

APWLD submission on the draft General Comment on Article 6 of the International Covenant on Civil and Political Rights – Right to life.

Introduction

The Asia Pacific Forum on Women, Law and Development (APWLD)¹ is pleased to make this submission on the draft General Comment on Article 6 of the International Covenant on Civil and Political Rights (ICCPR) on the right to life. APWLD welcomes the deliberations of the Human Rights Committee in this draft, noting that it is the first General Comment from this treaty body in over 30 years and includes greater scope than the two previous General Comments that it is replacing. APWLD supports the many progressive elements and long-sighted view of what direction human rights should take. Our submission focuses on:

- (I) particular aspects that we strongly support retaining as currently drafted,
- (II) elements that could be added to strengthen the reasoning already in place.

(I) Draft paragraphs that should not be diluted or removed

Paragraph 8: APWLD supports this consideration of the practice of enforced disappearance and its relationship to the violation of the right to life. We also particularly support the emphasis on not forcing families of victims of enforced disappearances to declare the victim dead in order to be eligible for reparation. We would welcome further deliberations on addressing older cases of enforced disappearances when State parties either ignore appeals or dismiss them as having occurred too long ago.

Paragraph 9: APWLD strongly supports the Committee's recommendation that '*State parties may not regulate pregnancy or abortion in a manner that runs contrary to their duty to ensure that women do not have to undertake unsafe abortions*' and fully agrees that '*the duty to protect the lives of women against the health risks associated with unsafe abortions requires State parties to ensure access for women and men, and, in particular, adolescents, to information and education about reproductive options, and to a wide range of contraceptive methods.*' To achieve gender equality, women and girls must have control over their fertility. The ability to control if and when to have children determines women's realization of their human rights, including civil and political rights as well as economic, social and cultural rights. The realization of women's democratic rights start from the ability to make a decision over their own bodies. Women's bodies are a site for demonstration of patriarchal power and this control over women's bodies, while historically present over centuries, is undemocratic and at odds with the Universal Declaration of Human Rights. Restrictions on women's and girls' access to sexual and reproductive health services, which includes safe abortion, implicates the right to life, the rights to non-discrimination, privacy, freedom from torture, cruel inhumane and degrading treatment, and the right to equality before the law and equal protection of the law without discrimination. Noting the interdependence of these rights is critical to ensuring women's and girls' right to life, especially with regard to their access to sexual and reproductive health services.

¹ APWLD is Asia Pacific's leading feminist, membership driven network. Our 215 members represent organisations and groups of diverse women from 27 countries in the region. We use capacity development, research, advocacy and activism to claim and strengthen women's human rights.

Paragraph 18: APWLD sees this as very important deliberation on the concept of 'arbitrariness'. In our work in the region, it is common for autocratic governments to pass domestic laws that do not comply with international human rights standards and then try to evade criticism by arguing that all laws were complied with.² While the Committee has elaborated on this principle within this comment on Article 6, this important broadened reading of 'arbitrariness' that includes '*elements of inappropriateness, injustice, lack of predictability, and due process of law as well as elements of reasonableness, necessity, and proportionality*' is applicable to other articles under this and other Covenants.

Paragraphs 27 and 53: APWLD welcomes the recommendation of special measures of protection towards persons in situation of vulnerability, and the already listed identities in paragraph 27 as well as the suggested protective measures. It is possible to add that state parties should also take measures to protect the identities and whereabouts of individuals that are under threat: in Bangladesh, where extremists have targeted secular thinkers, writers and bloggers and published a death list of their intended victims, police were lax in safeguarding this type of information, and in some cases were responsible for leaking home addresses. We also support the recommendation in paragraph 53 for states to refrain from imposing the death penalty on persons with psychosocial and intellectual disabilities as such individuals also should receive special measures of protection recommended in paragraph 27.

Paragraphs 34 and 35: We welcome the recommendation to refrain from deporting, extraditing or otherwise transferring individuals to countries where they face a real risk of deprivation of their life, and the elaboration that this obligation is broader than the scope of the principle of *non refoulement*. *Non refoulement* as a principle is often only thought to apply to refugees and asylum seekers; this section of the draft supports expansion of the principle to others who face real threats to life but do not for various reasons qualify as refugees.

Paragraphs 54 and 55: We are in full agreement with the reasoning in these two paragraphs, particularly the points that the '*death penalty cannot be reconciled with full respect for the right to life, and abolition of the death penalty is both desirable, and necessary for the enhancement of human dignity and progressive development of human rights*'. In the Asia Pacific region, none of the countries that impose the death penalty have been able to apply it in a fair, non-discriminatory or non-arbitrary fashion; this reality, combined with the fact that the death penalty is an act of violence that is dissonant with the entire human rights regime, leads to our conclusion that abolition of the practice is the way forward.

² Some examples of laws that fall short of the mark and are applied arbitrarily include the Security Offences (Special Measures) Act 2012 of Malaysia that was extended earlier this year and was criticized by the Working Group on Arbitrary Detention in [Opinion 50/2017](#); Myanmar's Peaceful Assembly and Peaceful Procession Bill, which has criminal penalties and vague restrictions on speech, and is selectively applied to those protesting the government.

Paragraphs 70 and 71: In this section on the interlinkages between other articles of the Covenant and other legal regimes we strongly support the paragraphs on war, mass violence, and widespread or systematic attacks including crimes against humanity. The recent exodus of half a million Rohingya from Myanmar as a result of violent attacks by the Myanmar military, which the UN Secretary General has termed 'ethnic cleansing'³ exemplifies how consistent use by the state of the practices of enforced disappearance, extrajudicial killing and other violations of Article 6 can be indicators of a systemic attack, or what the international community has for some years termed Myanmar's 'slow burning genocide'.⁴

(II) Elements that could enhance the existing draft

A. On extrajudicial killing

Paragraph 8 has addressed the practice of enforced disappearance, and other parts of the draft raise the requirement of 'a competent court' (paragraph 49) in applying the death penalty and the dangers of arbitrary and discriminatory applications of the death penalty. We would draw the Committee's attention to the practice of extrajudicial killings in several countries in the Asia Pacific region where states appear to be avoiding fair trial proceedings by giving license to security forces and state agents to execute individuals without attempting to arrest or try in court. Two key examples come from Bangladesh, where 'crossfire' killings are commonly used to target opposition figures,⁵ and in the Philippines, where the President has launched a so-called 'drug war' that has resulted in the deaths of 13,000 since the policy was launched last year.⁶

B. On the increased use of military courts to try civilians

The practice of using military courts to try civilians accused of threatening national security has persisted in countries in the region, limiting their rights to fair trial and access to justice. In Pakistan, the National Assembly earlier this year voted to reinstate military courts for two years: these courts, that were introduced in 2015 to try individuals accused of terrorist acts, are closed and not subject to civilian or external review. Opaque proceedings such as military courts do not ensure that 'legal and judicial outcomes are just and equitable' and the imposition of severe penalties including the

³ VOA: 'UN Chief Assails 'Ethnic Cleansing' of Myanmar's Rohingyas', 13 September 2017 <https://www.voanews.com/a/united-nations-antonio-guterres-myanmar-rohingya-ethnic-cleansing/4027395.html>

⁴ Washington Examiner: 'White House condemns 'slow-burning genocide' against Muslims in Burma', 11 September 2017 <http://www.washingtonexaminer.com/white-house-condemns-slow-burning-genocide-against-muslims-in-burma/article/2634085>; Daily Sabah: 'Up to 3,000 Muslims killed in Myanmar in 3 days, European Rohingya Council says' 28 August 2017 <https://www.dailysabah.com/asia/2017/08/28/up-to-3000-muslims-killed-in-myanmar-in-3-days-european-rohingya-council-says>

⁵ Human Rights Watch (2011) "Crossfire" Continued Human Rights Abuses by Bangladesh's Rapid Action Battalion <https://www.hrw.org/report/2011/05/10/crossfire/continued-human-rights-abuses-bangladeshs-rapid-action-battalion>

⁶ Al Jazeera: 'Thousands demand end to killings in Duterte's drug war', 21 August 2017 <http://www.aljazeera.com/news/2017/08/thousands-demand-killings-duterte-drug-war-170821124440845.html>

death penalty is contrary to the recommendations made by the Committee to only impose the death penalty under conditions that are fair and non-discriminatory.⁷ Similar obstruction of the right to fair trial and limiting individual's access to justice has occurred in Thailand, where the military seized power in 2014. Military courts have tried 1,500 in the two years that followed.⁸ In 2016, just before Thailand's Universal Periodic Review, junta chief General Prayuth Chan-ocha withdrew revoked three orders that empowered military courts to try civilians for national security offenses, including sedition and lese majeste (insulting the monarchy). The action was not retroactive and did not affect over than 1,000 cases already brought against civilians in military courts. The military retains authority to arrest, detain, and interrogate civilians, and there are no known safeguards or accountability mechanisms. The military-established National Council for Peace and Order has passed new laws and decrees (include the 2015 Public Assembly Act) that are used to criminalise human rights defenders, including several women human rights defenders, while the military courts are then used to try these human rights defenders and other dissenters, such as students.⁹

C. On the relationship between Article 6 and the quality of life

The Committee has already indicated that the right to life should not be interpreted narrowly and does connect to the ability to enjoy a life with dignity. In its future work, the Committee can consider the relationship between the right to life and the quality of life, going beyond just sustaining life to ensure that individuals do not have lives of deprivation, under oppression or in conditions of extreme poverty, as is a consequence of a neoliberal economic system that continues to increase inequality. In this regard, APWLD sees the right to life as closely linked to our campaigns on Decent Work, Living Wage, and reforming an economic system that exploits and benefits from the labour of the poorest and most deprived peoples. In 2014, as a result of consultation with nearly 100 civil society organisations in the region, APWLD adopted an alternative framework to counter these systems of entrenched inequality, which we term Development Justice.¹⁰ Development Justice, as underpinned by five foundational shifts, is the basis for much of our work in challenging the existing world order. We would suggest

⁷ United Nations Development Programme. 'Access to Justice Practice Note', 2004.

⁸ Reuters: 'Thai junta will stop prosecuting dissidents in military courts', 12 September 2016 <https://www.reuters.com/article/us-thailand-rights/thai-junta-will-stop-prosecuting-dissidents-in-military-courts-idUSKCN11114T>

⁹ For more details on the existing and new laws used by the current Thai regime against women human rights defenders and the use of military courts to try them, see *In Harm's Way: Women human rights defenders in Thailand*, a joint shadow report by the Observatory for the Protection of Human Rights Defenders (an FIDH-OMCT partnership), Protection International (PI), and the Asia Pacific Forum on Women, Law and Development (APWLD) for the 67th session of the UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) in Geneva on 5 July 2017: <http://apwld.org/wp-content/uploads/2017/06/Thailande694aweb.pdf>

¹⁰ Development Justice offers an alternative to the dominant, extractive model of development. It was framed by APWLD and adopted as the unifying position of civil society in the Asia Pacific region engaging with the Post-2015 sustainable development agenda. It is framed by five foundational shifts: (1) redistributive justice; (2) gender and social justice; (3) economic justice; (4) environmental justice; and (5) accountability to peoples. For more information on Development Justice, see http://apwld.org/wp-content/uploads/2016/11/2016_Development_Justice_Briefer.pdf



considering the framework of Development Justice as a lens through which an alternative worldview can be imagined, where quality of life is associated closely with the right to life and to ensure enjoyment of life with dignity.

Conclusion

APWLD supports the analysis of the Human Rights Committee in its interpretation of the right to life and the careful consideration of key right to life issues, including abortion and the death penalty. We remain at the disposal of the Committee to add to any of the points and examples raised in our submission, and we look forward to the adoption of this new General Comment in the near future, and further comments by the Committee.

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