



AL-HAQ SUBMISSION

UN Human Rights Committee on Draft General Comment No. 36
Article 6 of the International Covenant on Civil and Political Rights: Right to life

06 October 2017

I. General Remarks

1. Al-Haq welcomes the UN Human Rights Committee's revised draft General Comment on Article 6 of the International Covenant on Civil and Political Rights (ICCPR or 'the Covenant'). The draft reflects an evolved understanding of the right to life as a right that 'should not be interpreted narrowly',¹ that 'can be informed and infused by other human rights',² and that grants everyone without distinction the right 'to enjoy a life with dignity.'³ Al-Haq supports this broad interpretation of the right to life, which is consistent with the letter and the spirit of the Covenant,⁴ the Universal Declaration of Human Rights,⁵ and the Vienna Declaration and Programme of Action.⁶
2. The protection of the right to life takes on added significance in the Occupied Palestinian Territory (OPT), where five decades of Israeli military rule have involved systematic deprivations of Palestinian life by Israel, the Occupying Power, and by Israeli settlers. Israeli authorities consistently fail to effectively prevent, investigate, or prosecute such cases. Al-Haq's submission elaborates on a number of issues that may be further developed by the Committee to ensure broader protection of the right to life in contexts of prolonged occupation.

¹ Draft General Comment 36, para. 3.

² Draft General Comment 36, paras. 2 and 56.

³ Draft General Comment 36, para. 3.

⁴ ICCPR, preamble: "[r]ecognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights."

⁵ *Universal Declaration of Human Rights*, adopted 10 December 1948, preamble: "[w]hereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom."

⁶ *Vienna Declaration and Programme of Action*, adopted on 25 June 1993, Article 5: "[a]ll human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis."



II. Protecting the Right to Life in the Context of Prolonged Occupation

i. The regulation of the use of force

3. Al-Haq supports the Committee's view that international human rights law and international humanitarian law 'are complementary, not mutually exclusive.'⁷ The draft provides that Article 6 continues to apply 'also to the conduct of hostilities' in situations of armed conflict to which the rules of international humanitarian law are applicable.⁸ In paragraph 67 of the draft General Comment, Al-Haq believes that '[, subject to compelling security considerations,]' should be removed as it may be abused by States parties to avoid disclosing information on military or law enforcement attacks they have carried out and that may have resulted in arbitrary loss of life.

ii. Withholding the bodies of deceased individuals: A violation of the duty to investigate

4. The protection of the right to life includes an obligation to 'investigate and prosecute allegations of deprivation of life by State authorities or by private individuals and entities, including allegations of excessive use of lethal force.'⁹ Al-Haq welcomes the position that '[w]here relevant, the investigation should include a rigorous autopsy of the victim's body, whenever possible, in the presence of a pathologist representing the victim's family.' Al-Haq further supports the position that States have an obligation to 'establish the truth relating to the events leading to the deprivation of life'¹⁰ by revealing the reasons for targeting certain individuals and disclosing details about the investigation to the victim's family.¹¹ Al-Haq believes that the ability to conduct an investigation is obstructed where the remains of a victim are withheld by State authorities for prolonged periods, potentially concealing evidence of extrajudicial killings.¹² As such, the Committee may add the following in paragraph 32:

States may not obstruct investigations into arbitrary deprivations of life by withholding a victim's body for prolonged periods or by placing conditions on the release of a body to family members, including those that effectively prohibit autopsies.

5. Al-Haq supports the view that "[t]he arbitrary deprivation of life of an individual may cause his or her relatives mental suffering, which could amount to a violation of their

⁷ Draft General Comment 36, para. 67.

⁸ Draft General Comment 36, para. 67.

⁹ Draft General Comment 36, para. 31.

¹⁰ Draft General Comment 36, para. 32.

¹¹ Draft General Comment 36, para. 32.

¹² Al-Haq, "The Consequences of Israeli Impunity" (23 August 2017), available at:

<http://www.alhaq.org/advocacy/topics/right-to-life-and-body-integrity/1135-the-consequences-of-israeli-impunity>.



own rights under article 7 of the Covenant.”¹³ This includes not only the ‘failure to provide relatives with information on the circumstances surrounding the death of an individual’ but also the inability to bury a relative in accordance with one’s religious beliefs, cultural practices, and traditions. The draft provides that when the death penalty is carried out, ‘[f]amilies of executed individuals must be able to receive back the remains, if they so wish’¹⁴ and be informed ‘of the location of the body.’¹⁵ Al-Haq believes that this applies not only when the death penalty is applied, but also in other cases of arbitrary deprivation of life by State authorities. It is therefore suggested that the Committee modify the last sentence in paragraph 60 to read:

Families of executed individuals or individuals arbitrarily deprived of their life by State authorities must be able to receive back the remains, if they so wish.

6. The State may not arbitrarily withhold bodies of deceased victims and delay the return of their remains to their family for a dignified burial in accordance with their beliefs and traditions. Such a prolonged withholding of a victim’s body amounts to collective punishment and violates the victim’s family members’ rights under Article 7 of the Covenant.¹⁶ The imposition of humiliating and degrading conditions on funeral processions may further violate the family members’ right, under Article 18 of the Covenant, to bury their loved ones in accordance with their religious beliefs and customs. As such, it is suggested that the excessive delay in returning a person’s remains is in violation of both Articles 7 and 18 of the Covenant. Al-Haq proposes that the Committee add after the last sentence in paragraph 60:

An excessive delay by State authorities in returning the remains of a deceased individual to his or her family for a proper and dignified burial may violate his or her family members’ rights under articles 7 and 18 of the Covenant.

iii. The prohibition on forcible feeding of prisoners on hunger strike

7. Al-Haq notes with appreciation the recognition that States ‘have a heightened obligation to take any necessary measures to protect the lives of individuals deprived of their liberty by the State, since by arresting, detaining and imprisoning individuals States parties assume the responsibility to care for their life and bodily integrity’.¹⁷ In order to

¹³ Draft General Comment 36, para. 60.

¹⁴ Draft General Comment 36, para. 60.

¹⁵ Draft General Comment 36, para. 60.

¹⁶ “In addition to amounting to collective punishment, the withholding of bodies is inconsistent with Israel’s obligations as an occupying Power pursuant to the Fourth Geneva Convention (articles 27 and 30) and violates the prohibition of torture and ill-treatment.” Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, Report of the Secretary-General, A/71/364, 30 August 2016, para. 25.

¹⁷ Draft General Comment 36, para. 29.



ensure that ‘necessary measures’ are read consistently with principles of medical ethics,¹⁸ and are not interpreted in a way that authorises the forcible feeding of prisoners or detainees on hunger strike, which amounts to treatment contrary to Article 7 of the Covenant,¹⁹ it is suggested that the first sentence in paragraph 29 be reformulated to read:

Subject to internationally accepted principles on medical ethics,²⁰ States parties also have a heightened obligation to take any necessary measures to protect the lives of individuals deprived of their liberty by the State, since by arresting, detaining and imprisoning individuals States parties assume the responsibility to care for their life and bodily integrity, and they may not rely on lack of financial resources or other logistical problems to reduce this responsibility.

8. In paragraph 29, the Committee should also consider inserting the following after footnote 91:

This duty may not involve any treatment contrary to Article 7 of the Covenant, including the forcible feeding of prisoners or detainees on hunger strike.

III. The Right to Human Dignity and Economic, Social, and Cultural Rights

9. Al-Haq welcomes the Committee’s view that the right to life ‘concerns the entitlement of individuals [...] to enjoy a life with dignity.’²¹ This recognition significantly broadens the understanding of the right to life to include qualitative aspects that traditionally touch upon the realm of economic, social, and cultural rights, notably the right to an adequate standard of living,²² the right to the highest attainable standard of physical and mental health,²³ and the right to a healthy environment favourable to the development of future generations.²⁴

¹⁸ “Forcible feeding is never ethically acceptable. Even if intended to benefit, feeding accompanied by threats, coercion, force or use of physical restraints is a form of inhuman and degrading treatment. Equally unacceptable is the forced feeding of some detainees in order to intimidate or coerce other hunger strikers to stop fasting.” World Medical Association, Declaration of Malta on Hunger Strikers, adopted November 1991 by the 43rd World Medical Assembly, Principle 13.

¹⁹ UN experts urge Israel to halt legalization of force-feeding of hunger-strikers in detention, 28 July 2015, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16269>

²⁰ World Medical Association, Declaration of Malta on Hunger Strikers, adopted November 1991 by the 43rd World Medical Assembly, Principle 13.

²¹ Draft General Comment 36, para. 3.

²² Article 11, International Covenant on Economic, Social and Cultural Rights (ICESCR).

²³ Article 12, ICESCR.

²⁴ Draft General Comment 36, para. 65: “[e]nvironmental degradation, climate change and non-sustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”



i. The right to dignity in situations of prolonged occupation

10. The Committee affirms that to protect the right to life ‘States parties should take appropriate measures to address the general conditions in society that may eventually give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity.’²⁵ Al-Haq welcomes the expansive understanding of conditions that deny individuals a dignified life. It is suggested that the list may be expanded to include situations of armed conflict, situations of generalised violence, apartheid, foreign domination, and military occupation, which are incompatible with the full enjoyment of the right to life.
11. In the case of the OPT, which has been under prolonged military occupation for fifty years, the Israeli Occupation Forces have systematically denied the Palestinian people their right to live in dignity through widespread policies of collective punishment, appropriation of natural resources, home demolitions, residency revocations, restrictions on family reunification, mass arbitrary detentions without guarantees of due process, and systematic restrictions on the freedom of movement of Palestinians, including the denial of Palestinian refugee return, amongst other policies and practices. At the same time, Israeli settlers living illegally in the OPT enjoy an array of rights which are denied to Palestinians, and indeed are subject to a different legal system. The situation has been characterised as apartheid by experts.²⁶ Such a context of prolonged military occupation not only constitutes a severe denial of civil and political rights enshrined in the ICCPR but also fundamentally denies the occupied people a life of dignity. Accordingly, it is argued that situations of prolonged occupation, apartheid, and foreign domination cannot be reconciled with full respect for the right to life.
12. Therefore, while the draft provides that the protection of the right to life includes ‘long-term measures designed to promote and facilitate adequate general conditions’²⁷ it is not enough to maintain minimum standards, including those implicitly linked to the realisation of an adequate standard of living, as enshrined in Article 11 of the ICESCR or other rights. Long-term measures must include those that aim to change the system as whole, rather than those that merely lessen or mask a comprehensive structure which violates rights.

²⁵ Draft General Comment 36, para. 30.

²⁶ UN Economic and Social Commission for Western Asia, *Israeli Practices towards the Palestinian People and the Question of Apartheid* (2017), Palestine and the Israeli Occupation, Issue No. 1, UN Doc E/ESCWA/ECRI/2017/1. See also Committee on the Elimination of Racial Discrimination, Concluding observations: Israel (2012), UN Doc CERD/C/ISR/CO/14-16, 09 March 2012, para. 24: “[t]he Committee draws the State party’s attention to its General Recommendation 19 (1995) concerning the prevention, prohibition and eradication of all policies and practices of racial segregation and apartheid, and urges the State party to take immediate measures to prohibit and eradicate any such policies or practices which severely and disproportionately affect the Palestinian population in the Occupied Palestinian Territory and which violate the provisions of article 3 of the Convention.”

²⁷ Draft General Comment 36, para. 30.



ii. The right to life, environment, and adaptation to climate change

13. Al-Haq welcomes the recognition that '[e]nvironmental degradation, climate change and non-sustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life'²⁸ and that States may be in violation of their obligation to respect and ensure the right to life by failing to abide by their obligations under international environmental law.²⁹ The 1972 Declaration of the UN Conference on the Human Environment affirms that the protection of the environment is essential for a life of dignity and well-being and that such protection can be jeopardized in cases of 'policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination'.³⁰ The 1992 Rio Declaration on Environment and Development affirms that '[t]he environment and natural resources of people under oppression, domination and occupation shall be protected.'³¹ Customary international humanitarian law further protects the natural resources of the occupied territory from being acquired by the Occupying Power,³² which must safeguard and administer them in accordance with the rules of usufruct but may not exploit them to serve its own economic interests.³³ As such, Al-Haq suggests that the following be inserted after paragraph 65:

The protection of the environment is essential for a life of dignity and well-being and requires the elimination of situations of apartheid, racial segregation, discrimination, foreign occupation, and colonial and other forms of oppression and foreign domination.³⁴ Such situations often serve to exacerbate environmental degradation and facilitate the exploitation of natural resources. Accordingly, States must ensure that their actions do not further promote or assist the continuance of such conditions.

14. The draft should also reaffirm that the ability to enjoy the right to life depends on measures taken by States parties to assist and allow populations to adapt to existing and

²⁸ Draft General Comment 36, para. 65.

²⁹ Draft General Comment 36, para. 65.

³⁰ *Declaration of the United Nations Conference on the Human Environment*, adopted in Stockholm, 16 June 1972, Principle 1.

³¹ *Rio Declaration on Environment and Development*, adopted in Rio de Janeiro, 03 to 14 June 1992, Principle 23.

³² *Convention (IV) respecting the Laws and Customs of War on Land and its Annex: Regulations concerning the Laws and Customs of War on Land*, The Hague, 18 October 1907, Article 55.

³³ For a legal analysis, see Al-Haq, "An Environmental Approach: The Protection of Natural Resources in the Occupied Palestinian Territory" (2017), available at:

<http://www.alhaq.org/publications/publications-index/item/an-environmental-approach-the-protection-of-natural-resources-in-the-occupied-palestinian-territory>.

³⁴ *Declaration of the United Nations Conference on the Human Environment*, adopted in Stockholm, 16 June 1972, Principle 1.



projected region-specific climate change impacts. Al-Haq proposes that the following be added after the last sentence in paragraph 65:

The ability to enjoy the right to life depends on measures taken by States parties to assist and allow populations to adapt to existing and projected region-specific climate change impacts. States parties should engage in the formulation and implementation of climate change mitigation and adaptation strategies, taking due note of international environmental law principles including the sustainable development, precautionary, prevention, proximity, and integration principles.

IV. The Abolition of the Death Penalty

15. Al-Haq welcomes the Committee's interpretation that '[t]he death penalty cannot be reconciled with full respect for the right to life' and that 'abolition of the death penalty is both desirable, and necessary for the enhancement of human dignity and progressive development of human rights.'³⁵ Al-Haq is fundamentally opposed to the death penalty and supports the view that 'States parties that are not yet totally abolitionist should be on an irrevocable path towards complete abolition of the death penalty de facto and de jure, in the foreseeable future.'³⁶ This interpretation is wholly consistent with the object and purpose of the ICCPR and its abolitionist goal set out in paragraph 6 of Article 6. Accordingly, Al-Haq proposes that the following sentence be added at the end of paragraph 36 of the draft:

The interpretation of these paragraphs must be guided by the abolitionist goal of the Covenant.

16. The draft favourably expands the categories of individuals 'whose execution would be exceptionally cruel or would lead to exceptionally harsh results for them and their families'.³⁷ It is suggested that since parents of dependent children should not face the death penalty, pregnant women upon whom a sentence of death has been imposed may not be executed including after they have given birth. This interpretation is consistent with the abolitionist goal of Article 6.³⁸ It is therefore suggested that the following be included after the last sentence in paragraph 52 of the draft:

In line with the abolitionist goal of Article 6, death sentences imposed on pregnant women may not be carried out, including after they have given birth.

V. Accountability for Arbitrary Deprivations of the Right to Life

³⁵ Draft General Comment 36, para. 54.

³⁶ Draft General Comment 36, para. 54.

³⁷ Draft General Comment 36, para. 53.

³⁸ William A Schabas, *The Abolition of the Death Penalty in International Law* (3rd edn, Cambridge University Press 2002), p. 135.



17. The protection of the right to life involves bringing perpetrators to justice with the aim of ‘promoting accountability and preventing impunity’.³⁹ Al-Haq welcomes paragraphs 31, 33, and 68 of the draft General Comment, addressing the question of accountability. The Committee should recognise that violations of the right to life in times of armed conflict may also amount to grave breaches of the Geneva Conventions, including where they constitute wilful killings, torture or inhuman treatment, or wilfully causing great suffering or serious injury to body or health.⁴⁰ This is further important in cases of impunity and in situations of armed conflict where the State party may systematically violate the right to life and is unable or unwilling to carry out investigations into such violations. In these cases, third States have a duty to act effectively to end impunity.⁴¹ Given the crucial importance of the right to life and the need to ensure accountability for violations of the right, Al-Haq suggests the following sentence be added at the end of paragraph 33:

In cases of armed conflict, third states may have a duty to ensure respect⁴² for the right to life and hold perpetrators accountable.⁴³

18. The Committee provides: ‘States are reminded of their responsibility as members of the international community to protect lives and to oppose widespread or systematic attacks on the right to life, including acts of aggression, international terrorism and crimes against humanity, while respecting all of their obligations under the United Nations Charter.’ However, States do not only have an obligation to ‘protect’ from and ‘oppose’ the commission of international crimes, they must also ‘prevent’ them from occurring in the first place.⁴⁴

19. It is important to note that ‘international terrorism’ included in paragraph 71 of the draft, while a real and serious concern, is overly broad and may instead lead to State actions that violate the right to life. A 2015 report by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism highlighted the principle of legality and noted “the adoption of overly broad

³⁹ Draft General Comment 36, para. 31.

⁴⁰ *Convention (IV) relative to the Protection of Civilian Persons in Time of War*, Geneva, 12 August 1949, Article 147.

⁴¹ Article 146 of the Fourth Geneva Convention reads in part “Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts.”

⁴² States parties to the Geneva Conventions have a responsibility under Common Article 1 to ensure respect for the Conventions at all times. Articles of the Geneva Conventions are related to the right to life, including articles prohibiting wilful killing and torture.

⁴³ This includes enacting “any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed” or searching “for persons alleged to have committed, or to have ordered to be committed, such grave breaches,” and “[bringing] such persons, regardless of their nationality, before its own courts.”

⁴⁴ UN General Assembly, Resolution 60/1, World Summit Outcome, 16 September 2005, para. 138.



definitions of terrorism carries the potential for deliberate misuse – including as a response to claims and social movements of indigenous peoples – and unintended human rights abuses.”⁴⁵ Such instances of overly broad definitions or, more sweepingly, the use of security as a pretext for implementing policies which may violate the right to life, are especially concerning in situations of armed conflict, including occupation.⁴⁶ Accordingly, Al-Haq proposes that the Committee modify the last sentence of paragraph 71 to read:

At the same time, all States are reminded of their responsibility as members of the international community to protect lives, to oppose, and to prevent widespread or systematic attacks on the right to life, including acts of aggression, crimes against humanity, the crime of genocide, and war crimes, while respecting all of their obligations under the United Nations Charter.

20. Finally, paragraph 12 notes that ‘States parties engaged in the use of existing weapons and in the study, development, acquisition or adoption of new weapons, and means or methods of warfare must always consider their impact on the right to life.’⁴⁷ Special responsibility should also be placed on States that knowingly sell weapons to States or armed groups engaged in war crimes or crimes against humanity.⁴⁸

⁴⁵ The report went on to note: “[u]nclear, imprecise or overly broad definitions can be used to target civil society, silence human rights defenders, bloggers and journalists, and criminalize peaceful activities in defence of minority, religious, labour and political rights.” Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, UN Doc A/70/371, 18 September 2015, para. 14.

⁴⁶ In 2003, the UN Human Rights Committee noted its concern regarding “the vagueness of definitions in Israeli counter-terrorism legislation and regulations which, although their application is subject to judicial review appear to run counter to the principle of legality in several aspects owing to the ambiguous wording of the provisions and the use of several evidentiary presumptions to the detriment of the defendant.” See Concluding Observations: Israel (2003), para. 14. These concerns were reiterated in a 2007 report by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. See Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, Mission to Israel, including visit to Occupied Palestinian Territory, UN Doc A/ HRC/6/17/Add.4, 16 November 2007, para. 16.

⁴⁷ Draft General Comment 36, para. 12.

⁴⁸ International Law Commission, Responsibility of States for Internationally Wrongful Acts (2001), Article 16.