



The Global Initiative
for Economic, Social and Cultural Rights

Submission to the UN Human Rights Committee
on its draft General Comment on Article 6 of the ICCPR – the right to life
made by the Global Initiative for Economic, Social and Cultural Rights
5 October 2017

1. Introduction

- 1.1. This submission is made by the Global Initiative for Economic, Social and Cultural Rights (GIESCR). GIESCR is an international non-governmental, non-profit human rights organization which seeks to advance the realization of economic, social and cultural rights throughout the world, tackling the endemic problem of global poverty through a human rights lens.
- 1.2. GIESCR is grateful to the Human Rights Committee for the opportunity to comment on the revised draft of the Draft General Comment No. 36 on article 6 of the ICCPR, on the right to life.
- 1.3. Our submission addresses 3 issues:
 - 1.1.1. Recognition of economic and social dimensions of the right to life;
 - 1.1.2. Strong acknowledgement of intersection between right to life and environmental degradation and climate change;
 - 1.1.3. States' extra-territorial obligations under the ICCPR.

2. Recognition of economic and social dimensions of the right to life

- 2.1. We would like to emphasise the need for an inclusive understanding of the right to life that acknowledges the experiences of millions of rights holders across the world living in poverty, whose right to life and to enjoy a life with dignity, is threatened every day by violations of their rights to food, housing, work, social security, water and sanitation and health. For the right to life to have meaning for these people and to acknowledge the greatest threats to their lives, it must encompass threats to life, of a systemic nature, occasioned by deprivations of adequate housing, food, health care, water or work.



- 2.2. Taking an extreme example, in the case of North Korea, the Commission of Inquiry on the Democratic People's Republic of Korea investigated 'violations of the right to food and related aspects of the right to life' and stated:

'Freedom from hunger lies at the conjunction of the right to adequate food (article 11 (2) of the ICESCR) and the right to life (article 6 of the ICCPR).'¹

'The commission found evidence of systematic, widespread and grave violations of the right to food in the Democratic People's Republic of Korea. While acknowledging the impact of factors beyond State control over the food situation, the commission finds that decisions, actions and omissions by the State and its leadership caused the death of at least hundreds of thousands of people and inflicted permanent physical and psychological injuries on those who survived.'²

The COI concluded that crimes against humanity had been committed against starving populations, particularly during the 1990s.³

- 2.3. Given the Commission's findings, the situation in the DPRK, would constitute violations of the right to life and imply obligations on the State to take both short-term and long-term measures to ensure the right to food and the right to life.
- 2.4. Therefore, in relation to the draft text, we strongly support the inclusion of the words '*as well as to enjoy a life with dignity*' in paragraph 3 as these words give real substance to the meaning of the right to life, and ensure that the right addresses the reality of the lives of persons living in extreme poverty.
- 2.5. We welcome also the confirmation that Article 6 should not be interpreted narrowly, which originates from General Comment 6, paragraph 5. Paragraph 5 of General Comment 6 also underlined that States must take positive measures to protect the right to life. We consider this element is critically important to a proper understanding of States' obligations under Article 6 and that its omission might be read as a retrogression in the interpretation of the right to life. Therefore, we

¹ UN Human Rights Council Commission of Inquiry on the Democratic People's Republic of Korea, '*Report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea*', 7 February 2014, UN Doc. A/HRC/25/CRP.1, paragraph 665

² *Op cit.* paragraph 690

³ *Op cit.* paragraph 1115



consider this element should be retained in the new General Comment and suggest the following text in paragraph 3:

‘to freedom from acts and omissions intended or **expected to cause deprivation of this right as well as to positive measures to ensure this right.**’

Paragraph 30

- 2.6. We welcome also the reformulation of paragraph 30 which we consider more clearly articulates dimensions of the right that have longer-term impacts or that address systemic social and economic issues. However, we consider the paragraph could be strengthened by more explicitly affirming States’ obligations to take substantial and effective measures, including legislative, administrative, judicial, regulatory or other measures, to prevent violations of economic and social rights that lead to, or amount to, violations or impairments to the right to life.
- 2.7. We therefore suggest adding the following language to paragraph 30 (additions in bold and underlined):
- 1.1.1. ‘The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society, including **systemic issues relating to economic and social rights,** that may eventually give rise to ...’
- 1.1.2. ‘These general conditions **and systemic economic and social issues,** may include high levels of...’
- 1.1.3. ‘... emergency response operations (including fire-fighters, ambulances and police forces). **States should take positive measures, including legislative, administrative, judicial, regulatory or other measures, to address social and economic deprivations that lead to, or amount to, violations or impairments to the right to life.** States parties should also....’

Short-term and long-term measures

- 2.8. We are not convinced that the distinction in paragraph 30 between ‘long-term’ and ‘short-term’ measures is helpful. Whilst it is true to say that States will need to take both short-term and long-term measures to address the general conditions necessary in society for protecting the right to life, this could be said of measures relating to most elements of the right to life, such as in relation to suicide prevention (paragraph



- 10), protection of women from the health risks of unsafe abortion (paragraph 9), deaths in custody (paragraph 33) (which might imply prison building designs, training of custodial officers and culture change in custodial institutions).
- 2.9. Further, the examples currently given of ‘long-term measures’ suggest that these only relate to ‘emergency’ services. The Committee’s jurisprudence confirms that Article 6 may require States to take long term measures of a non-emergency nature, to address systemic social issues threatening the right to life. For instance, the Committee found that a State must adopt positive measures to address homelessness, where homelessness leads to serious health consequences and may cause death.⁴
- 2.10. For example, where a lack of access to healthcare is putting lives at risk, States may have an obligation to put in place policies and programs to ensure that people have access to adequate healthcare. Where only ‘emergency healthcare’ is available, this may put at risk the right to life and to live a life with dignity, of persons who cannot afford to pay for on-going, non-emergency healthcare.
- 2.11. We therefore suggest removing the references to ‘short-term’ and ‘long-term’ measures in paragraph 30. Alternatively, we suggest the following text:
- ‘The measures called for addressing adequate conditions for protecting the right to life include short-term measures designed to ensure access to essential goods and services such as food, water, shelter, health-care, electricity and sanitation, and long-term measures designed to promote and facilitate adequate general conditions, **such as food security strategies and programs, water and sanitation infrastructure, social housing programs and in situ upgrading of informal settlements, enhanced public health care programs and expanded access to utilities.**’

Progressive realisation

- 2.12. We consider that the last sentence of paragraph 30 that is currently in brackets, is lacking clarity and would benefit from greater specificity. For instance, is it intended to pick up the notion of ‘progressive realisation’ found in the ICESCR? Further, under Article 2 of the ICESCR, it is the rights that are the subject of ‘progressive realisation’,

⁴ Human Rights Committee, *Concluding Observations on Canada*, UN Doc. CCPR/C/79/Add.105, (1999) at para 12.



rather than the obligations. Whereas the last sentence of paragraph 30 implies that State obligations can be progressively realised.

- 2.13. Further, the words ‘can only be realised’ suggest that ‘progressive realisation’ is a limiting concept. Whereas this concept describes States’ obligations to adopt reasonable measures over time and States can and must be held accountable for those obligations.
- 2.14. The concept of ‘progressive realisation’ is inherently linked to the concept of ‘maximum available resources’ found in Article 2 of ICESCR. There is a wealth of jurisprudence and academic writing on the concepts of ‘progressive realisation’ and ‘maximum available resources’ which show that they are not limiting concepts but rather descriptive of the how States’ measures to address ICESCR rights should be assessed. In addition, the Option Protocol to the ICESCR prescribes a standard of ‘reasonableness’ in assessing steps taken by States and the Committee on Economic, Social and Cultural Rights (CESCR) has outlined that it will consider: the extent to which the measures taken by a State were deliberate, concrete and targeted towards the fulfilment of rights; whether the State acted within a reasonable timeframe; whether budgetary allocations were consistent with international human rights norms; whether the situation of disadvantaged, marginalised and at risk individuals or groups had been prioritised; and whether decision making was transparent and participatory.⁵
- 2.15. Therefore, we suggest the following reformulation of the final sentence of paragraph 30:

‘Given their wide-ranging implications, **some of these State obligations** relating to the general conditions necessary for full enjoyment of the right to life, **may require long-term positive measures which must be implemented within a reasonable period of time, to the maximum of available resources, by all appropriate means, including particularly the adoption of legislative measures.**’

Paragraph 15 of the Draft General Comment on Article 6

⁵ Committee on Economic, Social and Cultural Rights, *General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant)*, 14 December 1990, E/1991/23, paras. 2, 9, 11; CESCR Public Statement, ‘An evaluation of the obligation to take steps to the ‘maximum of available resources’ under an Optional Protocol to the Covenant’, UN Doc. E/C.12/2007/1, (21 September 2007).



- 2.16. It is unclear what paragraph 15 is intended to achieve. We are concerned that it may suggest that some failures of States to comply with ‘wide ranging obligations to respect and ensure the right to life’, may not be the subject of Individual Communications under the Optional Protocol, or perhaps even more broadly, that they may not be the subject of right to life claims in domestic Courts.
- 2.17. We are concerned that, in this way, the paragraph could be read as restricting access to justice for certain potential individual claimants. The conditions for making claims under the Optional Protocol are set out in the Optional Protocol. In our view, it is not necessary for the General Comment to prescribe which types of individual claims pursuant to Article 6, will be justiciable under the Optional Protocol, or in domestic Courts. Instead we suggest the General Comment should stress that States must be held accountable for any failure to comply with their obligation to respect and ensure the right to life, including by way of individual petitions or rights claims before Courts. We therefore urge the Committee to delete paragraph 15.

3. Strong acknowledgement of the intersection between the right to life and environmental degradation and climate change

- 3.1. The inclusion of the new paragraph 65 in the Draft General Comment is a very positive and important addition, which recognises the scale and global and existential nature of the threats posed by environmental degradation, climate change and non-sustainable development at this point in history. The Draft rightly recognises that these issues constitute ‘*some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life*’. We therefore strongly encourage the Committee to retain this paragraph.
- 3.2. We also support the reference to future generations. The inter-generational aspect is critical given the nature of environmental, and in particular climate change, impacts which we know will cause harms to human rights in the foreseeable future. We have sufficient scientific information now to know that the greenhouse gas emissions occurring today and in the coming years, will impact the climate and cause human rights harms to future generations in 50 years’ time and beyond.⁶

⁶ See World Health Organization, ‘*Quantitative risk assessment of the effects of climate change on selected causes of death, 2030s and 2050s*’ (2014), pages 13, 21 & 79-81. Report is accessible here: <http://www.who.int/globalchange/publications/quantitative-risk-assessment/en/>



- 3.3. The inter-governmental agreement on climate change made in Paris in 2015 under the auspices of the UN Framework Convention on Climate Change, is the most significant and contemporary expression of commitment by States with respect to action on climate change and it included important references to human rights. We strongly recommend that the General Comment reference that document. We suggest adding a reference to the Paris Agreement (2015), in footnote 248.
- 3.4. Further, we consider the paragraph could be strengthened by acknowledging that States obligations with respect to environmental degradation and climate change go beyond international environmental law. The current wording suggests that State obligations with respect to environmental degradation and climate change are only found in international environmental law. Whereas, international human rights law and the right to life itself, in certain circumstances, impose obligations upon States to protect the environment and the climate.
- 3.5. There is now ample scientific evidence to support the proposition that environmental degradation and climate change are causing (and will continue to cause) serious, foreseeable threats to the right to life. For example, the World Health Organisation projects a total of 250,000 additional deaths per year between 2030 and 2050 due to climate change. Further, the WHO found that increases in average seasonal temperatures and the frequency and intensity of heat waves will contribute to nearly 38,000 additional deaths per year as of 2030 and nearly 100,000 additional deaths per year as of 2050. WHO also estimates approximately 95,000 additional deaths per year by 2030, on account of under-nutrition related to climate change, of children aged five years or less.⁷
- 3.6. States' obligations under human rights treaties to protect rights, include obligations to take measures to prevent foreseeable harm to human rights caused by climate change.⁸ In his 2016 report the Special Rapporteur on human rights and the

⁷ World Health Organization, 'Quantitative risk assessment of the effects of climate change on selected causes of death, 2030s and 2050s' (2014), pages 13, 21 & 79-81. The report looks at a number of other health impacts of climate change such as exposure to malaria, coastal flooding and diarrhoeal diseases. Report is accessible here: <http://www.who.int/globalchange/publications/quantitative-risk-assessment/en/>

; see also Human Rights Council, Analytical Study, *op. cit.* at paragraph 20.

⁸ UNOHCHR, 'Climate change and the full and effective enjoyment of the rights of the child', UN Doc. A/HRC/35/13; UNOHCHR, 'Analytical study on the relationship between climate change and the human right to everyone to the enjoyment of the highest attainable standard of physical and mental health', UN Doc. A/HRC/32/23 (6 May 2016), paragraph 32; *The Effects of Climate Change on the Full Enjoyment of Human Rights*, Joint paper by five Special Procedures mandate holders of the Human Rights Council (2015), available at



environment stated that "*climate change threatens the full enjoyment of a wide range of rights, including the rights to life, health, water, food, housing, development and self-determination*".⁹ Further, that: '*The foreseeable adverse effects of climate change on the enjoyment of human rights give rise to duties of States to take actions to protect against those effects. Human rights obligations apply not only to decisions about how much climate protection to pursue, but also to the mitigation and adaptation measures through which the protection is achieved.*'¹⁰

- 3.7. Therefore, we suggest adding the following sentence before the last sentence of the paragraph:

'States' duty to protect life includes a duty to take measures to prevent foreseeable harm to the enjoyment of the right to life, due to environmental degradation, pollution or climate change.'

4. States' extra-territorial obligations under the ICCPR

- 4.1. We welcome the inclusion of paragraph 66 of the Draft which details States' extra-territorial obligations under the ICCPR.

- 4.2. We urge the Committee to remove the word 'direct' currently in brackets. States and non-State actors should strive to prevent any foreseeable human rights violations, and States should be accountable for regulating non-State actors over which they recognize jurisdiction, in order to prevent, including through human rights impact assessments, or remedy, any foreseeable human rights violations in which they are complicit.¹¹

- 4.3. As recognized in the Committee's Concluding Observations on Canada from 2015, the General Comment should reflect that:

States parties should:

- a) enhance the effectiveness of existing mechanisms to ensure that all corporations under their respective jurisdiction respect human rights standards when operating

http://www4.unfccc.int/Submissions/Lists/OSPSubmissionUpload/202_109_130758775867568762-CVF%20submission%20Annex%201_Human%20Rights.pdf

⁹ A/HRC/31/52 - Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Mr John Knox, February 2016.

¹⁰ Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Mr John Knox, UN Doc. A/HRC/31/52 (February 2016), paragraph 33.

¹¹ See, e.g., Human Rights Committee, Concluding Observations: Republic of Korea, UN Doc. UN Doc. CCRP/C/KOR/CO.4 at para. 11 (October 2015) (in which the Committee encourages States parties to "strengthen the safeguards to prevent people from becoming victims [of human rights violations abroad].")



The Global Initiative
for Economic, Social and Cultural Rights

abroad;

b) establish an independent mechanism with powers to investigate human rights abuses by such corporations abroad; and

c) develop a legal framework that affords legal remedies to people who have been victims of activities of such corporations operating abroad.¹²

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¹² See Human Rights Committee, Concluding Observations: Canada, UN Doc. UN Doc. CCPR/C/CAN/CO/6 at para. 6 (July 2015).