With regard to access to firearms (also discussed in regard to paragraph 25 below), while global data on suicide is incomplete,³⁹ studies have indicated strong correlations between access to firearms and both the proportion

before the law), UN Doc. CRPD/C/GC/1 (2014); CRC Committee, General Comment 15 (on the right of the child to the enjoyment of the highest attainable standard of health (Article 24)), UN Doc. CRC/C/GC/15 (2013); Committee Against Torture, Concluding Observations: Bolivia, UN Doc. CAT/C/BOL/CO/2 (2013), para. 23. Additionally, in the CEDAW Committee’s General Comment 33 (women’s access to justice), the Committee calls on states to “abolish rules and practices that require parental or spousal authorization for access to services such as . . . health, including sexual and reproductive health.” CEDAW, General Comment 33 (women’s access to justice), UN Doc. CEDAW/C/GC/33 (2015), para. 25(c). The Human Rights Committee, the European Court of Human Rights and the Inter-American Commission on Human Rights have confirmed that administrative, legal and other practical barriers to abortion can lead to cruel, inhuman and degrading treatment or punishment. See Human Rights Committee: *K.L. v. Peru*, Communication No. 1153/2003, UN Doc. CCPR/C/85/D/1153/2003 (2005) (in which the Committee found a violation of Article 7 of the ICCPR in the refusal of medical authorities to carry out a therapeutic abortion); *L.M.R. v. Argentina*, Communication No. 1608/2007, UN Doc. CCPR/C/101/D/1608/2007 (2011); *Amanda Jane Mellet v. Ireland*, Communication No. 2314/2013, UN Doc. CCPR/C/116/D/2324/2013 (2013), para. 7.11; *European Court of Human Rights: P and S v. Poland*, App. No. 57375/08, p. 21, 2008 (communicated to the state on September 20, 2011); *R.R. v. Poland*, App. no. 27617/04, 2011; *Z v. Poland*, App. No. 46123/08, p. 25, 2008 (maternal death as a result of denial of healthcare); *Inter-American Commission on Human Rights: M.M. v. Peru*, Report No. 71/03, Petition 12.191 (Friendly Settlement), 2003; see also Center for Reproductive Rights, *Reproductive Rights Violations as Torture and Cruel, Inhuman or Degrading Treatment or Punishment: A Critical Human Rights Analysis*, 2010, www.reproductiverights.org/sites/crr.civicactions.net/files/documents/TCIDT.pdf.

³⁵ CRC Committee, General Comment 20 (implementation of rights of the child during adolescence), UN Doc. CRC/C/GC/20 (2016), para. 60.

³⁶ CRC Committee, General Comment 20 (implementation of rights of the child during adolescence), UN Doc. CRC/C/GC/20 (2016), para. 60.

³⁷ See WHO, *Safe Abortion: Technical and Policy Guidance for Health Systems* (2nd edition), p. 90, 2012 (Restricting legal access to abortion does not decrease the need for abortion, but it is likely to increase the number of women seeking illegal and unsafe abortions, leading to increased morbidity and mortality. On the basis of this evidence, WHO recommends that “laws and policies on abortion should protect women’s health and their human rights”, and that “regulatory, policy and programmatic barriers that hinder access to and timely provision of safe abortion care should be removed.”). *Id.* at g. Additionally, the WHO and Guttmacher Institute research figures reflect that globally deaths and morbidity resulting from abortion are high in countries where access to abortion is legally restricted. See WHO and Guttmacher Institute, *Facts on Induced Abortion Worldwide: In Brief*, 2015, https://www.guttmacher.org/sites/default/files/pdfs/pubs/fb_IAW.pdf.

³⁸ See Amnesty International: *She is Not a Criminal: The Impact of Ireland’s Restrictive Abortion Laws* (Index: EUR 29/1597/2015), <https://www.amnesty.org/en/documents/eur29/1597/2015/en/>; *On the Brink of Death: Violence against Women and the Abortion Ban in El Salvador* (Index: AMR 29/003/2014), https://www.amnestyusa.org/files/el_salvador_report_-_on_the_brink_of_death.pdf; *The Total Abortion Ban in Nicaragua: Women’s Lives and Health Endangered, Medical Professional Criminalized* (Index: AMR 43/001/2009), <http://www.amnestyusa.org/pdfs/amr430012009en.pdf>.

³⁹ The World Health Organization has estimated that 804,000 suicide deaths occurred in 2012 although this is likely to be an under-estimate due to underreporting; WHO, *Preventing suicide: A global imperative*, http://apps.who.int/iris/bitstream/10665/131056/1/9789241564779_eng.pdf?ua=1&ua=1; for a summary of firearms suicide statistics,

of suicide deaths by firearm, as well as elevated overall suicide rates.⁴⁰ Access to the means of suicide is a strong risk factor for suicide death, especially in relation to firearms. Where suicide is a “heat-of-the-moment” event in response to an acute psychological crisis, the availability of firearms and their lethal nature greatly increases the risk of an irreversible, fatal or life-changing outcome.⁴¹ Preventive measures restricting access to firearms by those at risk of self-harm, as well as more stringent safety measures in the home, have been shown to reduce the incidence of both firearm suicide and the overall suicide rate.⁴² Due to the special role firearms regulation can play in reducing incidence of “moment of crisis” suicides, **Amnesty International therefore recommends reinstating the point from the initial draft of this General Comment that states should seek to limit access to firearms by suicidal individuals.**

For further remarks on “small arms” related abuses by non-state actors, please see below our observations on [paragraphs 24 and 25](#) of the revised draft.

2.1.8 VICTIM STATUS (PARAGRAPH 15)

For remarks on the victim status dealt in [paragraph 15](#), please see section 2.1.10 below.

2.1.9 USE OF FORCE, WEAPONS AND LAW ENFORCEMENT (PARAGRAPHS 11 TO 14, 18, 19 AND 24 TO 25)

[Paragraph 11](#) of the revised draft refers to “private individuals or entities ... authorized or empowered by a State party to employ force with potentially lethal consequences”; the next sentence then states that the state party “must rigorously limit the powers afforded to private actors”. Throughout the paragraph it is not clear whether it refers to private actors engaged by the state to carry out law enforcement functions (including the use of force), and to whom the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles)⁴³ would necessarily apply, or whether it also applies to private security forces engaged by corporations or other non-state bodies, where the responsibilities of the relevant non-state bodies, as well as those of the state, are different, and where indeed the state should limit their powers.

Amnesty International recommends that the General Comment treat separately the deprivation of life by non-state actors acting in a private capacity, and by law enforcement officials and private actors tasked with law enforcement functions. In this paragraph, which appears to relate to non-state actors tasked with law enforcement functions, that should be made clear.

Requiring that private individuals or entities engaged by States parties are trained in international human rights law and international humanitarian law and other relevant standards on the use of force is crucial in ensuring they adhere to international human rights and humanitarian law in their operations. **Amnesty International therefore recommends that the general comment include a specific reference to the requirement of human rights compliant training.**

AUTONOMOUS WEAPONS SYSTEMS (PARAGRAPH 12)

[Paragraph 12](#) refers to “lethal autonomous robotics”, which does not capture all weapons systems that we are concerned may be designed to be used in law enforcement operations. Amnesty International has taken the view that “Autonomous Weapons Systems” (AWS) is a useful term for these weapons systems, since these systems may be designed (1) to have lethal or less lethal effects and (2) to be used in armed conflict and/or law enforcement situations. This terminology is also consistent with that utilised in the Human Rights Council. **Amnesty International therefore recommends that the term “fully autonomous weapons systems” be used in order to capture both lethal and less lethal systems.**

In addition, [paragraph 12](#) refers to the development of these systems for use in military operations, but does not refer to use in law enforcement operations. The rapid development of these weapons systems could not

correlations and preventive measures, see *Ending it with a gun: global gun suicide statistics examined*, www.gunbabygun.com/ending-gun-global-gun-suicide-statistics-examined/

⁴⁰ A Anglemyer, T Horvath, G Rutherford, ‘The Accessibility of Firearms and Risk for Suicide and Homicide Victimization Among Household Members: A Systematic Review and Meta-analysis’, *Ann Intern Med.* 2014; 160:101-110, <http://annals.org/article.aspx?articleid=1814426>

⁴¹ 85% of firearm suicide attempts end in death – a far higher rate than other means, M Drexler, ‘Guns & Suicide: The Hidden Toll’, *Harv. Pub. Health*, Spring 2011, at 24, 26, www.hsph.harvard.edu/magazine-features/guns-and-suicide-the-hidden-toll/

⁴² WHO, *Preventing suicide*, p. 34.

⁴³ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August - 7 September 1990.

only change the entire nature of warfare, it could also dramatically alter the conduct of law enforcement operations and raises extremely serious human rights concerns, undermining the right to life, the prohibition of torture and other ill-treatment, the right to security of person, and other human rights. **Amnesty International therefore recommends that a specific reference to the potential use of AWS in law enforcement operations be explicitly included.**

Amnesty International foresees that the use of AWS would not be able to comply with international humanitarian law, particularly rules prohibiting the targeting of civilians, indiscriminate and disproportionate attacks and requiring that all feasible precautions be taken to spare civilian casualties. Additionally, as it is unlikely that AWS could ever reach human levels of judgement required in the lawful conduct of law enforcement, it is improbable that AWS could comply with international standards governing the use of force in law enforcement situations. It is particularly doubtful that the guiding human rights principles of legality, necessity and proportionality could be adhered to by AWS. Lethal and less lethal AWS without meaningful and effective human control would not have the capacity to correctly assess complex policing situations and comply with international standards that prohibit the use of lethal force except in defence against an imminent threat of death or serious injury. In addition, unlike highly trained and strictly accountable law enforcement personnel, robots could not by themselves distinguish between legal and illegal functions, or make decisions regarding the use of force, thereby seriously undermining accountability and the right to an effective remedy for arbitrary, abusive and excessive uses of force. **Given the potentially grave consequences of such technology and states' existing obligations under international human rights law and international humanitarian law, Amnesty International is calling for a pre-emptive ban on the development, production, and use of fully AWS.**

Amnesty International therefore recommends the General Comment explicitly expresses the view that lethal and less lethal AWS, which can select, attack, kill and injure human targets without meaningful human control, should be prohibited. This call would be consistent with the recommendation made in February 2016 by the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies.⁴⁴

WEAPONS OF MASS DESTRUCTION (PARAGRAPH 13)

Paragraph 13 does not make reference to the Treaty on the Prohibition of Nuclear Weapons,⁴⁵ which was adopted on 7 July 2017. This treaty prohibits States parties from developing, testing, producing, manufacturing, transferring, possessing, stockpiling, using or threatening to use nuclear weapons, or allowing nuclear weapons to be stationed on their territory. It also prohibits States parties from assisting, encouraging or inducing anyone to engage in any of these activities. States that possess nuclear weapons may join this treaty, as long as they agree to destroy them in accordance with a legally binding, time-bound plan. Similarly, states that host another state's nuclear weapons on their territory may join, as long as they agree to remove them by a specified deadline.

States parties are obliged to provide assistance to all victims of the use and testing of nuclear weapons and to take measures for the remediation of contaminated environments. As such, this new treaty is central to tackling the threat or use of nuclear weapons. **Therefore, Amnesty International recommends that the General Comment include a recommendation calling on all states to promptly ratify and effectively implement the Treaty on the Prohibition of Nuclear Weapons.**

SOLDIERS CHARGED WITH LAW ENFORCEMENT MISSIONS (PARAGRAPH 14)

Paragraph 14 of the revised draft refers to "law-enforcement agents and soldiers charged with law-enforcement missions". This formulation risks being misconstrued as identifying soldiers carrying out law enforcement as distinct from law enforcement agents. **We therefore encourage the Committee to make clear that soldiers charged with law enforcement missions are law enforcement officials;⁴⁶ not a separate category, and that the Basic Principles, in their entirety, are accordingly applicable to them.**

LESS-LETHAL WEAPONS (PARAGRAPH 14)

We welcome that **paragraph 14** of the revised draft identifies in an expanded manner the threats to the right to life emanating from the use of less lethal weapons and equipment in law enforcement and stresses the need for

⁴⁴ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66 (2016), para 67(f).

⁴⁵ <https://www.un.org/disarmament/ptnw/>

⁴⁶ See Commentary to Article 1 of the Code of Conduct for Law Enforcement Officials: "(a) The term 'law enforcement officials', includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. (b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services."

appropriate regulation of such weapons and training in their use, and states firmly that the weapons identified as examples must not be used in routine situations of crowd control and demonstrations. However, **it would be important for the General Comment to also indicate that such weapons must be subjected to rigorous independent testing before a decision is made to make them available for use in law enforcement; as well as that training in their use refers to training not only in the technical skill for using the weapon, but also in the surrounding context of a law enforcement official's duties** – that is, the obligation to attempt non-violent means first, human rights and the ethics of use of force, as well as communication, de-escalation and negotiation, and minimum use of force. In that regard **in referring to the international protocols for their use, it would be important to refer explicitly to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.**

Furthermore, **Amnesty International is very concerned that one of the three types of weapons identified as examples of less lethal weapons is rubber-coated metal bullets.** It is extremely problematic to refer to these as a less lethal weapon (even though there are also other weapons conventionally described as “less lethal” which can, if misused, have lethal consequences or cause very severe injury). Rubber-coated metal bullets, while not weapons designed to kill (i.e. in the same way as firearms/metal bullets or other weapons such as guided armed drones or explosive devices), carry such a high risk of death, and cause harm which is disproportionate to the law enforcement objective⁴⁷ that **Amnesty International recommends that they be excluded from being considered as less lethal weapons, and as such may only be used in circumstances similar to those established for the use of firearms.**⁴⁸

It would be most helpful if the revised General Comment includes a statement to that effect, or, at a minimum, if the Committee removes mention of rubber-coated metal bullets from this list of less lethal weapons, and replaces it with another example that more appropriately can be seen as a less lethal weapon. For example if it were replaced with a reference to chemical irritants (such as tear gas or pepper spray), the examples would cover different types of weapons which are conventionally regarded as less lethal, but with regard to which there are known risks of serious harm and so must be subject to particularly stringent conditions for their use.

NECESSITY AND PROPORTIONALITY OF USING FORCE (PARAGRAPH 18)

Given the substantial number of people killed in the course of law enforcement operations around the world, and the use by law enforcement officials of lethal force in situations where it is not proportionate to the threat,⁴⁹ **Amnesty International recommends that the General Comment gives more prominent and explicit emphasis to the particular obligations of States parties to ensure the respect and protection of life in law enforcement operations.** To some extent these obligations are reflected in **paragraph 18** of the revised General Comment, but as currently drafted several key points are not made sufficiently clear. **Amnesty International recommends to amend paragraph 18 of the revised draft in order to more closely reflect Principle 9 of the Basic Principles, and in addition to affirm that Principle 9 reflects binding international law.**

Amnesty International also **recommends that paragraph 18 clearly and explicitly identify the twin essential requirements of necessity and proportionality,** both of which states must comply with if the use of force, and particularly the use of lethal force, is to comply with the obligation to respect and protect the right to life. While **paragraph 18** in the revised draft refers to these elements, it does not sufficiently clearly differentiate the two interlinked key principles.

With regard to proportionality, while the revised draft at the end of **paragraph 18** refers to two examples of the use of potentially lethal force which “cannot be regarded as proportionate”, it is important to affirmatively state the requirement of proportionality as reflected in Basic Principle 9 of the UN Basic Principles on the Use of Force and Firearms – that it must be “in proportion to the seriousness of the offence and the legitimate objectives to be achieved”⁵⁰ – and that, in relation to the use of potentially lethal force, the proportionality is between the likelihood that the use of force will result in death and the comparable likelihood that failing to incapacitate an individual would result in the deaths of others.⁵¹ It is essential to elucidate this meaning of proportionality in law

⁴⁷ See e.g. Human Rights Committee, Concluding Observations: Israel (1998), para. 17: “The Committee expresses concern over the use of rubber-coated metal bullets by the security forces in the occupied territories in dispersing demonstrations. This type of rubber bullet is reported to have killed many Palestinians, including children. The Committee urges the State party to enforce rigorously the strict limitations on the operational rules as to the use of firearms and the use of rubber bullets against unarmed civilians.”

⁴⁸ See Amnesty International Netherlands, *Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (2015), p. 136. See also Amnesty International, *Trigger-Happy: Israel's use of excessive force in the West Bank* (Index: MDE 15/002/2014), p. 37.

⁴⁹ See e.g. figures cited in Report to the Human Rights Council of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/HRC/26/36 (2014), paras 24/25.

⁵⁰ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 5(a).

⁵¹ See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/61/311 (2006), para. 44.

enforcement precisely because it is different from the principle of proportionality in international humanitarian law.

In this regard Amnesty International notes that, with regard to the use of potentially lethal force, the revised draft states that “the force applied must be carefully directed, as far as possible, only at the attacker”. In contrast, we submit that with regard to the use of potentially lethal force in law enforcement, utmost attention must be given to the protection of third persons, and in particular that the concept of acceptable incidental harm to the lives or physical integrity of other persons, as can apply in situations of armed conflict, is not applicable in law enforcement, and accordingly that planning and conducting a law enforcement operation in which incidental harm is accepted from the outset would, if this results in loss of life, amount to an arbitrary deprivation of life.

With regard to necessity, the revised draft clarifies it by means of several examples, but it is important also to stress that the requirement of necessity imposes an obligation to minimize the level of force applied regardless of the level of force that would be proportionate.⁵²

Furthermore, it would be important to emphasize explicitly that neither necessity nor proportionality on their own can be a justification for taking life in the context of law enforcement.

Amnesty International recommend that the General Comment expressly states that use of lethal force in law enforcement is permissible only as the absolute last resort, when no less extreme means are sufficient to achieve the objective of preventing the loss of another life or serious injury and that intentional lethal use of force may only be made when strictly unavoidable in order to protect life,⁵³ and that any use of lethal force in situations that do not reach this threshold of danger or which is not a last resort, is an arbitrary deprivation of life, if resulting in the death of a person.⁵⁴

We further recommend in this context to refer explicitly to how these two elements are encapsulated in Principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and also to explicitly affirm the proportionality principle as set out in the final sentence of Basic Principle 9, identified by the Special Rapporteur on extrajudicial, summary or arbitrary executions as the “protect life” principle” and the overarching principle governing the use of (lethal) force in law enforcement, that a life may be taken intentionally only to save another life.⁵⁵

In this regard, **Amnesty International recommends that the General Comment affirm the centrality of the Basic Principles in defining the limits to the use of force by law enforcement officials,** and in particular Basic Principle No. 9 on lethal force as reflecting binding international law,⁵⁶ and accordingly that the use of lethal force in law enforcement contrary to Principle 9 would, if resulting in loss of life, amount to an arbitrary deprivation of life.

Amnesty International further recommends that in the General Comment all relevant domestic authorities are called upon to implement the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials in their entirety through domestic legislation, operational instructions and training of law enforcement officials.⁵⁷

INTENTIONAL USE OF LETHAL FORCE (PARAGRAPH 18)

Since the only legitimate objective for the use of potentially lethal force is to prevent a threat to life or of serious injury, it follows that shooting with the objective or purpose of killing a person must never be the primary

⁵² Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/61/311 (2006), para. 41.

⁵³ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 9. See also Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. E/CN.4/2006/53 (2006), paras 44-54.

⁵⁴ Human Rights Committee: *Suarez de Guerrero v. Colombia*, Communication No. 45/79, para. 13.3; Concluding Observations: Liechtenstein, UN Doc. CCPR/CO/81/LIE, para. 10.

⁵⁵ Report to the General Assembly, UN Doc. A/66/330 (2011), para. 88(b) “The starting point is the sanctity of life. International norms in this regard are premised on what has been called the ‘protection of life principle’: the right to life may be limited only in order to protect life.” See also para. 26: “international human rights law proceeds from what will be called in the present report the protection of life principle. This principle entails that while life may as a general rule not be sacrificed to protect other values, under closely defined circumstances one life may be taken as a last resort in order to protect another life or lives”.

⁵⁶ See Special Rapporteur on extrajudicial, summary or arbitrary executions, report to the General Assembly, UN Doc. A/61/311 (2006), para. 35; see also Special Rapporteur on extrajudicial, summary or arbitrary executions, Report to the Human Rights Council, UN Doc. A/HRC/26/36 (2014), para. 44.

⁵⁷ Human Rights Committee: Concluding Observations: Cyprus, UN Doc. CCPR/C/79/Add.39, para. 18; Concluding Observations: United States of America, UN Doc. CCPR/C/79/Add.50, para. 32; Concluding Observations: Portugal, UN Doc. CCPR/CO/78/PRT, para. 9; Concluding Observations: Germany, UN Doc. CCPR/CO/80/DEU, para. 15(b); Concluding Observations: Liechtenstein, UN Doc. CCPR/CO/81/LIE para. 10; Concluding Observations: Australia, UN Doc. CCPR/C/AUS/CO/5, para. 21; Concluding Observations: United States of America, UN Doc. CCPR/C/USA/CO/4, para. 11. See also: European Court of Human Rights, *Nachova and others v. Bulgaria*, Applications Nos. 43577/98 and 43579/98, para. 96; Inter-American Court on Human Rights, *Nadege Dorzema et al. v. Dominican Republic*, Judgment of 24 October 2012, paras 80-81.

intention. As is made clear in the last sentence of Principle 9 of the Basic Principles, the use of lethal force that is *intended* to cause death (e.g. by intentionally shooting in the head, or multiple shots at the central body mass) is permissible only in the most extreme situations, that is, when it is clear that nothing except the death of the targeted person will protect another life or lives.⁵⁸ That applies only in absolute emergency situations of a threat that is already under way at that very moment, and there is no other means to stop it. In such situations, **the overall law enforcement purpose must be to stop the threat: The killing of a person may never in itself be the purpose in law enforcement.**⁵⁹ Amnesty International recommends that the General Comment include wording to that effect. It is particularly important to state this explicitly in the General Comment as it is one of the key respects in which the use of lethal force in law enforcement must be distinguished from the use of lawful force under international humanitarian law.⁶⁰

SELF-DEFENCE AND LAW ENFORCEMENT (PARAGRAPH 18)

While the principle of individual self-defence, as a widely recognized basis for exemption from criminal responsibility,⁶¹ applies to law enforcement officials faced with an imminent threat, Amnesty International is concerned that the reference in **paragraph 18** to “a person acting in self-defence” could be misconstrued as also referring to that principle as it is applicable to non-state actors. **It should be made clear that this paragraph focuses on the use of force by law enforcement officials (which includes recognition of the principle of self-defence) and particularly their use of lethal or potentially lethal use of force, in terms of the Basic Principles, particularly Principles 9 and 10.**

NON-LETHAL ALTERNATIVES/MEANS (PARAGRAPHS 18 AND 19)

We welcome the use of the terminology “less-lethal weapons” in paragraph 14, rather than the term “non-lethal” used in Principles 2 and 3 of the Basic Principles. However there remain unfortunate references to “non-lethal alternatives/means” in **paragraphs 18 and 19**. While the example of “warnings” included in paragraph 18 is indeed an illustration of a non-lethal alternative, it is arguably the only alternative that can truly be described as “non-lethal” and therefore the scope of the recommendation is too narrow. Also, paragraph 19 explicitly refers to “means” (aka equipment), whereas it is difficult to imagine equipment, including protective gears (e.g. shields), that could not end up being used in a lethal manner.

Amnesty international therefore **recommends to delete all references to “non-lethal” in paragraphs 18 and 19 and replace them with language referring instead both to warnings and to all other alternatives, including less lethal ones, in paragraph 18, and to replace “non-lethal” by “less-lethal” equipment and weapons in paragraph 19.**⁶²

PROHIBITION OF ARBITRARY DEPRIVATION OF LIFE BY NON-STATE ACTORS (PARAGRAPHS 24 AND 25)

In line with the comments made on paragraph 18 above, about the need to remove ambiguity as to whether at particular points the General Comment is referring to the specific obligations of law enforcement officials, or to the obligations of the state to protect life against arbitrary deprivation of life by non-state actors, **Amnesty International recommends that the word “individuals” in paragraph 24 is edited for clarity on this point.**

With regard to the use of firearms, **the word “disproportionate” with its strong association with law enforcement officials (see above), or with international humanitarian law, appears to be out of place here and Amnesty International recommends it be changed to “abusive”.** In a key document on the use and abuse of firearms by non-state actors, the then Special Rapporteur on the Prevention of Human Rights Violations Committed with Small Arms and Light Weapons refers throughout to “small arms abuses” by non-state actors, which more clearly distinguishes it from disproportionate use of force by law enforcement officials or in the context of international humanitarian law.⁶³

The dangers of firearms violence are complex and multifaceted. A strict licensing system should bar “individuals at risk of misusing” firearms from accessing them, ensuring that they are unauthorized for possession. However, most licensing systems contain substantial gaps, and some are wholly inadequate. Asserting the principle of risk of misuse is far more comprehensive than individuals that have been legally excluded from possession, and applies equally across a variety of jurisdictions.

⁵⁸ See also Special Rapporteur on extrajudicial, summary or arbitrary executions, Report to the Commission on Human Rights, UN Doc. E/CN.4/2006/53 (2006), paras 58 and especially 59.

⁵⁹ See Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. E/CN.4/2006/53 (2006), paras 44-54.

⁶⁰ Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. E/CN.4/2006/53 (2006), para. 46.

⁶¹ Prevention of human rights violations committed with small arms and light weapons, Final report submitted by Barbara Frey, Special Rapporteur, UN Doc. A/HRC/Sub.1/58/27 (2006), paras 19-32.

⁶² See Special Rapporteur on extrajudicial, summary or arbitrary executions, Report to the Human Rights Council, UN Doc. A/HRC/26/36 (2014), para. 101.

⁶³ Prevention of human rights violations committed with small arms and light weapons, Final report submitted by Barbara Frey, Special Rapporteur, UN Doc. A/HRC/Sub.1/58/27 (2006).

Further to [paragraph 25](#), we recommend that the caveat regarding “impossible or disproportionate burdens” be removed, since the paragraph already states that only reasonable measures need be taken, and the understanding of what would be a disproportionate burden is vague and open to wide interpretation.

With regard to remedies, including the duties to investigate, prosecute and provide full reparation (paragraphs 31-33), including in the law enforcement context, please see section 2.3.5 below.

2.1.10 VICTIM STATUS (PARAGRAPH 15)

We welcome that the distinction between state obligations concerning short- and long-measures is now primarily of a descriptive nature (see paragraph 30 of the revised draft), and is now not applicable anymore to the question of who can claim a violation of Article 6 (see paragraph 28 of the initial draft).

However, we submit that the present formulation in paragraph 15 on “victimhood” is still too restrictive, unprecedented in General Comments on substantive articles of the Covenant and running counter to the practice and procedure of the Committee,⁶⁴ including the potential denial of access to justice for victims of violations of positive obligations. **This limitation on “justiciability” should be removed from this General Comment as a whole, and paragraph 15 be deleted**, as it is not a question that is solely limited to Article 6, is not reflective of the language in the authorities cited, and should be left to the developing practice of the Committee in considering communications. **Should the Committee nonetheless decide to retain this paragraph, we suggest that references to the Optional Protocol are maintained and the brackets deleted, so as to avoid potential undue restrictions of access to domestic remedies contrary to states’ general obligations under the Covenant.**

2.2 PART II: ARBITRARY DEPRIVATION OF LIFE

2.2.1 ARBITRARINESS (PARAGRAPHS 16 AND 18)

We welcome the additional language to prevent against arbitrariness in [paragraph 16](#), and note that the Committee overall is confirming its existing broad reading of the principle of arbitrariness.

DEATH PENALTY

However, we suggest to clarify in [paragraph 16](#) that the “residual” duty not to apply the death penalty in an arbitrary manner, and in strictest compliance with all other relevant safeguards, is not only an obligation of retentionist states that have not yet ratified the Second Optional Protocol, but also of those that have not yet ratified any other abolitionist treaty (as expressed in [paragraph 38](#) of the revised draft). (For further observations on the issue of the death penalty, see section 2.4 below.)

ADDITIONAL ELEMENTS, ESPECIALLY NON-DISCRIMINATION

However, we submit that the present language in [paragraph 18](#) should be even more expansive, by listing the additional elements of equality and non-discrimination, as well as consistency.⁶⁵ **In particular, Amnesty international recommends to expressly recognize in this part of the General Comment, for example in paragraphs 18 and/or 21 already, the principles of non-discrimination and the right to equality before the law and equal protection of the law, as they apply to the right to life.**⁶⁶

We further note and welcome that the present draft already accepts the relevance of the non-discrimination principle in the specific context of the death penalty (see paragraphs 48 and 51), and in particular, as a positive

⁶⁴ See the Committee’s Rules of Procedures, UN Doc. CCPR/C/3/REV.10 (2012), Procedure to determine admissibility, particularly Rule 96.

⁶⁵ Special Rapporteur on extrajudicial, summary or arbitrary executions, Report to the UN General Assembly, UN Doc. A/69/265, para. 47. See also, European Court of Human Rights (Grand Chamber), *McCann and others v. United Kingdom*, Application No. 18984/91, para. 202; Inter-American Commission on Human Rights, Report, The death penalty in the Inter-American human rights system: from restrictions to abolition (2012), www.oas.org/en/iachr/docs/pdf/deathpenalty.pdf, para. 11: “[...] the kinds of deficiencies that have been identified by the Commission as rendering an execution arbitrary and contrary to Article I of the American Declaration include failing to limit the penalty to crimes of exceptional gravity set forth in pre-existing law, the failure to provide strict due process guarantees, and the existence of demonstrably diverse practices that result in the inconsistent application of the penalty for the same crimes.” See the Committee’s Rules of Procedures, UN Doc. CCPR/C/3/REV.10 (2012), Procedure to determine admissibility, particularly Rule 96.

⁶⁶ See, for example, African Commission, General Comment 3 (2015), para. 12 (“Any deprivation of life resulting from a violation of the procedural or substantive safeguards in the African Charter, including on the basis of discriminatory grounds or practices, is arbitrary and as a result unlawful.”).

advancement from the initial draft, as a broader principle (paragraph 64).⁶⁷ However, stating this earlier in the General Comment would do better justice to the importance of this “basic and general” principle,⁶⁸ give a more rounded description of “arbitrariness”, and inform the content of the General Comment throughout.

2.2.2 PROTECTION OF “PERSONS IN SITUATION OF VULNERABILITY” (PARAGRAPHS 21, 24, 27 AND 30)

GENDER-BASED VIOLENCE (PARAGRAPHS 21, 24, 27 AND 30)

We welcome that the Committee amended the reference to “vulnerable persons” in [paragraph 27](#) and recommend that the Committee keep this change. In addition, we **recommend that the Committee change the reference to “victims of domestic violence” to a broader term that covers violence both in private and public spheres and is interlinked with gender-based discrimination in society, both of which states have obligations to address.** At a minimum, the Committee could refer to both survivors of domestic violence and gender-based violence.

We welcome the Committee’s calls for effective criminal prohibitions against arbitrary deprivations of life and that the Committee referred to “honour killings” in quotation marks.⁶⁹ Nevertheless, **we additionally recommend that “all gender-based killings” should be referenced in [paragraph 21 \(and 24\)](#),** to make clear that all gender-based killings violate the Covenant and amount to an arbitrary deprivation of life.

In [paragraph 30](#), we welcome the Committee’s reference to measures states must undertake to address domestic violence and infant mortality. However, similar to our recommendations for paragraph 27, we **recommend that the reference to “domestic violence” in this paragraph be replaced or amended to include the broader concept of “gender-based violence” (which includes domestic violence).** Moreover, we recommend that the Committee **add a reference when discussing states’ action plans for advancing the right to life** that reflects the fact that women’s and girls’ access to sexual and reproductive health information and services is imperative to safeguarding their health and lives, particularly in contexts of violence, global health epidemics, and poverty, among other things.

OTHER INDIVIDUALS OR GROUPS IN SITUATION OF VULNERABILITY (PARAGRAPH 27)

Further to [paragraph 27](#), we recommend to add a reference to members of *linguistic* minorities to those of “ethnic and religious minorities” which could be “persons in situation of vulnerability.”⁷⁰ We also suggest that apart from asylum-seekers and refugees, persons who have moved countries for other reasons than contemplated by the UN Refugee Convention are often in vulnerable positions.

2.3 PART III: THE DUTY TO PROTECT LIFE

2.3.1 PRIVATE PERSONS AND ENTITIES (PARAGRAPHS 7, 11, 22, 25, 31)

Amnesty International welcomes the express reference in [paragraph 22](#) (elaborated further in paragraph 25) of the duty of the state to protect the right to life by law from threats emanating from private persons and entities. In relation to private entities, **we recommend that the text provide greater guidance as to the specific legislative measures states should take to ensure protection against abuses of the right to life by business enterprises based on existing international law and standards on business and human rights.** In particular, the General Comment should specify that the duty to protect entails adopting laws requiring business enterprises to put in place due diligence processes to identify, prevent, address and account for their impacts on the right to life, in line with the UN Guiding Principles on Business and Human Rights, on the General Comment 24 of the Committee on Economic, Social and Cultural Rights as well as on the General Comment 16 of the

⁶⁷ See present draft, para. 64: “Any deprivation of life based on discrimination in law or fact is ipso facto arbitrary in nature.”

⁶⁸ Human Rights Committee, General Comment 18: Non-discrimination (1989), paras 1-3.

⁶⁹ See, for example, the Council of Europe Convention on preventing and combating violence against women and domestic violence (2011), CETS No. 210.

⁷⁰ See also the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, UN General Assembly resolution 47/135 of 18 December 1992.

Committee on the Rights of the Child.⁷¹ **Where laws already exist, we recommend that the General Comment calls for these to be enforced against business enterprises in line with principles of due process.**

To avoid any doubt and emphasize the importance of taking action to protect the right to life in the context of business activity, **we recommend adding an express reference to “business enterprises” or “corporate entities” whenever the phrase “private entities” is used.**

In relation to private military and security companies, the reference to private entities “empowered or authorized” by the state in **paragraph 11** is vague and equivocal. **We recommend the General Comment makes an express reference to private entities that act under agreement with a branch of government, and clarifies that this extends to sub-contractors.**

2.3.2 THIRD PARTIES OTHER THAN PRIVATE PERSONS AND ENTITIES (PARAGRAPHS 7, 22, 25, 31)

In order to clarify the obligations of states to protect the right to life of persons under their jurisdiction against abuses by any types of third parties, **we recommend the Committee to add, in paragraphs 7, 22, 25 and 31 a reference to both private persons and entities as well as any other third parties such as foreign public officials and foreign public entities.**

2.3.3 EXTRA-TERRITORIAL APPLICATION (PARAGRAPHS 26 AND 66)

For our observations and further details on this issue, please see our submissions on in section 2.5.4 below.

2.3.4 GENERAL CONDITIONS IN SOCIETY (PARAGRAPH 30)

We welcome the clear identification of a wide range of social and economic conditions negatively impacting on the right to life, and of measures which states should take to address them in order to ensure the effective enjoyment of the right. **Paragraph 30** is another opportunity to emphasize the indivisibility and interlinkages between the right to life and other rights, especially economic and social rights. In this light it would be important to note that the short-term measures should ensure adequate levels of the services listed without discrimination reflecting the relevant minimum core obligations of states.⁷²

However, it is possible that this paragraph might be read with the preceding paragraph 29 to suggest that the obligations in **paragraph 30** do not apply to people living in prisons or the institutions mentioned there. **It should be clarified that this duty should apply to all persons under the State party’s jurisdiction without discrimination, for example including groups of persons as referred to in paragraph 29.**

Furthermore, the measures enumerated include a reference to promoting educational programmes in non-violence. However, the reference to “de-radicalization programs”, without explanation or contextualization or definition, may not be clear in the context of a General Comment which deals with universally and generally applicable concepts, or could even be seen as carrying an implication that being “radical” in itself is counter to human rights (which is plainly not the case). **We therefore recommend to delete the terms “de-radicalization programs” and suggest instead that a broader approach to the same goal, and which is more closely linked to existing human rights law, would be to refer here instead to the aims of education as for example set out in Article 13(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁷³ since**

⁷¹ Principle 15(b) of the Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, UN Doc. A/HRC/17/31 (2011). Also, paras 16 and 33 of the Committee on Economic, Social and Cultural Rights’ General Comment 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, UN Doc. E/C.12/GC/24 (2017), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/GC/24&Lang=en. Also, paras 50 and 62-65 of the Committee on the Rights of the Child’s General Comment 16 on State obligations regarding the impact of the business sector on children’s rights, UN Doc. CRC/C/GC/16 (2013), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f16&Lang=en

⁷² See for example Committee on Economic, Social and Cultural Rights, General Comment 14, on the Right to Health, UN Doc. E/C.12/2000/4 (2000), paras 43 and 44.

⁷³ “Education shall be directed to the full development of the *human personality and the sense of its dignity*, and shall strengthen the *respect for human rights and fundamental freedoms*. ... education shall enable all persons to *participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups*, and further the activities of the United Nations for the maintenance of peace.” (Emphasis added).

education in line with those principles would go a long way to obviate those aspects of what is often referred to as “radicalization” which are counter to human rights.

Finally, **we recommend to delete the final sentence of paragraph 30, presently in square brackets.** The text already differentiates between two types of measures to address the general conditions, namely short-term and long-term measures. The former are closely related to the minimum, core obligations under the ICESCR (which are considered as immediate obligations) whilst the latter are to be implemented over the “long-term”, implying progressive realization. Consequently, we suggest this final line be deleted because it is both unnecessary and may create confusion as to the distinction between these two types of measures.

For further remarks specifically with regard to gender-based violence in paragraph 30 (and 27), please see our observations in section 2.2.2 above.

2.3.5 REMEDIES, INCLUDING THE DUTY TO INVESTIGATE, PROSECUTE AND PROVIDE FULL REPARATION (PARAGRAPHS 31 TO 33)

Amnesty International welcomes the detailed guidance that the draft seeks to provide to states in **paragraphs 31 and 32** to fulfil their obligations to investigate violations of the right to life and prosecute those responsible. **Amnesty International recommends that the Committee expressly affirm its position in these paragraphs that a failure by a State party to investigate allegations of violations of the right to life and bring all those suspected of criminal responsibility to justice could in and of itself give rise to a separate breach of the Covenant.⁷⁴ Moreover, it is recommended the Committee expressly affirm that any criminal investigation and prosecution must fully meet fair trial standards, at least equal to those set out in Article 14 of the Covenant, to ensure fair trials.** This includes an express statement that any evidence used needs to be admissible under national and international law, thereby e.g. ruling out the use of “confessions” extracted under torture or other ill-treatment.

Importantly, the Committee confirms that the obligation to investigate and prosecute relates to allegations of deprivation of life by state authorities, private individuals or entities. However, as currently worded, the text could be read to apply standards on the use of force that relate specifically to law enforcement officials to private individuals and entities. **Amnesty International recommends that the text should be amended to avoid conflating the use of force by law enforcement officials with violent acts by private individuals or entities.**

The Committee states that states “should explore, inter alia, the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates.” However, as worded, this may be read as recognizing a discretion of the authorities, whereas the obligation of states to conduct such investigations in all cases is implicit in the obligation recognized in paragraph 32 of the revised draft, that investigations must always be independent, impartial, thorough, effective and credible. **The Committee should confirm that states must investigate the legal responsibility of superior officials in all cases.**

Similarly, while the Committee states that a criminal investigation “is normally required”, instead of administrative or disciplinary measures, Amnesty International submits that a criminal investigation is *always* required to ensure that the investigation is independent, impartial, thorough, prompt, effective, credible and transparent. Criminal investigations of alleged violations of the right to life that are capable of leading to prosecutions are furthermore essential to ensure that states meet their obligations to bring all those suspected of criminal responsibility for violations of Article 6 to justice, as regularly affirmed by the Committee in its jurisprudence and General Comment 31.⁷⁵ **The Committee should reaffirm that criminal investigations must be conducted in relation to all alleged violations of the right to life.**

Amnesty welcomes the recognition in **paragraph 31** of the revised draft that immunities and amnesties are incompatible with the duty of states to respect and ensure the right to life, and to provide victims with an effective remedy. **It is recommended that the text should be further strengthened to clearly reflect that**

⁷⁴ [Human Rights Committee](#): General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004), paras 15 and 18; *Al-Rabassi v. Libya*, Communication No. 1860/2009, para. 7.8. See also: Special Rapporteur on extrajudicial, summary or arbitrary executions, Report to the General Assembly, UN Doc. A/67/275 (2012), para. 105; [African Commission](#): General Comment 3 (2015), para. 15 (“The failure of the State transparently to take all necessary measures to investigate suspicious deaths and all killings by State agents and to identify and hold accountable individuals or groups responsible for violations of the right to life constitutes in itself a violation by the State of that right.”)

⁷⁵ Human Rights Committee: *Sathasivam v. Sri Lanka*, Views of 8 July 2008, para. 6.4: “criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by articles 6 and 7 of the Covenant”; General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 18.

amnesties are prohibited in all cases for serious human rights violations.⁷⁶ The Committee should also expressly recognize that statutes of limitations are also incompatible with the duty of states pursuant to the Covenant.⁷⁷

Amnesty International welcomes the Committee's recognition that victims of violations of Article 6 and their families have a right to full reparation for the harm they have suffered. In addition to compensation, rehabilitation and satisfaction, **it is recommended that the Committee also expressly refer to the remedies of restitution and guarantees of non-recurrence, as referred to in the original draft and beyond the general duty to prevent occurrences of similar human rights violations, which are widely recognized in international law and standards.**⁷⁸

The Committee recognizes the need for investigations to include autopsies "where relevant". Importantly, it states that these should be conducted, whenever possible, in the presence of a pathologist representing the victim's family. However, **the Committee should further expressly recognize that Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions requires that an autopsy is required in all suspected cases of extra-legal, arbitrary and summary execution. In such cases, the family has a right to insist that a medical or other qualified representative be present.**⁷⁹

Finally, Amnesty International welcomes the additional language requiring protection of witnesses, victims and others involved in investigations. However, the organization recommends that the Committee strengthens further the requirements to ensure that family members of the victim have access to information and can engage with the investigation. At present, the Committee states that authorities "should also disclose relevant details about the investigation to the victim's next of kin". However, international standards in relation to extra-legal, arbitrary and summary executions require that "families of the deceased and their legal representatives shall be informed of, and have access to any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence".⁸⁰ Moreover, the inclusion of "relevant" is potentially open to abuse by authorities acting in bad faith and the text only requires that the communication be one-way. **At a minimum, the Committee should amend the text to recognize the specific standards of communication required in relation to suspected extra-legal, arbitrary and summary executions. In relation to the rights of families of violations of Article 6, it should reflect the broader requirements recognized in its practice that "families of the deceased and their legal representatives should have access to all information relevant to the investigation, and should be entitled to present other evidence."**⁸¹

The use of potentially lethal force by law enforcement officials is such a serious matter⁸² that it must be subject to particularly stringent controls, including thorough and detailed reporting as well as prompt, independent and impartial investigation, allowing an assessment of the lawfulness of the use of force - independent of whether the use of such force has in the end resulted in death or serious injury.⁸³

Where the use of force in the context of law enforcement operations has resulted in death, the duty to carry out a thorough, effective and independent investigation means that the investigation should address potential failures of information gathering and exchange, and a review of police training.⁸⁴ In the context of law

⁷⁶ *Inter-American Court of Human Rights: Barrios Altos case*, Judgment of 14 March 2001 (Merits), para. 41: "This Court considers that all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law." See also *Gomes Lund et al. v. Brazil*, Judgment of 24 November 2010, para. 180 (the 1979 amnesty law "[i]acks legal effects regarding serious human rights violations") and *Gelman v. Uruguay*, Judgment of 24 February 2011, paras 244 and 246; also Human Rights Committee, Concluding Observations: Chile, UN Doc. CCPR/C/CHL/CO/6 (2014), para. 9: "The State [Chile] should repeal the Amnesty Decree-Law and ensure that it continues not to be applied to past human rights violations."

⁷⁷ *Inter-American Court of Human Rights, Barrios Altos case*, Judgment of 14 March 2001 (Merits), para. 41.

⁷⁸ See for example, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (principles 8-11); Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (principles 19 and 23); Updated Set of principles for the protection and promotion of human rights through action to combat impunity (principles 34-38).

⁷⁹ The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Principle 16.

⁸⁰ The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Principle 16.

⁸¹ Human Rights Committee, *Eshonov v. Uzbekistan*, Communication No. 1225/2003, para. 9.6.

⁸² See Human Rights Committee, General Comment 6, Article 6 (Right to life) (1982), para. 3: "The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."

⁸³ See Special Rapporteur on extrajudicial, summary or arbitrary executions, Report to the General Assembly, UN Doc. A/66/330 (2011), para. 88: "(g) All instances where lethal force has been used should be investigated through an effective process, and where appropriate those who have violated the right to life are to be held accountable. [...]". Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principles 11(f) and 22. See also Special Rapporteur on extrajudicial, summary or arbitrary executions, Report to the Human Rights Council, UN Doc. A/HRC/14/24/Add.8 (2011), para. 74.

⁸⁴ Human Rights Committee: *Olmedo v. Paraguay*, Communication No. 1828/08, para. 7.5; *Eshonov v. Uzbekistan*, Communication No. 1225/03, para. 9.6; Concluding Observations: United Kingdom, CCPR/C/GBR/CO/6, para. 10. See also, European Court of Human Rights: *Nachova and*

enforcement, the responsibility to respect and protect life lies not only with the acting law enforcement official, but also with the command leadership of law enforcement agencies. The loss of life as a result of failure by the command leadership to take all possible measures and precautions to prevent this, for example through a lack of control, preparation and organization of the operation as a whole, must be considered an arbitrary deprivation of life,⁸⁵ and commanders must be held accountable for such failures. **Amnesty International recommends that these points should be stated explicitly in the General Comment.**

In **paragraph 33** it is helpful to have the clear statement that with regard to deaths in custody there is a presumption of arbitrary deprivation of life by the state which can only be rebutted by a proper investigation which establishes the state's compliance with its obligations under Article 6. However, **Amnesty International recommends to clarify that this presumption applies to all types of state custody, not only in the law enforcement context.**⁸⁶ In addition, **we further recommend that reference should be made here to paragraph 17 of the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016)**, which elaborates on the custodial and similar circumstances to which this is applicable, as well as identifying particular circumstances in which the state will be held responsible for the death, unless it is proven to the contrary.

2.3.6 NON-REFOULEMENT (PARAGRAPHS 34 AND 35)

Amnesty International welcomes the Committee's inclusion of a paragraph on *non-refoulement*. Indeed, **we recommend that the General Comment highlights the fact that *non-refoulement*, including to protect the right to life, is a peremptory norm of international law.**⁸⁷

We further welcome the strengthened language in paragraph 34 (and paragraph 38), qualifying that assurances in the case of a real risk of application of the death penalty must be credible "and effective" to protect against breaches of such assurances, especially if they have occurred in the past. However we do suggest that "credible" could turn out to be too weak a threshold, as only reflecting the subjective perception of the transferring state, and to **consider replacing this with a more objective standard as employed, for example, by the Special Rapporteur on extrajudicial, summary or arbitrary executions ("reliable").**⁸⁸

Moreover, we submit that the retention of language such as "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" could lead to overbroad limitations in the protection against risk to the right to life. The right to international protection depends on whether the risk of harm as such is sufficiently serious to substantiate an individual claim; as such and by way of example, transfer to an extremely violent country can still be inconsistent with Article 6 of the Covenant and the principle of *non-refoulement* even where the person *has* lived there, *has* social or family contacts and *can* speak the local language. **We recommend to review the present language in the revised draft with a view to avoiding an overly restrictive understanding of the principle of *non-refoulement*.**

Furthermore, with regard to the practice of assurances between states to remove the real risk of serious human rights violations or abuses, here in particular with regard to the right to life, it appears the current draft could be read to conflate three situations that are distinct both in law and in practice:

- assurances that the death penalty would not be sought or applied against a person;
- assurances that a person would not be at risk of the extrajudicial deprivation of life;

others v. Bulgaria, Applications Nos. 43577/98 and 43579/98, paras 111-113; *Inter-American Court of Human Rights: Nadege Dorzema et al. v. Dominican Republic*, Judgment of 24 October 2012, para. 101; *Baldeón-García v. Perú*, Judgment of 6 April 2006, para. 95.

⁸⁵ Special Rapporteur on extrajudicial, summary or arbitrary executions, Report to the Human Rights Council, UN Doc. A/HRC/26/36 (2014), para. 63. See also European Court of Human Rights, *McCann and Others v. United Kingdom*, Application No. 18984/91, para. 211.

⁸⁶ See also African Commission, General Comment 3 (2015), para. 37; Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), para. 17.

⁸⁷ J. Allain, 'The jus cogens nature of the non-refoulement', 13 (4): *Int'l J Refugee Law* (2001), pp. 533-558; E. Lauterpacht and D. Bethlehem, 'The Scope and Content of the Principle of Non-refoulement' in E. Feller, V. Türk, and F. Nicholson (eds.), 'Refugee Protection in International Law': UNHCR's Global Consultations on International Protection (Cambridge: Cambridge University Press, 2003), pp. 78-177; A. Farmer, 'Non-Refoulement and Jus Cogens: Limiting Anti-Terror Measures that Threaten Refugee Protection', 23:1 *Georgetown Immigration Law J* (2008), pp. 1-38; C. Costello and M. Foster, 'Non-refoulement as custom and jus cogens? Putting the prohibition to the test', 46 *Netherlands Yearbook of International Law* 2015: *Jus Cogens: Quo Vadis?*, pp. 273-327. The Committee has used General Comments before to identify certain human rights as constituting peremptory norms of international law. See Human Rights Committee, General Comment 24: Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.6 (1994), paras 8-10; General Comment 29: States of emergency (article 4), UN Doc. CCPR/C/21/Rev.1/Add.11 (2001), paras 11 et seq.

⁸⁸ See, e.g., Special Rapporteur on Extrajudicial, summary or arbitrary executions, UN Doc. A/67/275 (2012), para. 78 ("reliable").

- we are concerned that the last sentence of paragraph 34 could be interpreted as applying to assurances that the person would not be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

Amnesty International recommends that the General Comment refer to assurances only in the context of the first situation (death penalty), for the reasons explained below.

There is a sharp distinction between assurances given by receiving states against the death penalty and assurances as guarantees against unlawful killings by state actors, torture and other ill-treatment. Amnesty International opposes the death penalty absolutely, but recognises that, outside of certain regions and subject to certain strict conditions, it is not yet accepted as prohibited *per se* under international law. Assurances with respect to the death penalty thus simply acknowledge the different legal approaches of two states and serve as a tool that allows an exception to one state's laws and policies as an accommodation to the concerns of another state. In addition, such assurances are typically given within a recognized judicial context.

Conversely, assurances against unlawful killings, torture and other ill-treatment do not refer to lawful activity, but implicitly acknowledge unlawful, criminal behaviour to which persons in the receiving state are subjected, often routinely. As such, they are effectively an admission that the receiving state is in violation of the prohibitions, within the Covenant and elsewhere, against the arbitrary deprivation of life or against torture and other ill-treatment.

Moreover, monitoring a government's compliance with assurances that it will not apply or carry out the death penalty is far easier than monitoring compliance with assurances against torture and unlawful killings by state actors, which are practiced in secret. The death penalty is rarely carried out immediately after a person's return, thus any potential breach of the assurances (e.g. sentencing a person to death despite assurances to the contrary) can usually be identified and addressed before the sentence is carried out.

In cases where assurances are proffered as a guarantee of protection against torture, however, sending states run the unacceptable risk of being able to identify a breach, if at all given the secrecy surrounding torture, only after torture and other ill-treatment have already occurred. From the monitoring point of view the situation is even worse when it comes to unlawful killings by state actors – they are not only carried out within police stations, prisons and other state institutions, which arguably may be subject to scrutiny, but can happen anywhere within the state, making any effective monitoring a practical impossibility. Unlawful killings by state officials are often perpetrated by plainclothes assailants who melt into the night, are "subcontracted" to gangs, are falsely described as "encounters" with armed people and carried out in a variety of other ways which are extremely difficult to trace, let alone protect against.

Finally, the finality of death means that no reparations or any other form of remedy following the failure of assurances in the case of unlawful killings would be of any benefit to the person concerned.

Where there is a *prima facie* risk that a person would be arbitrarily killed by the authorities if returned, the intention of the state must be assessed objectively. Relying on the assurances of a state which is likely to order its officials to kill persons arbitrarily as to their intentions is placing the life of returnees at the mercy of a state on the strength of a promise, when the state in question which has already reneged on its promise – in the form of a legally binding undertaking - to protect and respect the right to life under Article 6 of the Covenant.

Assurances against torture and other ill-treatment is a complicated subject which the Committee has not to date addressed in great detail. The subject is outside the scope of this General Comment and Amnesty International believes that what appears to be a cursory reference to such assurance is both unnecessary and likely to be misunderstood or misinterpreted. Amnesty International opposes such assurances categorically, on both principled and practical grounds, a position shared across civil society globally.⁸⁹

In **paragraph 35**, we welcome the affirmation of the broad nature of the described obligation, but note that the present wording ("...since it may also require the protection of aliens *not entitled to refugee status*." [emphasis added]), could in turn be read to unduly narrow the scope of Article 33 of the UN Refugee Convention, by implying that asylum-seekers whose claims have failed but have a right to appeal a negative decision on their asylum applications would only be protected by the obligation under Article 6 of the Covenant, but not by Article 33 of the UN Refugee Convention itself. We recommend to avoid such a reading.

⁸⁹ See for instance the Alkarama Foundation, Amnesty International, the Association for the Prevention of Torture (APT), DIGNITY - Danish Institute Against Torture, the International Federation of Action by Christians for the Abolition of Torture (FIACAT), the International Commission of Jurists (ICJ), the International Rehabilitation Council for Torture Victims (IRCT), the World Organisation Against Torture (OMCT) and the Redress Trust (REDRESS), *Joint Observations regarding Revised General Comment No. 1 (2017) on the implementation of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, March 2017, paras 20-21, 62, www.amnesty.org/en/documents/ior40/6040/2017/en/

2.4 PART IV: IMPOSITION OF THE DEATH PENALTY

As mentioned above, Amnesty International welcomes the strengthened language in **paragraphs 34 and 38**, qualifying that assurances in the case of a real risk of application of the death penalty must be credible “and effective” to protect against breaches of such assurances, especially if they have occurred in the past. However we do suggest that “credible” could turn out to be too weak, as only reflecting the subjective perception of the transferring state, and to **consider replacing this with a more objective standard as employed, for example, by the Special Rapporteur on extrajudicial, summary or arbitrary executions (“reliable”).**⁹⁰

We further welcome the new language in **paragraph 38** clarifying obligations of States parties to the Second Optional Protocol with regard to abolition of the death penalty;⁹¹ the overall changes in **paragraph 51** in relation to *diyah* and the clarification, in footnote 208 of the revised draft, that “authorizing families of victims to decide whether or not to receive ‘blood money’ and, consequently, whether or not an execution will be carried out is contrary to the Covenant”; and the inclusion in **paragraph 52** of language clarifying that, when the age of the defendant/convicted person is disputed, the benefit of the doubt should be given in their favour, an addition that is extremely relevant.⁹²

However, **we recommend that the pro-abolitionist spirit of the Covenant should be reflected in references to the death penalty throughout the General Comment**, not only in the part on its imposition, reflecting language already used by the Committee in **paragraphs 36, 44 and 54** of the revised draft (“...by those countries which have not yet abolished it”).⁹³

We further welcome changes to **paragraph 39** which make the definition of what constitutes the “most serious crimes” more specific. However, it would be important not to lose language from General Comment No. 6, which emphasizes the exceptional nature of the death penalty.⁹⁴

Furthermore, since several death sentences have been imposed on those who did not themselves commit the criminal act but were present at the time of the offence (so-called “non-triggermen”), as a result of the application of the doctrine of the joint enterprise, **it would be useful to explicitly clarify in the same paragraph that “the limited degree of involvement or of complicity in the commission of even the most serious crimes” not justifying the imposition of the death penalty would also refer to these cases.** Finally, **when referring to reviews of criminal law at the end of the paragraph, it would be important to also include a reference to the incompatibility of the extension of the scope of the death penalty with the Covenant⁹⁵ and the pro-abolitionist spirit of the Covenant**, referred to in paragraph 55 of this revised draft General Comment.

Amnesty International also submits that, since the circumstances of a murder could be significantly different from one case to another even if the offence is the same, it would be helpful to repeat in **paragraph 41** the explicit reference to clarify the circumstances of the crime itself among the factors that a judge should consider in determining sentencing in death penalty cases. It must be noted that in several countries that still retain the mandatory death penalty the prosecution has often resorted to bringing charges for a lesser crime to allow judges sentencing discretion (for example, manslaughter instead of murder). Such prosecutorial practices cannot be seen as a remedy to the unlawfulness of the mandatory death penalty and obviate the need for its abolition.

References to the length of detention spent on death row (the “death row phenomenon”) in **paragraph 44** **should be accompanied by a clarification that the distress of prolonged stays on death row must not result in the curtailing of avenues of domestic and international appeals available to those facing the death penalty, nor as a justification to accelerate executions.**

In **paragraph 49** it would be helpful to **reiterate among the characteristics defining a “competent court” that its proceedings must meet fair trial guarantees at least equal to those outlined in Article 14.**⁹⁶ The last example in the paragraph, which refers to the imposition of the death penalty without any trial, risks conflating definitions of judicial executions with those of extrajudicial ones. This could **be better clarified by referring to a**

⁹⁰ See, e.g., Special Rapporteur on Extrajudicial, summary or arbitrary executions, UN Doc. A/67/275 (2012), para. 78 (“reliable”).

⁹¹ We note that presently two States parties to the treaty – the Philippines and Turkey – are actively discussing to reintroduce the death penalty.

⁹² Amnesty International is aware that in several cases of the age of the defendant at the time of the commission of the crime was or is disputed, usually because of lack of birth registration or other relevant documentation.

⁹³ But presently not, e.g., in paras 16, 20.

⁹⁴ Human Rights Committee, General Comment 6: Article 6 (Right to life) (1982), para. 7: “The Committee is of the opinion that the expression ‘most serious crimes’ must be read restrictively to mean that the death penalty should be a quite exceptional measure.”

⁹⁵ Concluding Observations of the Human Rights Committee: Peru, UN Doc. CCPR/C/79/Add.67 (1996), para.15.

⁹⁶ See Safeguard no. 5 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in resolution 1984/50 of 25 May 1984.

case of imposition of the death penalty after a trial carried out in serious violation of international fair trial standards that would amount to a summary trial.

In **paragraph 50**, the explicit reference to “official or private pardon” without further qualifications could be read as an explicit endorsement of privatization of justice through the administration of pardon procedures by those not holding an official capacity. This would run counter, among other things, to the concerns the Special Rapporteur on extrajudicial, summary or arbitrary executions has voiced about private *diyah* pardons, in particular with regard to the guarantees of non-discrimination and fair trial, including the right to seek pardon or commutation of the sentence from the state authorities.⁹⁷ **This could be avoided by simplifying the language** (“...requests for pardon”).

Transparency is a critical safeguard against the arbitrary application of the death penalty and, by extension, of the exercise of executive power of clemency. It would be helpful to **emphasize in paragraph 51 the need for states to be transparent about how pardons and commutations are administered, echoing language of UN General Assembly resolution 71/187 (“that procedures are fair and transparent and that prompt information is provided at all stages of the process”).**⁹⁸

We welcome the Committee’s removal in **paragraph 52** of the *reasoning* for “special protection” for pregnant women, yet maintaining the reference to “special protection for pregnant women” as such. We encourage the Committee to keep these changes, given that special protection afforded to pregnant women stems from the need to protect their rights and interests during this distinct time. Furthermore, we also **recommend that an additional reference be made to women whose execution would adversely impact the development of the child, especially women caring for young children, among those against whom the death penalty must not be imposed**, in line with international standards and regional law.⁹⁹

In light of developing jurisprudence of Committee on the Rights of Persons with Disabilities, it could be helpful to include in **paragraph 53 a reference to the fact that persons with disabilities, particularly persons with psycho-social and intellectual disabilities could be subjected to arbitrary deprivation of life in the absence of procedural accommodation in the administration of justice.**¹⁰⁰

In **paragraph 55** the trend towards worldwide abolition would be better illustrated by referring to **moratoriums on the death penalty in general, as opposed to limiting this to only those countries that have introduced a *de facto* moratorium**. This is because in some countries a formal moratorium was introduced by the courts, or an official moratorium was declared by the highest authorities. In addition, the **reference to the pro-abolitionist spirit of the Covenant could be strengthened by explicitly linking Article 6(6) with Article 10(3) of the Covenant, making abolition a programmatic goal to be achieved by all States parties to the Covenant, and the retention of a punishment that is the ultimate denial of rehabilitation incompatible with the Covenant.**

2.5 PART V: OTHER ARTICLES AND OTHER REGIMES

2.5.1 INTERDEPENDENCE (PARAGRAPH 56)

Given the widespread recognition of the **interdependence of the right to life with economic, social and cultural rights** as set out in this submission above, **paragraph 56 should, in addition, explicitly recognize this principle as part of the relationship of Article 6 with other legal regimes.**

2.5.2 REPRISALS (PARAGRAPH 57)

Amnesty International welcomes that **paragraph 57** in the revised draft on reprisals against human rights defenders has been modified to broaden the scope of protection States parties should provide to individuals

⁹⁷ Special Rapporteur on Extrajudicial, summary or arbitrary executions, UN Doc. A/61/311, paras 59-63 (especially at para. 61: “Where the *diyah* pardon is available it must be supplemented by a separate, public system for seeking an official pardon or commutation.”)

⁹⁸ See also African Commission, General Comment 3 (2015), para. 24 (“Those sentenced to death have the right to seek clemency, pardon or commutation through a transparent process with due process of law.”)

⁹⁹ See Safeguard no. 7 of the Safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the UN Economic and Social Council in resolution 1984/50 of 25 May 1984 (“new mothers”); report of the Special Rapporteur on extrajudicial executions, UN Doc. A/51/457 (1996), para. 115 (“recent mothers”); Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, Article 4(2)(g) and African Commission, General Comment 3 (2015), para. 25 (“nursing women”).

¹⁰⁰ Committee on the Rights of People with Disabilities, Concluding Observations: Iran, UN Doc. CRPD/C/IRN/CO/1 (2017), paras 22/23.

against reprisals. **However, we recommend in addition that the paragraph should highlight that the obligation of States parties to protect individuals should be part of a broader obligation to ensure a safe and enabling environment for human rights defenders.**

Moreover, the second part of the paragraph is too limited, as it only mentions death threats as the sole reprisal States parties must address. Many other reprisals against human rights defenders put their lives at risk, including attacks, intimidation and harassment. **The Committee should follow the guidance of the UN Special Rapporteur on human rights defenders and call on states to ensure a safe and enabling environment.**¹⁰¹

The paragraph could also be **strengthened by adding relevant actions that States parties could take to reduce reprisals against human rights defenders**, such as public recognition of their legitimate work, the establishment of protection mechanisms for those at risk, and carrying out effective investigations that take into account the possible connection with their work and ensure that those responsible are held to account.¹⁰²

2.5.3 NON-DISCRIMINATION (PARAGRAPH 64)

We welcome the Committee's acknowledgement in **paragraph 64** of the different vulnerabilities that put the right to life at risk. However, we **recommend that the Committee add a reference to "discrimination" and not only "distinction" and recognize intersecting forms of discrimination.**¹⁰³

Also, we welcome the Committee's reference to "sexual orientation and gender identity", but at the same time **recommend to separate one from the other and to add a specific reference to "gender", "gender expression", and "marital or family status" as grounds for discrimination.** Likewise, we welcome the Committee's reference to "femicide", but at the same time **recommend adding more specific language, such as "gender based killings, including feminicide and femicide".**¹⁰⁴

2.5.4 EXTRA-TERRITORIAL APPLICATION (PARAGRAPHS 66 AND 26)

GENERAL (PARAGRAPH 66)

Amnesty International welcomes the jurisdictional test described by the Committee at the beginning of **paragraph 66**, where it explicitly confirms that a State party has an obligation to respect and ensure the rights under Article 6 wherever it exercises power or effective control *over a person's enjoyment of its right to life*. This clarification rightly takes into account the protected legal interest, namely the legal interest the right to life seeks to guarantee (the life of the affected person), and is in line with the Committee's practice,¹⁰⁵ as well as that of other UN human rights treaty bodies¹⁰⁶ and the International Court of Justice (ICJ)¹⁰⁷ and regional human rights bodies.¹⁰⁸ It provides a clear understanding of the circumstances triggering a state's responsibility

¹⁰¹ See, for example, Report of the Special Rapporteur on the situation of human rights defenders, UN Doc. A/HRC/25/55 (2013).

¹⁰² Report of the Special Rapporteur on the situation of human rights defenders, UN Doc. A/HRC/31/55 (2016).

¹⁰³ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings, UN Doc. A/HRC/35/23 (2017), para. 60; CEDAW, General Recommendation 35 (gender-based violence against women, updating general recommendation no.19) (2017), paras 23 and 28.

¹⁰⁴ See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings, UN Doc. A/HRC/35/23 (2017), paras 14, 23, 35, 48, 59, 61 and 64; CEDAW, General Recommendation 35 (gender-based violence against women, updating general recommendation no.19) (2017), para. 49.

¹⁰⁵ As demonstrated by the Committee's engagement on issues such as targeted killings in extra-territorial counter-terrorism operations using unmanned aerial vehicles in another country over which that State did not exercise effective control (*Concluding Observations on the United States of America*, CCPR/C/USA/CO/4, para. 9); extraterritorial surveillance (*Concluding Observations on the United States of America*, CCPR/C/USA/CO/4, para.22); backing of military factions in another country who were carrying out human rights abuses (*Concluding observations on Croatia*, CCPR/C/79/Add.15, para. 7; *Concluding observations on Yugoslavia*, CCPR/C/79/Add.16, paras 5, 8); pronouncement of a death sentence on a non-national resident in another country, and general appeals made or condoned by that country for the execution of this sentence outside of its territory (*Concluding Observations on Iran*, CCPR/C/79/Add.25, para. 9); and failure to provide effective remedies to people abroad who have been victims of activities of business enterprises domiciled in that State's territory and/or its jurisdiction (*Concluding Observations on Germany*, CCPR/C/DEU/CO/6, para. 16).

¹⁰⁶ See, *inter alia*, CERD Committee: 'Concluding Observations: United States of America' (2008) UN Doc CERD/C/USA/CO/6 para. 30; CEDAW Committee: 'General Recommendation 28 on the Core Obligations of States Parties under Article 2' (2010) UN Doc CEDAW/C/GC/28: 'States parties are responsible for all their actions affecting human rights, regardless of whether the affected persons are in their territory', para. 12.

¹⁰⁷ International Court of Justice, *Armed Activities in the territory of the Congo (Democratic Republic of Congo v Uganda)* [2005] ICJ Rep 168, para. 220; *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v Russian Federation)*, Provisional Measures, Order of 15 October 2008 [2008] ICJ Rep 353, para. 109.

¹⁰⁸ See, for example, *Inter-American Commission on Human Rights, Armando Alejandro Jr. and Others v Cuba ('Brothers to the Rescue')*, Inter-American Commission on Human Rights Report No. 86/99, Case No. 11589, 29 September 1999, para. 23; *African Commission on Human Rights, Association Pour la Sauvegarde de la Paix au Burundi v Tanzania, Kenya, Uganda, Rwanda, Zaire*

to comply with its human rights obligations, it helps to avoid possible gaps in protection and thus rightly seeks ensure that the right to life is preserved at all times and in all circumstances. Amnesty International recommends that paragraph 66 explicitly indicates that such situations comprise cases when activities by non-State actors within the State's jurisdiction might foreseeably carry out or contribute to interferences with the right to life in other countries.

In this latter regard, in order to further ensure the effective protection of the right to life and avoid potential loopholes, **in addition to "power or effective control" Amnesty International submits that the Committee should also include in the explication of the jurisdictional test in paragraph 66 the situations where the state has "authority" over the person's enjoyment of its right to life.** While there will be many occasions where authority, power and effective control situations overlap, adding this third alternative example will help prevent situations in which unduly narrow interpretations of what "power or effective control" entail leading to interpretations of the ICCPR running against the effective protection of a person's right to life. Such an addition would also be in line with the Committee's recent approach to jurisdictional issues.¹⁰⁹ Also, Amnesty International wishes to draw the Committee's attention to a similar approach, referring to situations of state's "authority", adopted by the African Commission on Human and Peoples Rights in its recent General Comment No 3 on the right to life¹¹⁰ as well as the approach elaborated by the former Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions,¹¹¹ and the Inter-American Commission on Human Rights.¹¹²

Furthermore, whereas the first sentence of **paragraph 66** contains the terms "that is", **Amnesty International submits that the expression "that is" should be amended with a view to ensure that the "authority, power or effective control" test is described as an illustrative example of what "jurisdiction" entails.** Again, this would enable the Committee to more adequately address all possible situations where jurisdiction applies.

Amnesty International also submits that it would be important to rationalize paragraph 66 so that where it refers to effective control, it also mentions the other alternatives, i.e. "authority or power". Such additions should be made, for instance, when the Committee refers to territories under its effective control, as well as where it cites at the end of the paragraph the example of a person arrested or detained *by the state itself or otherwise placed under its authority, power or effective control.* **Crucially, Amnesty International recommends to not only refer to "territories" but also to any "places".** Indeed, a person may find itself in a *place* which is under the state's authority, power or effective control but outside a *territory* under its authority, power or effective control.

Also, in the very useful list of examples provided by the Committee in **paragraph 66**, **Amnesty International recommends to the Committee to more explicitly address situations of extra-territorial use of force by government agencies, outside the military, against persons located on a territory or in a place outside the state's authority, power or effective control.** While the Committee rightly refers to its Concluding Observations on the USA in footnote 251 of the revised draft, a more explicit reference in the core of the text would be of significant relevance and added value in terms of human rights protection, including as a way to clearly spell out the obligations of states resorting to extra-territorial force using strikes led by non-military agencies and conducted outside situations of armed conflict, such as during counter-terrorism operations.¹¹³

Finally, **Amnesty International submits that the "[direct], significant and foreseeable manner" test is too high a threshold when it comes to triggering states' extra-territorial human right obligations.** First, if applied to "military activities", as it appears to be the case in the existing text of **paragraph 66**, such a test could

and Zambia (2003-2004) Communication 157/96, 17th Annual Activity Report (African Commission on Human Rights) para. 75. In some cases, the [European Court of Human Rights](#) has applied the European Convention to situations where a State harmed the right to life of people outside its borders without control over territory or physical custody over them, for example: European Court of Human Rights, *Pad and others v Turkey* (2007) Application 60167/00, paras. 53-55; European Court of Human Rights, *Drozd and Janousek v France and Spain* (1992) Application 12747/87, para. 91; European Court of Human Rights, *Solomou and others v Turkey* (2008) Application no. 36832/97, paras. 50-51.

¹⁰⁹ Human Rights Committee: Concluding Observations: United Kingdom, UN Doc. CCPR/C/GBR/CO/7 (2015), para. 5(a); see also Concluding Observations: Russian Federation, UN Doc. CCPR/C/RUS/CO7 (2015), para. 6.

¹¹⁰ African Commission, General Comment 3 (2015), para. 14.

¹¹¹ Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Report to the UN General Assembly, UN Doc. A/68/382 (2013), para. 46.

¹¹² The Inter-American Commission has confirmed that States are bound by their human rights obligations extraterritorially when they exercise "authority or control" over persons outside their sovereign territory, *Saldaño v Argentina* (1998) Report 38/99, para. 21.

¹¹³ See, inter alia, Amnesty International: *Will I be next? US Drone Strikes in Pakistan* (Index: ASA 33/013/2013), www.amnesty.org/en/documents/ASA33/013/2013/en/; *United States of America: 'Targeted Killing' policies violate the right to life* (Index: AMR 51/047/2012), www.amnesty.org/en/documents/AMR51/047/2012/en/. See also, Columbia Law School Human Rights Clinic and Sana'a Center of Strategic Studies, *Out of the Shadows: Recommendations to Advance Transparency in the Use of Lethal Force* (June 2017) www.outoftheshadowsreport.com; Human Rights Watch, "Between a Drone and Al-Qaeda": *The Civilian Cost of US Targeted Killings in Yemen* (October 2013) www.hrw.org/report/2013/10/22/between-drone-and-al-qaeda/civilian-cost-us-targeted-killings-yemen; Open Society Justice Initiative, *Death by Drone: Civilian Harm Caused by U.S Targeted Killings In Yemen* (April 2015) www.opensocietyfoundations.org/sites/default/files/death-drones-report-eng-20150413.pdf.

deprive indirect (collateral) victims of air strikes, for instance, of the effective protection of their right to life. Similarly, requesting that the effect be “significant” would introduce a severity threshold that would be without any basis in international law when it comes to deciding whether a state has human rights obligations towards a victim of an air strike. A similar problem arises with the “foreseeability” criterion. None of these three criteria are appropriate in situations where military or other deadly force is used; no threshold criterion should be used in such circumstances. Outside such situations where the state uses force against individuals and objects, if the Committee decides to introduce some objective requirement of causality for state’s extra-territorial obligations to arise in the course of its *general activities*, then it might potentially, and at maximum, require that the effect be “foreseeable”. It is indeed clear that requiring additional criteria to be fulfilled, such as being “direct” and amounting to “significant” would set too high a threshold.

THE PROTECTION OF THE RIGHT TO LIFE AT SEA (PARAGRAPH 66)

Further to [paragraph 66](#), we submit that the present wording on “distress/rescue at sea” should be changed, as it appears to narrow the areas in which the duty to render life-saving assistance by rescuing people at sea applies. The duty to render assistance to those in distress at sea is accepted as customary international law¹¹⁴ and applies regardless of the persons’ nationality, status or the circumstances in which they are found. It has been codified in the international law of the sea, including, but not limited to, the UN Convention on the Law of the Sea (UNCLOS),¹¹⁵ of which the UN High Commissioner for Refugees has said that “[a]lthough [the search and rescue] provision is located in the Part of UNCLOS concerning the high seas, it is generally accepted that the duty in question applies in all maritime zones.” (emphasis added).¹¹⁶ **We recommend to remove the present qualifiers relating to the areas of the high seas in which this obligation applies.**

THIRD PARTIES (PARAGRAPH 26)

As regards the [first sentence of paragraph 26](#), which is *inward facing*, Amnesty International submits that the Committee could further clarify the circumstances where the first sentence applies, namely by stating that the state has an obligation to protect those within their jurisdiction, including within places under their authority, power or effective control, against both deprivations of life and threats thereto. Also, Amnesty International submits that it is important to specify that such deprivations of life, or threats thereto, can not only come from other states, but also from any other third party, be it private individuals or private entities such as business enterprises or corporate entities.

Moreover, Amnesty International considers that this [first sentence of paragraph 26](#) should not only deal with third parties operating within the state’s territory, but also operating within any other places under the state’s jurisdiction. Finally, and very importantly, this sentence should also clarify that the same principles apply whether the third party’s activity occurs within or *outside* the state’s territory or place under its jurisdiction. The state has indeed an obligation to protect its population not only from threats coming from within its jurisdiction, but also from those coming from abroad.

PRIVATE PERSONS AND ENTITIES (PARAGRAPH 26)

Also, regarding the [second sentence of paragraph 26](#), which is *outward facing*, Amnesty International welcomes the clarification that States parties must ensure that the activities of corporate entities taking place in whole or in part within their territory or jurisdiction but having an impact on the right to life of individuals outside their territory are consistent with Article 6. This is in line with interpretations under General Comment 24 on “State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities” of the Committee on Economic, Social and Cultural Rights (CESCR) and General Comment 16 on “State obligations regarding the impact of the business sector on children’s rights” of the Committee on the Rights of the Child (CRC).

However, Amnesty International submits that the “[direct], significant and foreseeable” criteria applied to third party activities having an effect abroad should be deleted or potentially replaced, at maximum, by the sole requirement that the effect be “foreseeable”. In relation to corporate activity, the test currently proposed is inconsistent with existing standards on business and human rights. For example, General Comment 24 by the CESCR states that the responsibility of the state would be engaged in these contexts if it failed to take reasonable measures to prevent violations that were “*reasonably foreseeable*” (paragraph 32). Similarly, General Comment 16 of the CRC states that “Home States should also develop and implement laws and regulations that address *specific foreseeable risks* to children’s rights from business enterprises that are operating

¹¹⁴ J Coppens, E Somers, ‘Towards New Rules on Disembarkation of Persons Rescued at Sea?’, *The International Journal of Marine and Coastal Law* (2010), vol. 25, pp. 377–403, p. 377, citing: UN Commission on International Law, *Commentary on Draft Article 12 of the United Nations Convention on the High Seas*, UN Doc. A/3179 (1956).

¹¹⁵ UN Convention on the Law of the Sea, Article 98.

¹¹⁶ UN High Commissioner for Refugees, *Background Paper: “Mapping Disembarkation Options: Towards Strengthening Cooperation in Managing Irregular Movements by Sea”* (2014) <http://www.refworld.org/docid/5346438f4.html>, p. 5.

transnationally" (paragraph 50). The test being proposed in this draft would introduce in relation to the right to life a much higher threshold than that which is required in relation to other human rights.

In addition, Amnesty International recommends that the text refers to business and human rights standards that address the corporate responsibility to respect human rights, instead of "corporate social responsibility" standards. In particular, the General Comment should refer to the UN Guiding Principles on Business and Human Rights. The General Comment should also provide further guidance, consistent with existing international standards on business and human rights and the Committee's own practice, as to the steps States parties should take to ensure they protect the right to life of individuals outside their jurisdiction from negative impacts resulting from business activity taking place wholly or on part within their jurisdiction.

Finally, Amnesty International submits that not only activities within a territory under the state's jurisdiction but also within *any places* under the state's jurisdiction should be subjected to the state's obligation to prevent adverse effects abroad. We note that [paragraph 26](#) uses the term "areas", however the term "places" would better reflect the fact that the location can be very limited in size.

2.5.5 RIGHT TO LIFE DURING AND OUTSIDE OF ARMED CONFLICT SITUATIONS (PARAGRAPH 67)

APPLICATION OF INTERNATIONAL HUMANITARIAN LAW

Amnesty International welcomes the Committee's reaffirmation of the continued application of Article 6 to situations of armed conflicts and (in paragraph 2) of the non-derogability of this right, including in armed conflict and other public emergencies. However, **Amnesty International recommends the Committee use the opportunity provided by paragraph 67 to explicitly specify the international law requirement for when international humanitarian law applies to the use of force, including extra-territorially.** In particular, paragraph 67 should clarify that for international humanitarian law to apply to the use of force, it is not sufficient that force is used in a specific area where there happens to be a situation of armed conflict. Indeed, several additional conditions need to be met, namely: 1) the state resorting to the use of force must be a party to that armed conflict, and 2) the use of extra-territorial force must be taking place as part of that armed conflict.

For instance, if an air strike is conducted outside of a specific zone of armed conflict or in a specific zone of armed conflict but in circumstances not related to that armed conflict, then international human rights law and its law enforcement standards on the use of lethal force will be the sole applicable international legal framework. If a strike occurs 1) in a specific zone of armed hostilities within that conflict, 2) in connection to that conflict and 3) is conducted by a party to that armed conflict, then and only then both international human rights law and international humanitarian law will apply.

This is necessary because of the risk that states may qualify situations as armed conflict (or deny that an armed conflict exists) based on political expediency rather than the factual and legal merits. The issue of qualification has been manipulated to justify application of conduct of hostilities rules to extra-territorial, intentionally lethal force. The unwarranted use of international humanitarian law standards also undermines protection of the right to life in domestic settings, including in militarized approaches to the so-called wars on drugs and on terrorism. Hence it is crucial that accurate determinations are made as to whether and where a situation of "armed conflict" exists.

Therefore, Amnesty International recommends that [paragraph 67](#) explicitly refers to the need for a nexus to exist between the use of force and a specific theatre of hostilities taking place as part of an armed conflict to which the state using force is a party in order for international humanitarian law to apply alongside Article 6. It is also crucial that the threshold for a situation to amount to an armed conflict as defined under international humanitarian law is reached. Similar concerns have been forcefully addressed by the Committee in its Concluding Observations on the USA¹¹⁷ and an explicit reference in [paragraph 67](#) would be of crucial added value, including in light of the increased use of extra-territorial force by states outside specific situations where international humanitarian law applies alongside Article 6.

¹¹⁷ Human Rights Committee, Concluding Observations: United States of America, UN Doc. CCPR/C/USA/CO/4 (2014), para. 9: "[...] the Committee remains concerned about the State party's very broad approach to the definition and geographical scope of "armed conflict", including the end of hostilities, the unclear interpretation of what constitutes an "imminent threat", who is a combatant or a civilian taking direct part in hostilities, the unclear position on the nexus that should exist between any particular use of lethal force and any specific theatre of hostilities, as well as the precautionary measures taken to avoid civilian casualties in practice".

The Committee should also consider including a reference to the international legal definitions of armed conflict and emphasize that international humanitarian law does not apply to “situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature”.¹¹⁸

Amnesty International further recommends that where the draft does refer to armed conflict it specifies that conduct of hostilities rules are strictly limited to battlefield/combat situations – never to policing operations. In light of this, **paragraph 67 should make clear that, wherever a state is in a position to exercise effective control over a place or territory, standards of law enforcement will be applicable.** Even in combat situations (and especially in non-international armed conflict), due regard should be given to the right to life. Unnecessary deprivation of life, which otherwise may comply with the rules of international humanitarian law, may nevertheless be arbitrary. Amnesty International notes in this regard that the Committee’s own practice acknowledges that even in situations of armed conflict -- and especially where the state is exercising effective control over a place or territory – circumstances often dictate that human rights law should prevail over conduct of hostilities rules of international humanitarian law. For example, during armed conflicts, wherever a state is in a position to exercise law enforcement functions, its forces have a duty to attempt to capture, rather than kill, members of armed groups.¹¹⁹

Finally, and in order to prevent unduly narrow interpretations of the circumstances in which states have to publicly explain the basis for using force, **Amnesty International recommends the deletion of the following section currently indicated in between square brackets: “[subject to compelling security considerations]”.** There can indeed be no legitimate reasons for resorting to secrecy about “the legal basis for specific attacks, the process of identification [...], the circumstances in which relevant means and methods of warfare have been used, and whether non-lethal alternatives for attaining the same military objective were considered”. Shrouding these elements in secrecy would indeed unduly affect the public’s and the victims’ right to know the truth about gross human rights violations and, if applicable, serious violations of international humanitarian law, as well as the victims’ and families’ right to an effective remedy. **Amnesty International further recommends a more prescriptive approach than the one currently adopted in this sentence, which uses the term “should”.**

ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN ARMED CONFLICT

To better reflect the interdependence of the right to life with economic, social and cultural rights in armed conflict, **Amnesty International recommends that the Committee add a few key rules on the protection of medical and humanitarian personnel and objects indispensable to the survival of the civilian population, to those listed in paragraph 67 of the current draft.** These rules are essential for the States parties’ duty to protect life, consistent with the appropriate measures identified by the Committee in paragraph 30 of the current draft as necessary to address threats to life.

“TARGETED KILLINGS” OUTSIDE ARMED CONFLICTS

Especially in light of the practice of extra-territorial use of force outside armed conflicts, **Amnesty International recommends to the Committee to explicitly confirm in paragraph 67 that intentional, premeditated and deliberate killings, reflected for instance in the practice of so-called “targeted killings” by air strikes, are always unlawful outside situations where a nexus with an armed conflict exist.** Indeed, while such killings might be lawful in certain situations where both international human rights and humanitarian law apply, they are unlawful in law enforcement operations because, *inter alia*, of the stringent requirements related to imminence and strict necessity, as well as of the fact that killing can never be the sole objective of a law enforcement operation.¹²⁰

2.5.6 DEROGATIONS AND RESERVATIONS (PARAGRAPHS 68 AND 69)

Amnesty International submits that the language of paragraph 68 on derogations could be made even more specific, and better safeguard against “indirect” derogations. This could be done by more fully utilizing language from the Committee’s General Comment 29 (in particular its paragraphs 14 and 15)¹²¹ as well General

¹¹⁸ See in this regard ICTY, *Prosecutor v. Tadić*, Case No. IT-94-1, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 70; and Article 2, Geneva Conventions of 1949.

¹¹⁹ See e.g. Concluding Observations of the Human Rights Committee on the third periodic report of Israel, UN Doc. CCPR/C/ISR/CO/3 (2010), para. 10; Special Rapporteur on extrajudicial, summary or arbitrary executions, Study on targeted killings, Report to the Human Rights Council, UN Doc. A/HRC/14/24/Add.6 (2010), para. 77.

¹²⁰ See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Study on Targeted Killings, UN Doc. A/HRC/14/24/Add.6 (2010), para. 33.

¹²¹ Human Rights Committee, General Comment 29, States of emergency (article 4), UN Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 14: “Article 2, paragraph 3, of the Covenant requires a State party to the Covenant to provide remedies for any violation of the provisions of the Covenant.

Comment 31 (there paragraph 15).¹²² In addition, a potential reading should be avoided in which some aspects of the prohibition of arbitrariness could be seen as more or less important ("fundamental") than others; the prohibition of arbitrary deprivation of life presents a norm of customary international law,¹²³ even a peremptory norm of international law (*jus cogens*),¹²⁴ and therefore *all* guarantees against arbitrary deprivation of life continue to apply in all circumstances.¹²⁵ By the same token, we submit that to limit the remedies required to vindicate a potential violation of Article 6 to those "feasible" would not adequately reflect Committee precedent on States parties' duties under Article 2(3) of the Covenant.¹²⁶

Amnesty International welcomes the explicit clarification in paragraph 69 that no part of Article 6 is open to reservations. By extending the protection against reservations to Article 6 as a whole, the Committee expresses the importance of the right to life, and the progressive development to restrict over time and eventually abolish the death penalty, consistent with paragraphs 54 and 55 of this revised draft General Comment.

This clause is not mentioned in the list of non-derogable provisions in article 4, paragraph 2, but it constitutes a treaty obligation inherent in the Covenant as a whole. Even if a State party, during a state of emergency, and to the extent that such measures are strictly required by the exigencies of the situation, may introduce adjustments to the practical functioning of its procedures governing judicial or other remedies, *the State party must comply with the fundamental obligation, under article 2, paragraph 3, of the Covenant to provide a remedy that is effective.*" See also para. 15: "It is inherent in the protection of rights explicitly recognized as non-derogable in article 4, paragraph 2, that they must be secured by procedural guarantees, including, often, judicial guarantees. The provisions of the Covenant relating to procedural safeguards may never be made subject to measures that would circumvent the protection of non-derogable rights. Article 4 may not be resorted to in a way that would result in derogation from non-derogable rights. Thus, for example, as article 6 of the Covenant is non-derogable in its entirety, any trial leading to the imposition of the death penalty during a state of emergency must conform to the provisions of the Covenant, including all the requirements of articles 14 and 15." (Emphasis added).

¹²² Human Rights Committee, General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 15: "Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights. [...] Cessation of an ongoing violation is an essential element of the right to an effective remedy." (Emphasis added).

¹²³ Human Rights Committee, General Comment 24, Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.6 (1994), para. 8. See also, Special Rapporteur on extrajudicial, summary or arbitrary executions, Report to the General Assembly, UN Doc. A/67/275 (2012), para. 11.

¹²⁴ Human Rights Committee, General Comment 24, Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.6 (1994), para. 10.

¹²⁵ See also African Commission, General Comment 3 (2015), para. 7 ("Derogation from the right to life is not permissible in a time of emergency, including a situation of armed conflict, or in response to threats such as terrorism.")

¹²⁶ See Human Rights Committee: General Comment 29, States of emergency (article 4), UN Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 14 ("...the State party must comply with the fundamental obligation, under article 2, paragraph 3, of the Covenant to provide a remedy that is effective."); General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 15 ("Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights"); *Al-Rabassi v. Libya*, Communication No. 1860/2009, para. 7.8.

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THE RIGHT TO LIFE

SUBMISSION TO THE UN HUMAN RIGHTS COMMITTEE ON THE REVISED DRAFT GENERAL COMMENT 36

Following the UN Human Rights Committee's finalization of its first reading of the Draft General Comment No. 36 on Article 6 (Right to Life) of the International Covenant on Civil and Political Right, Amnesty International provides this submission on the right to life. These comments supplement Amnesty International's preliminary observations submitted in 2015.

The organization reaffirms its strong support for this initiative. The General Comment provides a key opportunity for the Committee to clarify important principles underlying the right to life so as to help ensure better implementation of this right.

The present submission aims to inform the current process by providing Amnesty International's main observations and recommendations. In addition to the Committee's practice, this document also draws on pertinent international and regional standards, rulings, decisions and observations, as well as in some cases decisions of domestic courts and other sources, with a view to providing supplemental authority for the Committee's consideration.