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Human Rights Committee

**General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life<sup>\*,\*\*</sup>**

**Revised draft prepared by the Rapporteur**

**I. General remarks**

1. This general comment replaces earlier general comments No. 6 (16th session) and 14 (23rd session) adopted by the Committee in 1982 and 1984, respectively.

2. Article 6 recognizes and protects the right to life of all human beings. It is the supreme right from which no derogation is permitted<sup>1</sup> even in situations of armed conflict and other public emergencies. The right to life has crucial importance both for individuals and for society as a whole. It is most precious for its own sake as a right that inheres in every human being, but it also constitutes a fundamental right,<sup>2</sup> whose effective protection is the prerequisite for the enjoyment of all other human rights and whose content can be informed and infused by other human rights.

3. The right to life is a right which should not be interpreted narrowly. It concerns the entitlement of individuals to be free from acts and omissions intended or expected to cause their unnatural or premature death, as well as to enjoy a life with dignity. Article 6 guarantees this right for all human beings, without distinction of any kind, including for persons suspected or convicted of even the most serious crimes.

4. Paragraph 1 of article 6 of the Covenant provides that no one shall be arbitrarily deprived of his life and that the right shall be protected by law. It lays the foundation for the obligation of States parties to respect and to ensure the right to life, to give effect to it through legislative and other measures, and to provide effective remedies and reparation to all victims of violations of the right to life.

5. Paragraphs 2, 4, 5 and 6 of article 6 of the Covenant set out specific safeguards for ensuring that in countries which have not yet abolished the death penalty, it shall be applied only in the most exceptional cases, for the most serious crimes and under the strictest limits. The prohibition on arbitrary deprivation of life contained in article 6, paragraph 1 further limits the ability of States parties to apply the death penalty. The provisions of Paragraph 3 regulate specifically the relationship between Article 6 of the Covenant and the Convention on the Prevention and Punishment of the Crime of Genocide ('the Genocide Convention').

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\* The present document is being issued without formal editing.

\*\* Adopted on First Reading during the 120<sup>th</sup> Session

<sup>1</sup> General Comment 6, para. 1; Communication No. R.11/45, Suarez de Guerrero v. Colombia, Views adopted on 31 March 1982, para. 13.1; Communication No. 146/1983, Baboeram Adhin v Suriname, Views adopted on 4 April 1985, para. 14.3.

<sup>2</sup> General Comment 14, para. 1.

6. Deprivation of life involves a deliberate<sup>3</sup> or otherwise foreseeable and preventable life-terminating harm or injury, caused by an act or omission. It goes beyond injury to bodily or mental integrity or threat thereto, which are prohibited by article 9, paragraph 1.<sup>4</sup>

7. States parties have the duty to refrain from engaging in conduct resulting in arbitrary deprivation of life. They must also exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities, whose conduct is not attributable to the State.<sup>5</sup> The obligation of States parties to respect and ensure the right to life extends to all threats that can result in loss of life. States parties may be in violation of article 6 even if such threats have not actually resulted in loss of life.<sup>6</sup>

8. Enforced disappearance constitutes a unique and integrated series of acts and omissions representing a grave threat to life and may thus result in a violation of the right to life.<sup>7</sup> It also violates other rights recognized in the Covenant, in particular, article 9 (liberty and security of persons), article 7 (prohibition of torture or cruel, inhuman or degrading treatment or punishment) and article 16 (right to recognition of a person before the law). States parties must take adequate measures to prevent the enforced disappearance of individuals, and conduct an effective and speedy inquiry to establish the fate and whereabouts of persons who may have been subject to enforced disappearance. States parties should also ensure that the enforced disappearance of persons is punished with criminal sanctions and introduce prompt and effective procedures to investigate cases of disappearances thoroughly, by independent and impartial bodies.<sup>8</sup> They should bring to justice the perpetrators of such acts and omissions and ensure that victims of enforced disappearance and their relatives are informed about the outcome of the investigation and are provided with full reparation.<sup>9</sup> Under no circumstances should families of victims of enforced disappearance be obliged to declare them dead in order to be eligible for reparation.<sup>10</sup> States parties should also provide families of victims of disappeared persons with means to regularize their legal status in relation to the disappeared persons after an appropriate period of time.<sup>11</sup>

9. Although States parties may adopt measures designed to regulate terminations of pregnancy, such measures must not result in violation of the right to life of a pregnant woman or her other rights under the Covenant, including the prohibition against cruel, inhuman and degrading treatment or punishment. Thus, any legal restrictions on the ability of women to seek abortion must not, *inter alia*, jeopardize their lives or subject them to physical or mental pain or suffering which violates article 7. States parties must provide safe access to abortion to protect the life and health of pregnant women, and in situations in which carrying a pregnancy to term would cause the woman substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or when the foetus suffers from fatal impairment.<sup>12</sup> States 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

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<sup>3</sup> Communication No. R.11/45, *Suarez de Guerrero v. Colombia*, Views adopted on 31 March 1982, para. 13.2.

<sup>4</sup> General Comment 35, para. 9.

<sup>5</sup> Cf. *Osman v UK*, Judgment of the ECtHR of 28 Oct. 1998, para. 116.

<sup>6</sup> Communication No. 821/1998, *Chongwe v. Zambia*, Views adopted on 25 Nov. 2000, para. 5.2. Cf. *Ilhan v Turkey*, Judgment of the ECtHR of 27 June 2000, para. 75-76; *Rochela Massacre v Colombia*, I/A CHR Judgment of 11 May 2007, para. 127.

<sup>7</sup> See e.g., Communication No. 992/2001, *Saker v. Algeria*, Views adopted on 15 March 2006, para. 9.2; Communication No. 2000/2010, *Katwal v. Nepal*, Views adopted on 1 April 2015, para. 11.3.

<sup>8</sup> Communication No. 161/1983, *Rubio v. Colombia*, Views adopted on 2 Nov. 1987, para. 10.3; General Comment 6, para. 4.

<sup>9</sup> Cf. International Convention for the Protection of All Persons from Enforced Disappearance, art. 24.

<sup>10</sup> See e.g., Communication No. 1917/2009, *Prutina v. Bosnia and Herzegovina*, Views adopted on 28 March 2013, para. 9.6.

<sup>11</sup> Cf. International Convention for the Protection of All Persons from Enforced Disappearance, art. 24.

<sup>12</sup> See Concluding Observations: Ireland (2014), para. 9.

abortions.<sup>13</sup> [For example, they should not take measures such as criminalizing pregnancies by unmarried women<sup>14</sup> or applying criminal sanctions against women undergoing abortion or against physicians assisting them in doing so, when taking such measures is expected to significantly increase resort to unsafe abortions]. Nor should States parties introduce humiliating or unreasonably burdensome<sup>15</sup> requirements on women seeking to undergo abortion.<sup>16</sup> The duty to protect the lives of women against the health risks associated with unsafe abortions requires States parties to ensure access for women and men, and, in particular, adolescents,<sup>17</sup> to information and education about reproductive options,<sup>18</sup> and to a wide range of contraceptive methods.<sup>19</sup> States parties must also ensure the availability of adequate prenatal and post-abortion health care for pregnant women.<sup>20</sup>

10. [While acknowledging the central importance to human dignity of personal autonomy, the Committee considers that States parties should recognize that individuals planning or attempting to commit suicide may be doing so because they are undergoing a momentary crisis which may affect their ability to make irreversible decisions, such as to terminate their life. Therefore,] States should take adequate measures, without violating their other Covenant obligations, to prevent suicides, especially among individuals in particularly vulnerable situations.<sup>21</sup> At the same time, States parties [may allow] [should not prevent] medical professionals to provide medical treatment or the medical means in order to facilitate the termination of life of [catastrophically] afflicted adults, such as the mortally wounded or terminally ill, who experience severe physical or mental pain and suffering and wish to die with dignity.<sup>22</sup> In such cases, States parties must ensure the existence of robust legal and institutional safeguards to verify that medical professionals are complying with the free, informed, explicit and, unambiguous decision of their patients, with a view to protecting patients from pressure and abuse.<sup>23</sup>

11. When private individuals or entities are empowered or authorized by a State party to employ force with potentially lethal consequences, the State party is under an obligation to ensure their actual compliance with article 6 and remains directly responsible for any failure to comply with the provisions of article 6. Among other things, it must rigorously limit the powers afforded to private actors, and provide strict and effective measures of monitoring and control in order to ensure, inter alia, that the powers granted are not misused, and do not lead to arbitrary deprivations of life. For example, States parties should ensure that persons involved in serious human rights violations are excluded from private security forces employing force.<sup>24</sup> They must also ensure that victims of arbitrary deprivation of life by private actors empowered or authorized by the State are granted the same remedies as would be applicable for violation committed by public officials.<sup>25</sup>

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<sup>13</sup> General Comment 28, para. 10. See also e.g., Concluding Observations: Argentina (2010) para. 13; Concluding Observations: Jamaica (2011), para. 14; Concluding Observations: Madagascar (2007), para. 14.

<sup>14</sup> Concluding Observations: Tanzania (1998), para. 15.

<sup>15</sup> See e.g., Concluding Observations: Zambia (2007), para. 18.

<sup>16</sup> See e.g., Concluding Observations: Panama (2008), para. 9; Concluding Observations: FYROM (2015), para. 11. See also WHO Guidelines on Safe Abortions World Health Organization, *Safe Abortion: Technical and Policy Guidance for Health Systems* (2nd ed., 2012) 96-97.

<sup>17</sup> Concluding Observations: Chile (2014), para. 15; Concluding Observations: Kazakhstan (2011), para. 11.

<sup>18</sup> Concluding Observations: Sri Lanka (2014), para. 10; Concluding Observations: San Marino (2015), para. 15; Concluding Observations: Equatorial Guinea (2004), para. 9 (recommending removal of restrictions on family planning services).

<sup>19</sup> Concluding Observations: Poland (2010), para. 12.

<sup>20</sup> Concluding Observations: Malawi (2014), para. 9.

<sup>21</sup> Concluding Observations: Ecuador (1998), para. 11.

<sup>22</sup> Cf. CESCR, General Comment 14 (2000), para. 25 (“attention and care for chronically and terminally ill persons, sparing them avoidable pain and enabling them to die with dignity”).

<sup>23</sup> Concluding Observations: Netherlands (2009), para. 7.

<sup>24</sup> Concluding Observations: Guatemala (2012), para. 16.

<sup>25</sup> See Concluding Observations: Guatemala (2012), para. 16; General Comment 31, para. 15.

12. 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. For example, the development for use in military operations of new lethal autonomous robotics lacking in human compassion and judgement, raises difficult legal and ethical questions concerning the right to life, including questions relating to legal responsibility for their use. [The Committee is therefore of the view that such weapon systems should not be [developed and] put into operation, either in times of war or in times of peace, unless and until a normative framework has been established ensuring that their use conforms with article 6 and other relevant norms of international law].<sup>26</sup>

13. The [threat] or use of weapons of mass destruction, in particular nuclear weapons, which are indiscriminate in effect and can destroy human life on a catastrophic scale, is incompatible with respect for the right to life and may amount to a crime under international law. States parties must take all necessary measures to stop the proliferation of weapons of mass destruction, including measures to prevent their acquisition by non-state actors, to refrain from developing, producing, testing, stockpiling and using them, and to destroy existing stockpiles, all in accordance with their international obligations. They must also respect their international obligations to pursue in good faith negotiations in order to achieve the aim of nuclear disarmament under strict and effective international control<sup>27</sup> [and to afford adequate reparation to victims whose right to life has been adversely affected by the testing or use of weapons of mass destruction].<sup>28</sup>

14. States parties should monitor the impact on the right to life of less-lethal weapons which are designed for use by law-enforcement agents and soldiers charged with law-enforcement missions, including electro-muscular disruption devices (Tasers),<sup>29</sup> rubber-coated metal bullets,<sup>30</sup> and attenuating energy projectiles.<sup>31</sup> The use of such weapons must be restricted only to law-enforcement agents who have undergone appropriate training, and must be strictly regulated in accordance with international protocols for their use.<sup>32</sup> Furthermore, such less-lethal weapons can only be employed, subject to requirements of necessity and proportionality, in situations of exceptional nature in which other less harmful measures have proven to be, or clearly are inadequate.<sup>33</sup> For example, States parties should not resort to them in routine situations of crowd control and demonstrations.<sup>34</sup>

15. Article 6 of the Covenant imposes on States parties wide-ranging obligations to respect and to ensure the right to life. Individuals claiming to be victims of a violation of the Covenant [for the purposes of article 1 of Optional Protocols] must show, however, that their rights were directly violated by acts or omissions attributable to the States parties [to the Optional Protocol], or are under are under a real and personalized risk of being violated.<sup>35</sup>

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<sup>26</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 9 April 2013, para. 113-114.

<sup>27</sup> General Comment 14, para. 7. Cf. Legality of the Threat or Use of Nuclear Weapons, 1996 ICJ 226, 267.

<sup>28</sup> Concluding Observations: France (2015), para. 21.

<sup>29</sup> Concluding Observations: USA (2014), para. 11; Concluding Observations: USA (2006), para. 30.

<sup>30</sup> Concluding Observations: Israel (1998), para. 17.

<sup>31</sup> Concluding Observations: UK (2006), para. 11.

<sup>32</sup> 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, 4 Feb. 2016, para 55.

<sup>33</sup> Cf. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), para. 14,

<sup>34</sup> Concluding Observations: Sweden (2012), para. 10.

<sup>35</sup> Communication No. 429/1990. E.P. v Netherlands, Views adopted on 8 April 1993, para. 6.4; General Comment 31, para. 12. Cf. Communication No. 1544/2007, Hamida v Canada, Views adopted on 18 March. 2010, para. 8.7.

## II. The Prohibition against Arbitrary Deprivation of Life

16. Although it inheres in every human being<sup>36</sup> the right to life is not absolute. By requiring that deprivations of life must not be arbitrary, Article 6, paragraph 1 implicitly recognizes that some deprivations of life may be non-arbitrary. For example, the use of lethal force in self-defence, under the conditions specified in paragraph 18 below would not constitute an arbitrary deprivation of life. Even those exceptional measures leading to deprivations of life which are not arbitrary *per se* must be applied in a manner which is not arbitrary in fact. Such exceptional measures should be established by law and accompanied by effective institutional safeguards designed to prevent arbitrary deprivations of life. Furthermore, countries which have not abolished the death penalty and that have not ratified the Second Optional Protocol can only apply the death penalty in a non-arbitrary manner, with regard to the most serious crimes and subject to a number of strict conditions elaborated in part IV below.

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

18. A deprivation of life may be authorized by domestic law and still be arbitrary. The notion of “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability, and due process of law<sup>37</sup> as well as elements of reasonableness, necessity, and proportionality. For example, in order not to be qualified as arbitrary under article 6, the application of lethal force by a person acting in self-defense, or by another person coming to his or her defence, must be reasonable and necessary in view of the threat posed by the attacker; it must represent a method of last resort after non-lethal alternatives, including warnings,<sup>38</sup> have been exhausted or deemed inadequate;<sup>39</sup> the amount of force applied cannot exceed the amount strictly needed for responding to the threat; the force applied must be carefully directed, as far as possible, only against the attacker;<sup>40</sup> and the threat responded to must be extreme, involving imminent death or serious injury.<sup>41</sup> The deliberate use of potentially lethal force for law enforcement purposes which is intended to address threats, not of extreme gravity, such as protecting private property<sup>42</sup> or preventing the escape from custody of a suspected criminal or a convict who does not pose a serious and imminent threat to the lives or bodily integrity of others, cannot be regarded as a proportionate use of force.<sup>43</sup>

19. States parties are expected to take all necessary measures intended to prevent arbitrary deprivations of life by their law-enforcement organs. These measures include appropriate legislation controlling the use of lethal force by law enforcement officials, procedures designed to ensure that law-enforcement actions are adequately planned in a manner consistent with the need to minimize the risk they pose to human life,<sup>44</sup> mandatory

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<sup>36</sup> Universal Declaration of Human Rights, preamble.

<sup>37</sup> Communication No. 1134/2002, Gorji-Dinka v. Cameron, Views adopted on 14 March 2005, para. 5.1; Communication No. 305/1988, Van Alphen v. The Netherlands, Views adopted on 23 July 1990, para. 5.8.

<sup>38</sup> Cf. Guilianani and Gaggio v. Italy, Judgment of the ECtHR of 24 March 2011, para. 177.

<sup>39</sup> Communication No. R.11/45, Suarez de Guerrero v. Colombia, Views adopted on 31 March 1982, para. 13.2.

<sup>40</sup> Communication No. R.11/45, Suarez de Guerrero v. Colombia, Views adopted on 31 March 1982, para. 13.2-13.3.

<sup>41</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 23 May 2011, para. 60.

<sup>42</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 1 April 2014, para. 72.

<sup>43</sup> Cf. Kazingachire v Zimbabwe, Report of the ACHPR of 12 Oct. 2013, para. 118-120.

<sup>44</sup> Cf. McCann v UK, Judgment of the ECtHR of 27 Sept, 1995, para. 150.

reporting and investigation of lethal incidents,<sup>45</sup> and the equipping of police forces responsible for crowd control with effective non-lethal means and adequate protective gear in order to obviate their need to resort to lethal force.<sup>46</sup> In particular, all operations of law enforcement agents should comply with relevant international standards, including the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990),<sup>47</sup> and law enforcement agents should undergo appropriate training designed to inculcate these standards<sup>48</sup> so as to ensure, in all circumstances, the fullest respect for the right to life.<sup>49</sup>

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

21. The deprivation of life of individuals through acts or omissions that violate provisions of the Covenant other than article 6 is, as a rule, arbitrary in nature. This includes, for example, the use of force resulting in the death of demonstrators exercising their right of freedom of assembly;<sup>50</sup> and the passing of a death sentence following a trial which failed to meet the due process requirements of article 14 of the Covenant.<sup>51</sup>

### III. The Duty to Protect Life

22. The second sentence of paragraph 1 provides that the right to life “shall be protected by law”. This implies that States parties must establish a legal framework to ensure the full enjoyment of the right to life by all individuals. The duty to protect the right to life by law also includes an obligation for States parties to take appropriate legal measures in order to protect life from all foreseeable threats, including from threats emanating from private persons and entities.

23. The duty to protect by law the right to life entails that any substantive ground for deprivation of life must be prescribed by law, and defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.<sup>52</sup> Since deprivation of life by the authorities of the State is a matter of the utmost gravity, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities<sup>53</sup> and the States parties must ensure full compliance with all of the relevant legal provisions. The duty to protect by law the right to life also requires States parties to organize all State organs and governance structures through which public authority is exercised in a manner

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<sup>45</sup> Concluding Observations: Chile (2013), para. 11.

<sup>46</sup> 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, 4 Feb. 2016, para 54.

<sup>47</sup> Concluding Observations: Nepal (2014), para. 10; Concluding Observations: Liechtenstein (2004), para. 10.

<sup>48</sup> Concluding Observations: Kenya (2012), para. 11.

<sup>49</sup> Concluding Observations: Central African Republic (2006), para. 12.

<sup>50</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 1 April 2014, para. 75.

<sup>51</sup> See e.g., Comm. No. 2017/2010, *Burdyko v Belarus*, Views adopted on 15 July 2015, para. 8.6.

<sup>52</sup> Cf. General Comment 35, para. 22.

<sup>53</sup> General Comment 6, para. 3; Communication No. R.11/45, *Suarez de Guerrero v. Colombia*, Views adopted on 31 March 1982, para. 13.1.

consistent with the need to respect and ensure the right to life,<sup>54</sup> including establishing by law adequate institutions and procedures for preventing deprivation of life, investigating and prosecuting potential cases of unlawful deprivation of life, meting out punishment and providing full reparation.

24. States parties must enact a protective legal framework which includes effective criminal prohibitions on all forms of arbitrary deprivations of life by individuals, including intentional and negligent homicide, disproportionate use of firearms,<sup>55</sup> infanticide,<sup>56</sup> “honour” killings,<sup>57</sup> lynching,<sup>58</sup> violent hate crimes,<sup>59</sup> blood feuds,<sup>60</sup> death threats, terrorist attacks and other manifestations of violence or incitement to violence that are likely to result in a deprivation of life. The criminal sanctions attached to these crimes must be commensurate with their gravity,<sup>61</sup> while remaining compatible with all provisions of the Covenant.

25. The duty to take positive measures to protect the right to life derives from the general duty to ensure the rights recognized in the Covenant, which is articulated in article 2, paragraph 1, when read in conjunction with article 6, as well as from the specific duty to protect the right to life by law which is articulated in the second sentence of article 6. States parties are thus under a due diligence obligation to undertake reasonable positive measures, which do not impose on them impossible or disproportionate burdens,<sup>62</sup> in response to foreseeable threats to life originating from private persons and entities, whose conduct is not attributable to the State.<sup>63</sup> Hence, States parties are obliged to take adequate preventive measures in order to protect individuals against being murdered or killed by criminals and organized crime or militia groups, including armed or terrorist groups.<sup>64</sup> States parties should also disband irregular armed groups, such as private armies and vigilante groups, that are responsible for deprivations of life<sup>65</sup> and reduce the proliferation of potentially lethal weapons to unauthorized individuals.<sup>66</sup> States parties must further take adequate measures of protection, including continuous supervision,<sup>67</sup> in order to prevent, investigate, punish and remedy arbitrary deprivation of life by private lawful entities, such as private transportation companies, private hospitals<sup>68</sup> and private security firms.<sup>69</sup>

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<sup>54</sup> Cf. *González v. Mexico*, Judgment of the I/A CHR of 16 Nov. 2009, para. 236.

<sup>55</sup> Concluding Observations: Liechtenstein (2004), para. 10.

<sup>56</sup> Concluding Observations: Madagascar (2007), para. 17.

<sup>57</sup> Concluding Observations: Turkey (2012), para. 13.

<sup>58</sup> Concluding Observations: Mozambique (2013), para. 12; Concluding Observations: Guatemala (2012), para 18.

<sup>59</sup> Concluding Observations: Indonesia (2013), para. 6; Concluding Observations: Russia (2009), para. 11.

<sup>60</sup> Concluding Observations: Albania (2013), para. 10.

<sup>61</sup> Concluding Observations: Russia (2009), para. 14.

<sup>62</sup> Cf. *Sawhoyamaya Indigenous Community v. Paraguay*, Judgment of the I/A CHR of 29 March 2006, para. 155.

<sup>63</sup> See Communication No. 1862/2009, *Peiris v Sri Lanka*, Views adopted on 26 Oct. 2011, para. 7.2.

<sup>64</sup> Concluding Observations: Israel (1998), para. 17.

<sup>65</sup> Concluding Observations: Philippines (2012), para. 14.

<sup>66</sup> Concluding Observations: Angola (2013), para. 12; Concluding Observations: USA (2014), para. 10.

<sup>67</sup> Cf. *Ximenes-Lopes v. Brazil*, Judgment of the I/A CHR of 4 July 2006, para. 96.

<sup>68</sup> Cf. *Pimentel v Brazil*, Views of CEDAW of 6 Aug. 2011, para. 7.5; *Nitecki v Poland*, ECtHR admissibility decision of 21 March 2002 (“the State’s positive obligations under Article 2 to protect life include the requirement for hospitals to have regulations for the protection of their patients’ lives and also the obligation to establish an effective judicial system for establishing the cause of a death which occurs in hospital and any liability on the part of the medical practitioners concerned...”); *Calvelli and Ciglio v Italy*, Judgment of the ECtHR of 17 Jan. 2002, para. 49.

<sup>69</sup> Concluding Observations: Bulgaria (2011).

26. States parties must take appropriate measures to protect individuals against deprivations of life by other States operating within their territory<sup>70</sup> or in other areas subject to their jurisdiction. They must also ensure that all activities taking place in whole or in part within their territory and in other areas subject to their jurisdiction, but having a [direct], significant and foreseeable impact on the right to life of individuals outside their territory, including activities taken by corporate entities,<sup>71</sup> are consistent with article 6, taking due account of related international standards of corporate social responsibility.<sup>72</sup>

27. The duty to protect the right to life requires States parties to take special measures of protection towards persons in situation of vulnerability whose lives have been placed at particular risk because of specific threats<sup>73</sup> or pre-existing patterns of violence. These include human rights defenders,<sup>74</sup> journalists,<sup>75</sup> prominent public figures, witnesses to crime<sup>76</sup> and victims of domestic violence. They may also include street children, members of ethnic and religious minorities<sup>77</sup> and indigenous peoples,<sup>78</sup> displaced persons, lesbian, gay, bisexual, transgender and inter-sex (LGBTI) persons,<sup>79</sup> persons with albinism,<sup>80</sup> alleged witches,<sup>81</sup> asylum seekers, refugees<sup>82</sup> and stateless persons and, in certain situations, women and children.<sup>83</sup> States parties must respond urgently and effectively in order to protect individuals who find themselves under a specific threat, including by adopting special measures such as the assignment of around-the-clock police protection, the issuance of protection and restraining orders against potential aggressors and, in exceptional cases, and only with the free and informed consent of the threatened individual, protective custody.

28. Persons with disabilities, including psychosocial and intellectual disabilities, are entitled to special measures of protection so as to ensure their effective enjoyment of the right to life on equal basis with others.<sup>84</sup> Such measures of protection shall include reasonable accommodation of public policies which are necessary to ensure the right to life, such as ensuring access of persons with disabilities to essential goods and services,<sup>85</sup> and special measures designed to prevent excessive use of force by law enforcement agents against persons with disabilities.<sup>86</sup>

29. States parties also have a heightened obligation to take any necessary measures<sup>87</sup> 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<sup>88</sup> and bodily integrity, and they may not rely on lack of financial resources or other

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<sup>70</sup> Communication No. 319/1988, *García v. Ecuador*, Views adopted on 5 Nov. 1991, paras. 5.1-5.2.

<sup>71</sup> Concluding Observations: Canada (2015), para. 6.

<sup>72</sup> Guiding Principles on Business and Human Rights (2011), principle 2.

<sup>73</sup> Cf. *Barrios Family v. Venezuela*, Judgment of the I/A CHR of 24 Nov. 2011, para. 124.

<sup>74</sup> Concluding Observations: Paraguay (2013), para. 15. See also paragraph 57 below.

<sup>75</sup> Concluding Observations: Serbia (2011), para. 21; Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 10 April 2012, para. 105.

<sup>76</sup> Concluding Observations: Colombia (2010), para. 14.

<sup>77</sup> Concluding Observations: France (2008), para. 24.

<sup>78</sup> Cf. *Yakye Axa Indigenous Community v. Paraguay*, Judgment of the I/A CHR of 17 June 2005, para. 167.

<sup>79</sup> Concluding Observations: Colombia (2010), para. 12.

<sup>80</sup> Concluding Observations: Tanzania (2009), para. 15.

<sup>81</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 27 May 2009, para. 68.

<sup>82</sup> Concluding Observations: Kenya (2012), para. 12.

<sup>83</sup> Concluding Observations: Honduras (2006), para. 9.

<sup>84</sup> Convention on the Rights of Persons with Disabilities, article 10.

<sup>85</sup> Convention on the Rights of Persons with Disabilities, article 9.

<sup>86</sup> Concluding Observations: Australia (2009), para. 21.

<sup>87</sup> Communication No. 546/1993, *Burrell v. Jamaica*, Views adopted on 18 July 1996, para. 9.5.

<sup>88</sup> Communication No. 1756/2008, *Zhumbaeva v. Kyrgyzstan*, Views adopted on 19 July 2011, para. 8.6; Communication No. 84/1981, *Barbato v Uruguay*, Views adopted on 21 Oct. 1982, para. 9.2.



logistical problems to reduce this responsibility.<sup>89</sup> The same heightened obligation attaches to individuals held in private incarceration facilities operating pursuant to an authorization by the State. The duty to protect the life of all detained individuals includes providing them with the necessary medical care, regularly monitoring their health,<sup>90</sup> and shielding them from inter-prisoner violence.<sup>91</sup> A heightened duty to protect the right to life also applies to individuals quartered in State-run mental health facilities,<sup>92</sup> military camps,<sup>93</sup> refugee camps and camps for internally displaced persons,<sup>94</sup> and orphanages.

30. The duty to protect life also implies that 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. These general conditions may include high levels of criminal and gun violence,<sup>95</sup> pervasive traffic and industrial accidents,<sup>96</sup> pollution of the environment,<sup>97</sup> the prevalence of life threatening diseases, such as AIDS or malaria,<sup>98</sup> extensive substance abuse, widespread hunger and malnutrition and extreme poverty and homelessness.<sup>99</sup> The measures called for addressing adequate conditions for protecting the right to life include, where necessary, short-term measures designed to ensure access by individuals to essential goods and services such as food,<sup>100</sup> water, shelter, health-care, electricity and sanitation,<sup>101</sup> and long-term measures designed to promote and facilitate adequate general conditions such as the bolstering of effective emergency health services and emergency response operations (including fire-fighters, ambulances and police forces). States parties should also develop action plans for advancing the enjoyment of the right to life, which may comprise strategies to fight the stigmatization associated with diseases, including sexually-transmitted diseases, which hamper access to medical care;<sup>102</sup> detailed plans to promote education to non-violence and de-radicalization programs; and campaigns for raising awareness against domestic violence<sup>103</sup> and for improving access to medical examinations and treatments designed to reduce maternal and infant mortality.<sup>104</sup> Furthermore, States parties should also develop, when necessary, contingency plans and disaster management plans designed to increase preparedness and address natural and man-made disasters, which may adversely affect enjoyment of the right to life, such as hurricanes, tsunamis, earthquakes, radio-active accidents and massive cyber-attacks. [Given their wide-ranging implications, some of the obligations relating to the general conditions necessary for full enjoyment of the right to life can only be realized progressively].

31. An important element of the protection afforded to the right to life by the Covenant is the obligation to investigate and prosecute allegations of deprivation of life by State authorities<sup>105</sup> or by private individuals and entities,<sup>106</sup> including allegations of excessive use

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<sup>89</sup> Communication No. 763/1997, *Lantsov v. Russian Federation*, Views adopted on 26 March 2002, para. 9.2.

<sup>90</sup> Communication No. 763/1997, *Lantsov v. Russian Federation*, Views adopted on 26 March 2002, para. 9.2.

<sup>91</sup> Cf. *Edwards v. UK*, ECtHR Judgment of 14 June 2002, para. 60.

<sup>92</sup> Cf. *Campeanu v. Romania*, Judgment of the ECtHR of 17 July 2014, para. 131.

<sup>93</sup> Concluding Observations: Armenia (2012), para. 15.

<sup>94</sup> Concluding Observations: UN administration for Kosovo (2006), para. 14.

<sup>95</sup> Concluding Observations: USA (2014), para. 10.

<sup>96</sup> Cf. *Öneryildiz v. Turkey*, Judgment of the ECtHR of 30 Nov. 2004, para. 71.

<sup>97</sup> Cf. *SERAC v Nigeria*, Report of the ACHPR of 27 Oct. 2001, para. 67. See also paragraph 65 below.

<sup>98</sup> Concluding Observations: Kenya (2012), para. 9.

<sup>99</sup> General Comment 6, para. 5. Concluding Observations: Canada (1999), para. 12.

<sup>100</sup> Concluding Observations: Democratic People's Republic of Korea (2001), para. 12.

<sup>101</sup> Concluding Observations: Israel (2014), para. 12.

<sup>102</sup> Concluding Observations: Jamaica (2011), para. 9.

<sup>103</sup> Concluding Observations: Uzbekistan (2001), para. 19.

<sup>104</sup> General Comment 6, para. 5; Concluding Observations: DRC (2006), para. 14.

<sup>105</sup> See e.g., Communication No. 888/99, *Telitsin v Russian Federation*, Views adopted on 29 March 2004, para. 7.6.

<sup>106</sup> Concluding Observations: Yemen (2012), para. 24.

of lethal force.<sup>107</sup> This obligation is implicit in the obligation to protect and is reinforced by the general duty to ensure the rights recognized in the Covenant, which is articulated in article 2, paragraph 1, when read in conjunction with article 6, paragraph 1, and the duty to provide an effective remedy to victims of human rights violations<sup>108</sup> and their families,<sup>109</sup> which is articulated in article 2, paragraph 3 of the Covenant, when read in conjunction with article 6, paragraph 1. Investigations and prosecutions of alleged deprivations of life must be aimed at ensuring that those responsible are brought to justice,<sup>110</sup> at promoting accountability and preventing impunity,<sup>111</sup> at avoiding denial of justice<sup>112</sup> and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations.<sup>113</sup> They should explore, inter alia, the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates.<sup>114</sup> Given the importance of the right to life, States parties must generally refrain from addressing violations of article 6 merely through administrative or disciplinary measures, and a criminal investigation, which should lead if enough incriminating evidence is gathered to a criminal prosecution, is normally required.<sup>115</sup> Immunities and amnesties provided to perpetrators of intentional killings and to their superiors, and comparable measures leading to de facto or de jure impunity, are, as a rule, incompatible with the duty to respect and ensure the right to life, and to provide victims with an effective remedy.<sup>116</sup>

32. Investigations into allegations of violation of article 6 must always be independent,<sup>117</sup> impartial,<sup>118</sup> prompt,<sup>119</sup> thorough,<sup>120</sup> effective,<sup>121</sup> credible<sup>122</sup> and transparent,<sup>123</sup> and in the event that a violation is found, full reparation must be provided, including, in view of the particular circumstances of the case, adequate measures of compensation, rehabilitation, satisfaction.<sup>124</sup> States parties are also under an obligation to take steps to prevent the occurrence of similar violations in the future.<sup>125</sup> Where relevant,

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<sup>107</sup> Concluding Observations: Kyrgyzstan (2014), para. 13.

<sup>108</sup> General Comment 31, para. 15 and 18. See also Communication No. 1619/07, *Pestano v Philippines*, Views adopted on 23 March 2010, para. 7.2; Communication No. 1458/2006, *Gonzalez v Argentina*, Views adopted on 17 March 2001, para.9.4; Concluding Observations: Jamaica (2011), para. 16. Cf. *Calvelli and Ciglio v Italy*, ECtHR Judgment of 17 Jan. 2002, para. 51 (civil proceedings may be appropriate in some medical negligence cases).

<sup>109</sup> Concluding Observations: Israel (2010), para. 12.

<sup>110</sup> Communication No.1436/2005, *Sathasivam v. Sri Lanka*, Views adopted on 8 July 2008, paragraph 6.4; communications No. 1447/2006, *Amirov v. Russian Federation*, Views adopted on 2 April 2009, para. 11.2. See also General Comment 31, para. 15, 18.

<sup>111</sup> Concluding Observations: Angola (2013), para. 14.

<sup>112</sup> Communication 1560/2007, *Marcellana and Gumanoy v Philippines*, Views adopted on 30 Oct. 2008, para. 7.4.

<sup>113</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 8 March 2006, para. 41.

<sup>114</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 1 April 2014, para. 81.

<sup>115</sup> Communication No. 563/93 *Arellana v Colombia*, Views adopted on 27 Oct. 1995, para. 8.2; Communication No. 1560/2007 *Marcellana and Gumanoy v Philippines*, Views adopted on 17 Nov. 2008, para. 7.2.

<sup>116</sup> General Comment 31, para. 18; Cf. *Barrios Altos v. Peru*, Judgment of the I/A CHR of 14 March 2001, para. 43.

<sup>117</sup> Concluding Observations: Cameroon (2010), para. 15.

<sup>118</sup> Concluding Observations: Bolivia (2013), para. 15.

<sup>119</sup> See e.g., Communication 1556/2007 *Novakovic v Serbia*, Views adopted on 21 Oct. 2010, para. 7.3; Concluding Observations: Russia (2009), para. 14.

<sup>120</sup> Concluding Observations: Mauritania (2013), para. 13.

<sup>121</sup> Concluding Observations: UK (2015), para. 8.

<sup>122</sup> Concluding Observations: Israel (2010), para. 9.

<sup>123</sup> Concluding Observations: UK (2015), para. 8.

<sup>124</sup> See Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (2016), para. 10.

<sup>125</sup> Communication No. R.11/45 *Suarez de Guerrero v. Colombia*, Views adopted on 31 March 1982, para. 15.

the investigation should include a rigorous autopsy of the victim's body,<sup>126</sup> whenever possible, in the presence of a pathologist representing the victim's family. States parties need to take, among other things, appropriate measures to establish the truth relating to the events leading to the deprivation of life, including revealing the reasons for targeting certain individuals and the procedures employed by State forces before, during and after the time in which the deprivation occurred,<sup>127</sup> and identifying bodies of individuals who had lost their lives.<sup>128</sup> It should also disclose relevant details about the investigation to the victim's next of kin<sup>129</sup> and make public its findings, conclusions and recommendations,<sup>130</sup> unless absolutely prevented from doing so due to a compelling need to protect the public interest or the legal rights of directly affected individuals. States parties must also take the necessary steps to protect witnesses, victims and their relatives and persons conducting the investigation from threats, attacks and any act of retaliation. An investigation into alleged violations of the right to life should commence when necessary *ex officio* – that is, even in the absence of a formal complaint.<sup>131</sup> States should cooperate in good faith with international mechanisms of investigation and prosecutions looking into possible violations of article 6.<sup>132</sup>

33. Loss of life occurring in custody, especially when accompanied by reliable reports of an unnatural death, create a presumption of arbitrary deprivation of life by State authorities, which can only be rebutted on the basis of a proper investigation which establishes the State's compliance with its obligations under article 6.<sup>133</sup> States parties also have a heightened duty to investigate allegations of violations of article 6 whenever State authorities have used or appear to have used firearms outside the immediate context of an armed conflict, for example, when live fire had been used against demonstrators,<sup>134</sup> or when civilians were found dead by firearms outside the theatre of military operations in circumstances fitting a pattern of alleged violations of the right to life by State authorities.<sup>135</sup>

34. The duty to respect and ensure the right to life requires States parties to refrain from deporting, extraditing or otherwise transferring individuals to countries in which there are substantial grounds for believing that a real risk exists that they would be deprived of their life in violation of article 6 of the Covenant.<sup>136</sup> Such a risk must be personal in nature<sup>137</sup> and cannot derive merely from the general conditions in the receiving State. For example, as explained in paragraph 38 below, it would be contrary to article 6 to extradite an individual

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<sup>126</sup> See Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (2016), para. 25; *Kawas-Fernández v. Honduras*, Judgment of the I/A CHR of 3 April 2009 para. 102.

<sup>127</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 28 May 2010, para. 93.

<sup>128</sup> Report of the Working Group on Enforced or Involuntary Disappearances, 2 March 2012, para. 56, 59.

<sup>129</sup> Cf. *Ogur v Turkey*, Judgment of the ECtHR of 20 May 1999, para. 92.

<sup>130</sup> Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (2016), para. 13; Cf. *Ramsahai v The Netherlands*, Judgment of the ECtHR of 15 May 2007, para. 353 (requiring sufficient public scrutiny of inquiry proceedings).

<sup>131</sup> Cf. *Tanrikulu v Turkey*, Judgment of the ECtHR of 8 July 1999, para. 103.

<sup>132</sup> Concluding Observations: Kenya (2012), para. 13.

<sup>133</sup> Communication No. 1225/2003, *Eshonov v. Uzbekistan*, Views adopted on 22 July 2010, para. 9.2; Communication No. 1756/2008, *Zhumbaeva v. Kyrgyzstan*, Views adopted on 19 July 2011, para. 8.8.

<sup>134</sup> Communication No. 1275/2004, *Umetaliev v. Kyrgyzstan*, Views adopted on 30 Oct. 2008, para. 9.4; Communication No. 1828/2008, *Olmedo v. Paraguay*, Views adopted on 22 March 2012, para. 7.5.

<sup>135</sup> Comm. No. 1447/2006, *Amirov v Russian Federation*, Views adopted on 2 April 2009, para. 11.4.

<sup>136</sup> Communication No. 470/1991, *Kindler v. Canada*, Views adopted on 30 July 1993, para. 13.1-13.2.

<sup>137</sup> Communication No. 1792/2008, *Dauphin v Canada*, Views adopted on 28 July 2009, para. 7.4,

from a country that abolished the death penalty to a country in which he or she may face the death penalty.<sup>138</sup> Similarly, it would be inconsistent with article 6 to deport an individual to a country in which a fatwa had been issued against him by local religious authorities, without verifying that the fatwa is not likely to be followed;<sup>139</sup> or to deport an individual to an extremely violent country in which he has never lived, has no social or family contacts and cannot speak the local language.<sup>140</sup> In cases involving allegations of risk to the life of the removed individual emanating from the authorities of the receiving State, the situation needs to be assessed inter alia, based on the intent of the authorities of the receiving State, the pattern of conduct they have shown in similar cases,<sup>141</sup> and the availability of credible and effective assurances about their intentions. When the alleged risk to life emanates from non-state actors or foreign States operating in the territory of the receiving State, credible and effective assurances for protection by the authorities of the receiving State may be sought and internal flight options could be explored. When relying upon assurances of treatment upon removal, the removing State should put in place adequate mechanisms for ensuring compliance by the receiving State with the issued assurances from the moment of removal onwards.<sup>142</sup>

35. The obligation not to extradite, deport or otherwise transfer pursuant to article 6 of the Covenant is broader than the scope of the principle of *non refoulement* under international refugee law, since it may also require the protection of aliens not entitled to refugee status. States parties must, however, allow all asylum seekers claiming a real risk of a violation of their right to life in the State of origin access to refugee or other individualized status determination procedures that could offer them protection against *refoulement*.<sup>143</sup>

#### IV. Imposition of the death penalty

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

37. Paragraph 2 of article 6 strictly limits the application of the death penalty, firstly, to States parties that have not abolished the death penalty, and secondly, to the most serious crimes. Given the anomalous nature of regulating the application of the death penalty in an instrument enshrining the right to life, the contents of paragraph 2 [should/have to] be narrowly construed.<sup>144</sup>

38. States parties that have abolished the death penalty, through amending their domestic laws, acceding to the Second Optional Protocol to the Covenant or adopting another international instrument obligating them to abolish the death penalty, are barred from reintroducing it. Like the Covenant, the Second Optional Protocol does not contain termination provisions and States parties cannot denounce it. Abolition of the death penalty is therefore legally irrevocable. Furthermore, States parties may not transform an offence, which upon ratification of the Covenant, or at any time thereafter, did not entail the death penalty, into a capital offence. Nor can they remove legal conditions from an existing

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<sup>138</sup> Communication No. 1442/2005, Yin Fong v Australia, Views adopted on 23 Oct. 2009, para. 9.7.

<sup>139</sup> Communication No. 1881/2009, Shakeel v Canada, Views adopted on 24 July 2013, para. 8.5.

<sup>140</sup> Communication No. 1959/2010 Warsame v Canada, Views adopted on 21 July 2011, para. 8.3.

<sup>141</sup> Communication No. 706/1996, G.T. V Australia, Views adopted on 4 Nov. 1997, para. 8.4; Communication 692/1996, A.R.J. v Australia, Views adopted on 6 Feb. 1996, para. 6.12; Communication No. 2024/2011, Israil v Kazakhstan, Views adopted on 31 Oct. 2011, para. 9.5.

<sup>142</sup> Concluding Observations: Sweden (2002), para. 12; Cf. Communication No. 1416/2005, Alzery v Sweden, Views adopted on 25 Oct. 2006, para. 11.5.

<sup>143</sup> Concluding Observations: Tajikistan (2013), para. 11; Concluding Observations: Estonia (2003), para. 13.

<sup>144</sup> Communication No. 829/1998, Judge v Canada, Views adopted on 5 Aug. 2002, para. 10.5.

offence with the result of permitting the imposition of the death penalty in circumstances in which it was not possible to impose it before. States parties that abolished the death penalty cannot deport or extradite persons to a country in which they are facing criminal charges that carry the death penalty, unless credible and effective assurances against the imposition of the death penalty have been obtained.<sup>145</sup> In the same vein, the obligation not to reintroduce the death penalty for any specific crime requires States parties not to extradite or deport an individual to a country in which he or she is expected to stand trial for a capital offence, if the same offence does not carry the death penalty in the removing State, unless credible and effective assurances against exposing the individual to the death penalty have been obtained.

39. The term “the most serious crimes” must be read restrictively<sup>146</sup> and appertain only to crimes of extreme gravity,<sup>147</sup> involving intentional killing<sup>148</sup>. Crimes not resulting directly and intentionally in death,<sup>149</sup> such as drug offences,<sup>150</sup> attempted murder,<sup>151</sup> corruption and other economic [and political] crimes,<sup>152</sup> armed robbery,<sup>153</sup> piracy,<sup>154</sup> abduction,<sup>155</sup> and sexual offences, although serious in nature, can never justify, within the framework of article 6, the imposition of the death penalty. In the same vein, a limited degree of involvement or of complicity in the commission of even the most serious crimes, such as providing the physical means for the commission of murder, cannot justify the imposition of the death penalty. States parties are under an obligation to constantly review their criminal laws so as to ensure that the death penalty is not imposed for crimes which do not qualify as the most serious crimes.<sup>156</sup>

40. Under no circumstances can the death penalty ever be applied as a sanction against conduct whose very criminalization violates the Covenant, including adultery, homosexuality, apostasy<sup>157</sup> [establishing political opposition groups,<sup>158</sup>] or offending a head of state.<sup>159</sup> States parties that retain the death penalty for such offences commit a violation of their obligations under article 6 read alone and in conjunction with article 2, paragraph 2 of the Covenant, as well as of other provisions of the Covenant.

41. In all cases involving the application of the death penalty, the personal circumstances of the offender and the particular circumstances of the offence, including its

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<sup>145</sup> Communication No. 829/1998, *Judge v Canada*, Views adopted on 5 Aug. 2002, para. 10.6; Communication No. 1442/2005, *Yin Fong v Australia*, Views adopted on 23 Oct. 2009, para. 9.7.

<sup>146</sup> Communication No. 1132/2002, *Chisanga v. Zambia*, Views adopted on 18 Oct. 2005, para. 7.4.

<sup>147</sup> ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, 25 May 1984, para. 1.

<sup>148</sup> See e.g., Communication No. 470/ 1991, *Kindler v. Canada*, Views adopted on 30 July 1993, para. 14.3 (premeditated murder can be deemed a most serious crime); Report of Special Rapporteur on extrajudicial, summary or arbitrary executions, 9 Aug. 2012, para. 35.

<sup>149</sup> Concluding Observations: Iran (1993), para. 8.

<sup>150</sup> Concluding Observations: Thailand (2005), para. 14.

<sup>151</sup> Communication No. 1132/2002, *Chisanga v. Zambia*, Views adopted on 18 Oct. 2005, para. 7.4

<sup>152</sup> Concluding Observations: Libya (1998), para. 8; Concluding Observations: Iran (1993), para. 8; Concluding Observations: Sudan (1997), para. 8..

<sup>153</sup> Communication No. 1132/2002, *Chisanga v. Zambia*, Views adopted on 18 Oct. 2005, para. 7.4; Communication No. 390/1990, *Luboto v Zambia*, Views adopted on 31 Oct. 1995, para. 7.2; Communication No. 2177/2012, *Johnson v Ghana*, Views adopted on 27 March 2014, para. 7.3.

<sup>154</sup> Concluding Observations: UK (2001), para. 37.

<sup>155</sup> Concluding Observations: Guatemala (2001), para. 17.

<sup>156</sup> General Comment 6, para. 6

<sup>157</sup> Concluding Observations: Mauritania (2013), para. 21.

<sup>158</sup> Concluding Observations: Libya (2007), para. 24,

<sup>159</sup> Concluding Observations: Iraq (1997), para. 16.

specific attenuating elements<sup>160</sup> must be considered by the sentencing court. Hence, mandatory death sentences that leave domestic courts with no discretion on whether or not to designate the offence as a crime entailing the death penalty, and on whether or not to issue the death sentence in the particular circumstances of the offender, are arbitrary in nature.<sup>161</sup> The availability of a right to seek pardon or commutation on the basis of the special circumstances of the case or the accused is not an adequate substitute for the need for judicial discretion in the application of the death penalty.<sup>162</sup>

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

43. Article 6, paragraph 2 also requires States parties to ensure that any death sentence would be “in accordance with the law in force at the time of the commission of the crime”. This application of the principle of legality complements and reaffirms the application of the principle of *nulla poena sine lege* found in article 15, paragraph 1 of the Covenant. As a result, the death penalty can never be imposed, if it was not provided by law for the offence at the time of its commission. Nor can the imposition of the death penalty be based on vaguely defined criminal provisions,<sup>163</sup> whose application to the convicted individual would depend on subjective or discretionary considerations<sup>164</sup> the application of which is not reasonably foreseeable.<sup>165</sup> On the other hand, the abolition of the death penalty should apply retroactively to individuals charged or convicted of a capital offence in accordance with the retroactive leniency (*lex mitior*) principle, which finds partial expression in the third sentence of article 15, paragraph 1, requiring States parties to grant offenders the benefit of lighter penalties adopted after the commission of the offence. The retroactive application of the abolition of the death penalty to all individuals charged or convicted of a capital crime also derives from the fact that the need for applying the death penalty cannot be justified once it had been abolished.

44. States parties that have not yet abolished the death penalty must respect article 7 of the Covenant, which bars certain methods of execution. Failure to respect article 7 would inevitably render the execution arbitrary in nature and thus also be in violation of article 6. The Committee has already opined that stoning,<sup>166</sup> injection of untested lethal drugs,<sup>167</sup> gas chambers,<sup>168</sup> burning and burying alive,<sup>169</sup> and public executions,<sup>170</sup> are contrary to article 7. For similar reasons, other painful and humiliating methods of execution are also unlawful under the Covenant. Failure to provide individuals on death row with timely notification

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<sup>160</sup> Communication No. 390/1990, *Luboto v Zambia*, Views adopted on 31 Oct. 1995, para. 7.2.

<sup>161</sup> Communication No. 1132/2002, *Chisanga v. Zambia*, Views adopted on 18 Oct. 2005, para. 7.4; Communication 1421/2005, *Larranaga v. Philippines*, Views adopted on 24 July 2006, para. 7.2; Communication 1077/2002, *Carpo v Philippines*, adopted on 6 May 2002, para. 8.3.

<sup>162</sup> Communication No. 806/1998, *Thompson v. Saint Vincent and the Grenadines*, Views adopted on 18 Oct. 2000, para. 8.2; Communication 845/1998, *Kennedy v Trinidad and Tobago*, Views adopted on 26 March 2002, para. 7.3.

<sup>163</sup> Concluding Observations: Algeria (2007) para. 17; Concluding Observations: Cameroon (1999) para. 14.

<sup>164</sup> Concluding Observations: Democratic Republic of Korea (2001), para. 13.

<sup>165</sup> Cf. *SW v UK*, Judgment of the European Court of Human Rights of 22 Nov. 1995, para. 36 (retroactive introduction of criminal responsibility through interpretation can only occur when it is “consistent with the essence of the offence and could reasonably be foreseen”).

<sup>166</sup> Concluding Observations: Iran (2011), para. 12.

<sup>167</sup> Concluding Observations: US (2014), para. 8.

<sup>168</sup> Cf. Communication No. 469/1991, *Ng v Canada*, Views adopted on 5 Nov. 1993, para. 16.4.

<sup>169</sup> Cf. *Malawi Africa Association v Mauritania*, Report of the ACHPR of 11 May 2000, para. 120.

<sup>170</sup> Concluding Observations: Democratic Republic of Korea (2001), para. 13.

about the date of their execution constitutes, as a rule, a form of ill-treatment, which renders the subsequent execution contrary to articles 7 of the Covenant.<sup>171</sup> Extreme delays in the implementation of a death penalty sentence, which exceed any reasonable period of time necessary to exhaust all legal remedies,<sup>172</sup> may also entail the violation of article 7 of the Covenant, [especially] when the long time on death row exposes sentenced persons to [exceptionally] harsh<sup>173</sup> or stressful conditions, including, solitary confinement,<sup>174</sup> and when they are particularly vulnerable due to factors such as age or mental state.<sup>175</sup>

45. Violation of the fair trial guarantees provided for in article 14 of the Covenant in proceedings resulting in the imposition of the death penalty may render the execution arbitrary in nature, and could lead to a violation of article 6 of the Covenant.<sup>176</sup> Such violations might involve the use of forced confessions;<sup>177</sup> inability of the accused to question relevant witnesses;<sup>178</sup> lack of effective representation during all stages of the criminal proceedings,<sup>179</sup> including during criminal interrogation,<sup>180</sup> preliminary hearings,<sup>181</sup> trial<sup>182</sup> and appeal,<sup>183</sup> and involving confidential attorney-client meetings; failure to respect the presumption of innocence which may manifest itself in the accused being placed in a cage or handcuffed during the trial;<sup>184</sup> lack of an effective right of appeal;<sup>185</sup> inability to access legal documents essential for conducting the legal defense or appeal, such as access to official prosecutorial applications to the court,<sup>186</sup> the court's judgment<sup>187</sup> or the trial transcript; lack of suitable interpretation;<sup>188</sup> excessive and unjustified delays in the trial<sup>189</sup> or

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<sup>171</sup> Concluding Observations: Japan (2014), para. 13.

<sup>172</sup> Communication No. 588/1994, *Johnson v. Jamaica*, Views adopted on 22 March 1996), para. 8.5; Communication No. 470/1991, *Kindler v. Canada*, Views adopted on 30 July 1993, para. 15.2; Communication No. 317/1988, *Martin v. Jamaica*, Views adopted on 24 March 1993, paragraph 12.2.

<sup>173</sup> Communication No. 775/1997, *Brown v Jamaica*, Views adopted on 11 May 1999, para. 6.13, 6.15.

<sup>174</sup> Concluding Observations: Japan (2014), para. 13.

<sup>175</sup> Communication No. 470/1991, *Kindler v. Canada*, Views adopted on 30 July 1993, para. 15.3.

<sup>176</sup> Communication No. 1096/2002, *Kurbanov v Tajikistan*, Views adopted on 6 Nov. 2003, para. 7.7.

<sup>177</sup> Communication No. 1545/2007, *Gunan v Kyrgyzstan*, Views adopted on 25 July 2011, para. 6.2; Communication No. 1043/2002, *Chikunova v Uzbekistan*, Views adopted on 16 March 2007, para. 7.2, 7.5; Communication No. 1906/2009, *Yuzepchuk v Belarus*, Views adopted on 17 Nov. 2014, para. 8.2, 8.6.

<sup>178</sup> Communication No. 1906/2009, *Yuzepchuk v Belarus*, Views adopted on 17 Nov. 2014, para. 8.4, 8.6.

<sup>179</sup> Communication No. 1043/2002, *Chikunova v Uzbekistan*, Views adopted on 16 March 2007, para. 7.4, 7.5.

<sup>180</sup> Communication No. 1545/2007, *Gunan v Kyrgyzstan*, Views adopted on 25 July 2011, para. 6.3.

<sup>181</sup> Communication No. 719/1996, *Levy v. Jamaica*, Views adopted on 3 Nov. 1998, para. 7.2-7.3.

<sup>182</sup> Communication No. 775/1997, *Brown v Jamaica*, Views adopted on 11 May 1999, para. 6.11, 6.15.

<sup>183</sup> Communication No. 546/1993, *Burrell v. Jamaica*, Views adopted on 18 July 1996, para. 9.4.

<sup>184</sup> Communication No. 2120/2011, *Kovalev v Belarus*, Views adopted on 29 Oct. 2012, para. 11.4; Communication No. 2013/2010, *Grishkovtsov v Belarus*, Views adopted on 1 April 2015, para. 8.4.

<sup>185</sup> Communication No. 829/1998, *Judge v Canada*, Views adopted on 5 Aug. 2002, para. 10.6.

<sup>186</sup> Communication No. 1545/2007, *Gunan v Kyrgyzstan*, Views adopted on 25 July 2011, para. 6.3.

<sup>187</sup> Communication No. 445/1991, *Champagnie v Jamaica*, par. 7.3-7.4.

<sup>188</sup> ECOSOC Res. 1996/15, *Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty*, 23 July 1996, para. 4.

<sup>189</sup> Communication No. 606/1994, *Francis v Jamaica*, Views adopted on 25 July 1994, para. 9.3.

the appeal process,<sup>190</sup> and general lack of fairness of the criminal process,<sup>191</sup> or lack of independence or impartiality of the trial or appeal court.

46. Other serious procedural flaws, not explicitly covered by article 14 of the Covenant, may nonetheless render the imposition of the death penalty contrary to article 6. For example, a failure to promptly inform detained foreign nationals charged with a capital crime of their right to consular notification pursuant to the Vienna Convention on Consular Relations,<sup>192</sup> and failure to afford individuals about to be deported to a country in which their lives are claimed to be at real risk with the opportunity to avail themselves of available appeal procedures<sup>193</sup> can violate article 6, paragraph 1 of the Covenant.

47. The execution of sentenced persons whose guilt has not been established beyond reasonable doubt also constitutes an arbitrary deprivation of life. States parties must therefore take all feasible measures in order to avoid wrongful convictions in death penalty cases,<sup>194</sup> and to re-examine past convictions on the basis of new evidence, including new DNA evidence. States parties should also consider the implications for the evaluation of evidence presented in capital cases of new reliable studies suggesting the prevalence of false confessions and the unreliability of eyewitness testimony.

48. The death penalty must not be imposed in a discriminatory manner contrary to the requirements of articles 2(1) and 26 of the Covenant. Data suggesting that members of religious, racial or ethnic minorities, indigent persons or foreign nationals are disproportionately likely to face the death penalty may indicate unequal application in practice of the death penalty, and may raise concerns under article 2(1) read in conjunction with article 6, as well as under article 26.<sup>195</sup>

49. According to the last sentence of article 6, paragraph 2, the death penalty can only be carried out pursuant to a judgment of a competent court. Such a court should be established by law within the judiciary, generally before the commission of the offence, and must be independent of the executive and legislative branches and impartial.<sup>196</sup> Although military courts may enjoy functional independence when adjudicating ordinary military crimes,<sup>197</sup> it is unlikely that military courts would be regarded as sufficiently independent and impartial<sup>198</sup> when trying the most serious capital crimes. As a result, civilians should not be tried for capital crimes before military tribunals<sup>199</sup> and even military personnel should not, as a rule, be tried for offences carrying the death penalty before a tribunal other than a civilian court affording all fair trial guarantees. Furthermore, the Committee does not consider courts of customary justice, such as tribal courts, as judicial institutions offering sufficient fair trial guarantees that would enable them to try the most serious capital crimes.<sup>200</sup> The issuance of a death penalty without any trial, for example in the form of a religious edict<sup>201</sup> or military order which the State plans to carry out or allows to be carried out, violates both article 6 and 14 of the Covenant.

50. Any penalty of death can only be carried out pursuant to a final judgment, after an opportunity to resort to all judicial appeal procedures has been provided to the sentenced person, and after petitions to all other available non-judicial avenues have been attempted,

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<sup>190</sup> Communication No. 1859/2009, *Kamoyo v Zambia*, Views adopted on 23 March 2012, para. 6.3.-6.4.

<sup>191</sup> Communication No. 1906/2009, *Yuzepchuk v Belarus*, Views adopted on 17 Nov. 2014, para. 8.5, 8.6.

<sup>192</sup> The Right to Information on Consular Assistance in The Framework of The Guarantees of the Due Process of Law' I/A CHR Advisory Opinion of 1 Oct. 1999, para. 137

<sup>193</sup> Communication No. 829/1998, *Judge v Canada*, Views adopted on 5 Aug. 2002, para. 10.9.

<sup>194</sup> Concluding Observations: US (2014), para. 8.

<sup>195</sup> Concluding Observations: US (2014), para. 8.

<sup>196</sup> Cf. *Egyptian Initiative for Personal Rights v Egypt*, Report of the ACHPR of 1 March 2011, para. 204.

<sup>197</sup> General Comment 35, para. 45.

<sup>198</sup> See *Prosecutor v Furundzija*, ICTY Appeals Chamber Judgment of 21 July 2000, para. 189.

<sup>199</sup> General Comment 32, para. 22.

<sup>200</sup> Concluding Observations: Madagascar (2007), para. 16.

<sup>201</sup> Concluding Observations: Iran (1993), para. 9.



including supervisory review by prosecutors, and requests for official or private pardon. Furthermore, death sentences must not be carried out as long as international interim measures requiring a stay of execution are in place. Such interim measures are designed to allow review of the sentence before, international courts, human rights courts and commissions, and international monitoring bodies, such as the UN Treaty Bodies. Failure to implement such interim measures is incompatible with the obligation to respect in good faith the procedures established under the specific treaties governing the work of the relevant international bodies.<sup>202</sup>

51. States parties are required pursuant to Article 6, paragraph 4, to allow individuals sentenced to death to seek pardon or commutation, to ensure that amnesties, pardons and commutation can be granted to them in appropriate circumstances, and to ensure that sentences are not carried out before requests for pardon or commutation have been meaningfully considered and conclusively decided upon.<sup>203</sup> No category of sentenced persons can be a priori excluded from such measures of relief, nor should the conditions for attainment of relief be ineffective, unnecessarily burdensome, discriminatory in nature or applied in an arbitrary manner.<sup>204</sup> Article 6, paragraph 4 does not prescribe a particular procedure for the exercise of the right to seek pardon or commutation and States parties consequently retain discretion in spelling out the relevant procedures.<sup>205</sup> Still, such procedures should be specified in domestic legislation,<sup>206</sup> and they should not afford the families of crime victims a preponderant role in determining whether the death sentence should be carried out.<sup>207</sup> Furthermore, pardon or commutation procedures must offer certain essential guarantees, including certainty about the processes followed and the substantive criteria applied; a right for individuals sentenced to death to initiate pardon or commutation procedures and to make representations about their personal or other relevant circumstances; a right to be informed in advanced when the request will be considered; and a right to be informed promptly about the outcome of the procedure.<sup>208</sup>

52. Article 6, paragraph 5 prohibits the application of the death penalty for crimes committed by persons below the age of 18 and on pregnant women. The prohibition against imposing the death penalty on persons below the age of 18 at the time of the offence,<sup>209</sup> necessarily implies that they can never face the death penalty for that offence, regardless of their age at the time of sentencing or at the time foreseen for carrying out the sentence.<sup>210</sup> If there is no reliable and conclusive proof that the person was not below the age of 18 at the time in which the crime was committed, he or she will have the right to the benefit of the doubt and the death penalty cannot be imposed.<sup>211</sup>

53. States parties must refrain from imposing the death penalty on individuals who have limited ability to defend themselves on an equal basis with others, such as persons with serious psycho-social and intellectual disabilities,<sup>212</sup> and on persons with or without disability that have reduced moral culpability. They should also refrain from executing persons that have diminished ability to understand the reasons for their sentence, and

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<sup>202</sup> General comment 33, para. 19.

<sup>203</sup> Communication No. 1043/2002, *Chikunova v Uzbekistan*, Views adopted on 16 March 2007, para. 7.6

<sup>204</sup> Communication No. 1132/2002, *Chisanga v. Zambia*, Views adopted on 18 Oct. 2005, para. 7.5.

<sup>205</sup> Communication 845/1998, *Kennedy v Trinidad and Tobago*, Views adopted on 26 March 2002, para. 7.4.

<sup>206</sup> Concluding Observations: Guatemala (2001), para. 18.

<sup>207</sup> Concluding Observations: Yemen (2005), para. 15 (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).

<sup>208</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 2 May 2008, para. 67.

<sup>209</sup> Concluding Observations: Yemen (2012), para. 14.

<sup>210</sup> CRC, General Comment No. 10 (2007), para. 75.

<sup>211</sup> Cf. CRC, General Comment No. 10 (2007), para. 35, 39.

<sup>212</sup> Concluding Observations: Japan (2014), para. 13. Cf. Communication 684/1996 R.S. v Trinidad and Tobago, Views adopted on 2 April 2002, para. 7.2.

persons whose execution would be exceptionally cruel or would lead to exceptionally harsh results for them and their families, such as parents to very young or dependent children, persons at an advanced age<sup>213</sup> and individuals who have suffered in the past serious human rights violations, such as torture victims.<sup>214</sup>

54. Article 6, paragraph 6 reaffirms the position that States parties that are not yet totally abolitionist should be on an irrevocable path towards complete abolition of the death penalty de facto and de jure, in the foreseeable future. The death penalty cannot be reconciled with full respect for the right to life, and abolition of the death penalty is both desirable,<sup>215</sup> and necessary for the enhancement of human dignity and progressive development of human rights.<sup>216</sup> It is contrary to the object and purpose of article 6 for States parties to take steps to increase de facto the rate and extent in which they resort to the death penalty,<sup>217</sup> and to reduce the number of pardons and commutations they grant.

55. Although the allusion to the conditions for application of the death penalty in article 6, paragraph 2 suggests that when drafting the Covenant the States parties did not universally regard the death penalty as a cruel, inhuman or degrading punishment per se,<sup>218</sup> subsequent agreements by the States parties or subsequent practice establishing such agreements, may ultimately lead to the conclusion that the death penalty is contrary to article 7 of the Covenant under all circumstances.<sup>219</sup> The increasing number of ratifications of the Second Optional Protocol, as well as that of other international instruments prohibiting the imposition or carrying out of the death penalty, and the growing number of non-abolitionist States that have nonetheless introduced a de facto moratorium on the exercise of the death penalty, suggest that considerable progress has been made towards establishing an agreement among the States parties to consider the death penalty as a cruel, inhuman or degrading form of punishment.<sup>220</sup> Such a legal development is consistent with the pro-abolitionist spirit of the Covenant, which manifests itself, inter alia, in the texts of article 6, paragraph 6 and the Second Optional Protocol.

## V. Relationship of article 6 with other articles of the Covenant and other legal regimes

56. The standards and guarantees of article 6 both overlap and interact with other provisions of the Covenant. Some forms of conduct simultaneously violate both article 6 and another article. For example, applying the death penalty in response to a crime not constituting the most serious crime,<sup>221</sup> would violate both article 6, paragraph 2 and article 7. At other times, the contents of article 6, paragraph 1, are informed by the contents of other articles. For example, application of the death penalty may amount to an arbitrary deprivation of life under article 6 by virtue of the fact that it represents a punishment for exercising freedom of expression, in violation of article 19.<sup>222</sup>

57. Article 6 also reinforces the obligations of States parties under the Covenant and the Optional Protocol to protect individuals against reprisals for promoting and striving to protect and realize human rights, including through cooperation or communication with the

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<sup>213</sup> Concluding Observations: Japan (2009), para. 16.

<sup>214</sup> Cf. Communication No. 210/1986, Pratt and Morgan v Jamaica, para. 15 (death penalty should not be imposed where there was a violation of article 7).

<sup>215</sup> General Comment 6, para. 6.

<sup>216</sup> Second Additional Protocol, preamble.

<sup>217</sup> Concluding Observations: Chad (2009), para. 19.

<sup>218</sup> Communication No. 470/1991, Kindler v. Canada, Views adopted on 30 July 1993, para. 15.1.

<sup>219</sup> Cf. Communication No. 469/1991, Ng v Canada, Views adopted on 5 Nov, 1993, para. 16.2; Ocalan v Turkey, Judgment of the ECtHR of 12 May 2005, para. 163-165.

<sup>220</sup> Cf. Communication No. 829/1998, Judge v Canada, Views adopted on 5 Aug. 2002, para. 10.3.

<sup>221</sup> See also paragraph 39 above.

<sup>222</sup> See also paragraph 21 above.

Committee.<sup>223</sup> States parties must take the necessary measures to respond to death threats and to provide adequate protection to human rights defenders,<sup>224</sup> and such measures should reflect the importance of their work.<sup>225</sup>

58. Torture and ill-treatment, which may seriously affect the physical and mental health of the mistreated individual could also generate the risk of deprivation of life. Furthermore, criminal convictions resulting in the death penalty, which are based on information procured by torture or ill-treatment of interrogated persons, would violate articles 7 and 14, paragraph 3(g) of the Covenant, as well as article 6.<sup>226</sup>

59. Returning individuals to countries where there are substantial grounds for believing that they face a real risk to their lives violates articles 6 and 7 of the Covenant.<sup>227</sup> In addition, making an individual sentenced to death believe that the sentence was commuted only to inform him later that it was not,<sup>228</sup> and placing an individual on death row pursuant to a death sentence that is void ab initio,<sup>229</sup> would run contrary to both articles 6 and 7.

60. The arbitrary deprivation of life of an individual may cause his or her relatives mental suffering, which could amount to a violation of their own rights under article 7 of the Covenant. Furthermore, even when the deprivation of life is not arbitrary, failure to provide relatives with information on the circumstances surrounding the death of an individual may violate their rights under article 7,<sup>230</sup> as could failure to inform them, in circumstances where the death penalty is applied, of the date in which the carrying out of the death penalty is anticipated,<sup>231</sup> and of the location of the body.<sup>232</sup> Families of executed individuals must be able to receive back the remains, if they so wish.<sup>233</sup>

61. The right to life guaranteed by article 6 of the Covenant, including the right to protection of life under article 6, paragraph 1, may overlap with the right to security of person guaranteed by article 9, paragraph 1. Extreme forms of arbitrary detention that are themselves life-threatening, in particular acts and omissions constituting enforced disappearance, violate the right to personal liberty and personal security as well as the right to life.<sup>234</sup> Failure to respect the procedural guarantees found in article 9, paragraphs 3 and 4, designed inter alia to prevent disappearances, could also result in a violation of article 6.<sup>235</sup>

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<sup>223</sup> General Comment No. 33, para. 4; Communication No. 241/1987, *Birhashwiwa v. Zaire*, Views adopted on 2 Nov. 1989, para. 12.5; Concluding observations: Maldives (2012), para. 26; Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 9 Dec. 1998, art. 9(4).

<sup>224</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 9 Dec. 1998, art. 12(2).

<sup>225</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 9 Dec. 1998, art. 18(2).

<sup>226</sup> Communication No. 1782/2008, *Aboufaied v. Libya*, Views adopted on 21 March 2012, paras. 7.4, 7.6; Communication No. 440/1990, *El-Megreisi v. Libya*, Views adopted on 23 March 1994, para. 5.4. See also paragraph 45 above.

<sup>227</sup> Cf. General Comment No. 31, para. 12.

<sup>228</sup> Communication No. 1132/2002, *Chisanga v. Zambia*, Views adopted on 18 Oct. 2005, para. 7.3.

<sup>229</sup> Communication No. 592/1994, *Johnson v. Jamaica*, Views adopted on 25 Nov. 1998, para. 10.4.

<sup>230</sup> Communication No. 1225/2003, *Eshonov v. Uzbekistan*, Views adopted on 22 July 2010, para. 9.10.

<sup>231</sup> Concluding Observations: Japan (2014), para. 13.

<sup>232</sup> Communication No. 2120/2011, *Kovalev v. Belarus*, Views adopted on 29 Oct. 2012, para. 11.10.

<sup>233</sup> Concluding Observations: Botswana (2008), para. 13.

<sup>234</sup> Communication No. 449/1991, *Mojica v. Dominican Republic*, Views adopted on 15 July 1994, para. 5.4; Communication No. 1753/2008, *Guezout v. Algeria*, Views adopted on 19 July 2012, para. 8.4, 8.7. See also paragraph 8 above.

<sup>235</sup> Cf. General Comment No. 35, para. 58.

62. A particular connection exists between article 6 and article 20, which prohibits any propaganda for war and certain forms of advocacy constituting incitement to discrimination, hostility or violence. Failure to comply with these obligations under article 20, may also constitute a failure to take the necessary measures to protect the right to life under article 6.<sup>236</sup>

63. Article 24, paragraph 1, of the Covenant entitles every child “to such measures of protection as are required by his status as a minor on the part of his family, society and the State.” This article requires adoption of special measures designed to protect the life of every child, in addition to the general measures required by article 6 for protecting the lives of all individuals.<sup>237</sup> When taking special measures of protection, States parties should be guided by the best interests of the child,<sup>238</sup> by the need to ensure the survival and development of all children,<sup>239</sup> and their well-being.<sup>240</sup>

64. The right to life must be respected and ensured without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or any other status, including caste,<sup>241</sup> sexual orientation and gender identity,<sup>242</sup> disability<sup>243</sup> albinism<sup>244</sup> and age.<sup>245</sup> Legal protections for the right to life must apply equally to all individuals and provide them with effective guarantees against all forms of discrimination. Any deprivation of life based on discrimination in law or fact is *ipso facto* arbitrary in nature.<sup>246</sup> Femicide, which constitutes an extreme form of gender-based violence that is directed against girls and women, is a particularly grave form of assault on the right to life.<sup>247</sup>

65. Environmental 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.<sup>248</sup> Obligations of States parties under international environmental law should thus inform the contents of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life must reinforce their relevant obligations under international environmental law. The ability of individuals to enjoy the right to life, and in particular life with dignity, depends on measures taken by States parties to protect the environment against harm and pollution. In this respect, States parties should engage in sustainable utilization of natural resources, conduct environmental impact assessments for activities likely to have a significant impact on the environment, provide notification to other States of natural disasters and emergencies, and take due note of the precautionary principle.<sup>249</sup>

66. In light of article 2, paragraph 1, of the Covenant, a State party has an obligation to respect and to ensure the rights under article 6 of all persons who are found within its territory and all persons subject to its jurisdiction, that is, all persons over whose enjoyment of the right to life it exercises power or effective control.<sup>250</sup> This includes persons located outside any territory effectively controlled by the State who are nonetheless impacted by its

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<sup>236</sup> Cf. Prosecutor v. Ruggiu, ICTR Trial Chamber Judgment of 1 June 2000, para. 22.

<sup>237</sup> See General Comment No. 17, para. 1; General Comment No. 32, paras. 42-44; Communication 1917/2009, Prutina v. Bosnia and Herzegovina, Views adopted on 28 March 2013, para. 9.8.

<sup>238</sup> Convention on the Rights of the Child, art. 3(1).

<sup>239</sup> Convention on the Rights of the Child, art. 6(2).

<sup>240</sup> Convention on the Rights of the Child, art. 3(2).

<sup>241</sup> Concluding Observations: India (1997), para. 15.

<sup>242</sup> Concluding Observations: Iran (2011), para. 10.

<sup>243</sup> Concluding Observations: Netherlands (2001), para. 6.

<sup>244</sup> Cf. CESCR, Concluding Observations: DRC (2009), para. 19.

<sup>245</sup> Cf. Yakye Axa Indigenous Community v. Paraguay, I/A CHR judgment of 17 June 2005, para. 175.

<sup>246</sup> Concluding Observations: USA (2014), para. 8.

<sup>247</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, 23 May 2102, para. 21.

<sup>248</sup> Declaration of the United Nations Conference on the Human Environment, 17 June 1972, para. 1 (preamble).

<sup>249</sup> Rio Declaration on Environment and Development, 14 June 1992, principles 1, 2, 15, 17, 18.

<sup>250</sup> General Comment No. 31, para. 10; Concluding Observations: United Kingdom (2008), para. 14.

military or other activities in a [direct], significant and foreseeable manner.<sup>251</sup> Furthermore, States parties must respect and protect the lives of individuals located in territories, which are under their effective control, such as occupied territories, and in territories over which they have assumed an international obligation to apply the Covenant. They are also required to respect and protect the lives of all individuals located on marine vessels or aircrafts registered by them, and of those individuals who due to a situation of distress in sea found themselves in an area of the high seas over which particular States parties have assumed de facto responsibility, including pursuant to the relevant international norms governing rescue at sea.<sup>252</sup> Given that the act of arrest or detention brings a person within a state's effective control, States parties must respect and protect the right to life of all individuals arrested or detained by them, even if held outside their territory.<sup>253</sup>

67. Like the rest of the Covenant, 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.<sup>254</sup> While rules of international humanitarian law may be relevant for the interpretation and application of article 6, both spheres of law are complementary, not mutually exclusive.<sup>255</sup> Uses of lethal force authorized and regulated by and complying with international humanitarian law are, in principle, not arbitrary. By contrast, practices inconsistent with international humanitarian law, entailing a risk to the lives of civilians and persons hors de combat, including the targeting of civilians and civilian objects, indiscriminate attacks, failure to apply adequate measures of precaution to prevent collateral death of civilians, and the use of human shields, violate article 6 of the Covenant.<sup>256</sup> States parties should [, subject to compelling security considerations,] disclose the criteria for attacking with lethal force individuals or objects whose targeting is expected to result in deprivation of life, including the legal basis for specific attacks, the process of identification of military targets and combatants or persons taking a direct part in hostilities, the circumstances in which relevant means and methods of warfare have been used,<sup>257</sup> and whether non-lethal alternatives for attaining the same military objective were considered. They must also investigate allegations of violations of article 6 in situations of armed conflict in accordance with the relevant international standards.<sup>258</sup>

68. Article 6 is included in the list of non-derogable rights of article 4, paragraph 2 of the Covenant. Hence, the fundamental guarantees against arbitrary deprivation of life continue to apply in all circumstances.<sup>259</sup> The existence and nature of a public emergency which threatens the life of the nation may, however, be relevant to a determination of whether a particular act or omission leading to deprivation of life is arbitrary and to a determination of the scope of the positive measures that States parties must undertake. Although some Covenant rights other than the right to life may be subject to derogation, derogable rights which support the application of article 6 must not be diminished by measures of derogation.<sup>260</sup> Such rights include the right to fair trial in death penalty cases and the duty to take all feasible measures to investigate, prosecute, punish and remedy violations of the right to life.

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<sup>251</sup> See paragraph 26 above; Concluding Observations: USA (2014), para. 9 (“The Committee is concerned about the State party’s practice of targeted killings in extraterritorial counter-terrorism operations using unmanned aerial vehicles”).

<sup>252</sup> Concluding Observations: Malta (2014), para. 17.

<sup>253</sup> General Comment No. 31, para. 10; Communication No. 12/52, Saldías de López v. Uruguay, Views adopted on 29 July 1981, paras. 12.1-13; Communication No. R.13/56, Celiberti de Casariego v. Uruguay, Views adopted on 29 July 1981, para. 10.1-11; Communication No. 623/1995 Domukovsky v. Georgia, Views adopted on 6 April 1998, para. 18.2.

<sup>254</sup> General Comment No. 31, para. 11; General Comment No. 29, para. 3.

<sup>255</sup> General Comment No. 31, para. 11; General Comment No. 29, para. 3, 12, 16.

<sup>256</sup> Concluding Observations: Israel (2010), para. 9-10.

<sup>257</sup> Concluding Observations: USA (2014), para. 9.

<sup>258</sup> See paragraph 31-32 above; Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (2016), para. 20-22.

<sup>259</sup> General Comment No. 29, paras. 7.

<sup>260</sup> General Comment No. 29, para. 16.

69. It would be incompatible with the object and purpose of the Covenant for a State party to enter a reservation with respect to article 6, especially in light of the peremptory and non-derogable nature of the obligations set out in this article. In particular, no reservation may be made to the prohibition against arbitrary deprivation of life of persons, nor to the prohibition against the application of the death penalty outside the strict limits provided in Article 6.<sup>261</sup>

70. Wars and other acts of mass violence continue to be a scourge of humanity resulting in the loss of lives of many thousands of innocent human beings every year. Efforts to avert the risks of war, and any other armed conflict, and to strengthen international peace and security, would count among the most important conditions and guarantees for safeguarding the right to life.<sup>262</sup>

71. States parties engaged in acts of aggression contrary to the United Nations Charter violate ipso facto article 6 of the Covenant. Moreover, States parties that fail to take all reasonable measures to settle their international disputes by peaceful means so as to avoid resort to the use of force do not comply in full with their positive obligation to ensure the right to life. At the same time, all 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,<sup>263</sup> including acts of aggression, international terrorism and crimes against humanity, while respecting all of their obligations under the United Nations Charter.

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<sup>261</sup> General Comment No. 24, para. 8.

<sup>262</sup> General Comment 6, para. 2.

<sup>263</sup> GA Res.60/1, (World Summit Outcome)16 Sept. 2005, para. 138.