

The Right to Life

Death Penalty & the UN Human Rights Committee



ASIAN CENTRE FOR HUMAN RIGHTS



THE RIGHT TO LIFE:
DEATH PENALTY AND THE
UN HUMAN RIGHTS COMMITTEE



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I. INTRODUCTION

The right to life as recognized under Article 6 of the International Covenant on Civil and Political Rights has been described as the supreme right from which no derogation is permitted even in time of public emergency. The UN Human Rights drafted its General comment No. 14: Article 6 (Right to life) during its 23rd Session in 1984 and the General Comment merely contained 7 paragraphs. There is no doubt that the General Comment drafted in 1984 was highly inadequate.

The UN Human Rights Committee therefore decided to update the General Comment on the right to life. On the occasion of its 114th session, the Human Rights Committee held a half day of general discussion on 14 July 2015 in preparation for a General Comment on Article 6 (Right to Life). The issues (CCPR/C/GC/R.36) for the General were framed by the Rapporteurs on the General Comment, Mr. Yuval Shany and Sir Nigel Rodley.

A total of 117 NGOs including Asian Centre for Human Rights made written submission on 9 June 2015.

Asian Centre for Human Rights highlighted three issues relating to death penalty. **First**, imposition of death penalty without complying with the ICCPR constitutes arbitrary deprivation of the right to life as provided under Article 6, paragraph 1 of the ICCPR. The death penalty cases which could be considered as arbitrary deprivation of the right to life are: mandatory death sentencing; imposition of death penalty by the courts without procedural guarantees commonly available under national laws consistent with the ICCPR and as per Article 14 of the ICCPR; execution without exhausting all legal remedies including review of the decisions pertaining to pardon and commutation by the competent court; and execution in violation of the principles of equality and non-discrimination. Arbitrary deprivation of the right to life need not be committed by the security forces only but by the judiciary too. **Second**, ‘final judgement’ as provided in Article 6, Para 2, should be read with access to pardon and commutation. The finality of the conclusion of finding an accused guilty of an offence punishable with death by the highest court of the country is not necessarily the “final judgement”.

Considering that seeking pardon and commutation is recognized as a right under Article 6, paragraph 4, its violation must be subject to judicial review. Therefore, “final judgement” under Article 6, Para 2, should mean “final judgement” delivered after reviewing rejection of mercy plea. A court established by national law is not necessarily the ‘competent court’. A ‘court’ cannot be considered as ‘competent’ unless the trial complies with the fair trial standards provided in the ICCPR and the court itself meets the UN Basic Principles on the Independence of the Judiciary. **Third**, as stated above seeking ‘pardon and commutation’ is recognized as a right under Article 6, paragraph 4. The consideration of this right i.e. *the right to seek pardon or commutation of the sentence*’ cannot be arbitrary. Therefore, the process and decisions on pardon and commutation must be subject to judicial review.

The UN Human Rights Committee in its revised General Comment CCPR/C/GC/R.36/Rev.2 (2 September 2015) devotes 20 paras on the issue of death penalty that the State parties should comply and reflected the submission of the ACHR and other NGOs.

The General Comment is a significant step for development of soft law for final abolition of death penalty.

2. GENERAL COMMENT NO. 14: ARTICLE 6 (RIGHT TO LIFE)

Twenty-third session (1984)

General comment No. 14: Article 6 (Right to life)

1. In its general comment No. 6 [16] adopted at its 378th meeting on 27 July 1982, the Human Rights Committee observed that the right to life enunciated in the first paragraph of article 6 of the International Covenant on Civil and Political Rights is the supreme right from which no derogation is permitted even in time of public emergency. The same right to life is enshrined in article 3 of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December 1948. It is basic to all human rights.
2. In its previous general comment, the Committee also observed that it is the supreme duty of States to prevent wars. War and other acts of mass violence continue to be a scourge of humanity and take the lives of thousands of innocent human beings every year.
3. While remaining deeply concerned by the toll of human life taken by conventional weapons in armed conflicts, the Committee has noted that, during successive sessions of the General Assembly, representatives from all geographical regions have expressed their growing concern at the development and proliferation of increasingly awesome weapons of mass destruction, which not only threaten human life but also absorb resources that could otherwise be used for vital economic and social purposes, particularly for the benefit of developing countries, and thereby for promoting and securing the enjoyment of human rights for all.
4. The Committee associates itself with this concern. It is evident that the designing, testing, manufacture, possession and deployment of nuclear weapons are among the greatest threats to the right to life which confront mankind today. This threat is compounded by the danger that

the actual use of such weapons may be brought about, not only in the event of war, but even through human or mechanical error or failure.

5. Furthermore, the very existence and gravity of this threat generates a climate of suspicion and fear between States, which is in itself antagonistic to the promotion of universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations and the International Covenants on Human Rights.
6. The production, testing, possession, deployment and use of nuclear weapons should be prohibited and recognized as crimes against humanity.
7. The Committee accordingly, in the interest of mankind, calls upon all States, whether Parties to the Covenant or not, to take urgent steps, unilaterally and by agreement, to rid the world of this menace.

3. ISSUES FOR CONSIDERATION DURING THE HALF-DAY GENERAL DISCUSSION IN PREPARATION FOR A GENERAL COMMENT ON ARTICLE 6 (RIGHT TO LIFE) OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, ADOPTED BY THE COMMITTEE AT ITS 113TH SESSION (16 MARCH - 2 APRIL 2015)

United Nations



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on Civil and Political Rights**

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Organizational and other matters, including the adoption
of the report of the pre-sessional working group
on individual communications

Draft general comment No. 36

Article 6: Right to life

Draft prepared by Yuval Shany and Nigel Rodley, Rapporteurs

Issues for consideration during the half-day general discussion in preparation for a general comment on article 6 (right to life) of the International Covenant on Civil and Political Rights, adopted by the Committee at its 113th session (16 March - 2 April 2015)

1. The Human Rights Committee, in accordance with article 40, paragraph 4, of the International Covenant on Civil and Political

Rights, and Rule 73 of its Rules of Procedure (CCPR/C/3/Rev.10), may prepare general comments based on the various articles and provisions of the Covenant with a view to assisting States parties in fulfilling their reporting obligations. This draft is prepared based on that Rule in preparation of a general comment.

2. The Human Rights Committee decided at its 112th session (7–31 October 2014) to begin the drafting of a general comment on article 6 of the International Covenant on Civil and Political Rights, revisiting and expanding its earlier general comments No. 6 and 14 (from 1982 and 1984, respectively), in the light of experience obtained in the review of State reports and communications and the adoption of general comments on related issues.
3. The Committee plans to hold a half-day general discussion at its 114th session (29 June- 24 July 2015), giving national human rights institutions, civil society and academia the opportunity to provide relevant information before the Committee undertakes the drafting process.
4. At present, the Committee’s rapporteurs for the general comment, Yuval Shany and Nigel Rodley, contemplate that the questions arising under article 6 to be addressed in the general comment may include the issues listed below, without prejudice to the question whether they or other issues would be included in the adopted text of the general comment. Issues organized by paragraph of article 6 are presented first, followed by general issues.

A. Issues by subparagraph

Article 6, paragraph 1

5. With regard to article 6, paragraph 1: “Every human being has the inherent right to life”, issues may include:
 - (a) The scope and nature of the duty to respect and ensure the right to life;
 - (i) Relationship to other articles of the Covenant that protect human life and the human person, e.g. 7, 9, 20;

- (ii) Relationship to other international human rights instruments, e.g., article 12 of the International Covenant on Economic, Social and Cultural Rights;
 - (iii) Protection against dangerous conduct not resulting in deprivation of life;
- (b) Meaning of “inherent right”;
- (i) Relationship to other international human rights instruments, e.g., preamble to the Universal Declaration of Human Rights;
- (c) Applicability of the article to the unborn and other forms of human existence (frozen embryos, clones etc.);
- (d) The relationship between the right to life and the right to die (e.g., euthanasia).
6. With regard to article 6, paragraph 1: “This right shall be protected by law”, issues may include:
- (a) Meaning of “protected by law”;
 - (i) Relationship to other articles of the Covenant entailing duties to protect rights by law, e.g., article 2(2), 16;
 - (ii) Relevance of other rules of international law, e.g., international humanitarian law, international refugee law, international environmental law, international criminal law;
 - (iii) Contents of legal protection (e.g., prevention, investigation, prosecution and effective remedy);
 - (iv) Strict control of exceptions (e.g., contents of possible legal exceptions, such as legal defenses and immunities, conditions for legitimate use of lethal force by state authorities);
 - (v) Regulation of possible life-harming practices and circumstances (e.g., gun control, alcohol, tobacco, drugs, violence, traffic, infectious disease, medical malpractice, etc.);

- (vi) Forms of domestic legal protection (e.g., criminal law/civil law, possibility for direct reliance on the Covenant, legislation/judge made law);
 - (b) Possible exceptions to the duty to protect life by law (e.g., suicide, abortion);
 - (i) Relationship of such possible exceptions to other articles of the Covenant, e.g., article 7, 17.
7. With regard to article 6, paragraph 1: “No one shall be arbitrarily deprived of his life”,
- (a) Meaning of “deprivation of life”, and whether it includes anything other than deliberate killings and other acts or omissions intentionally or inevitably leading to loss of life;
 - (b) Meaning of “arbitrary deprivation”;
 - (i) Substantive requirements of non-arbitrariness;
 - (ii) Relevance of other provisions of the Covenant (e.g., article 7, 14, 20);
 - (iii) Relevance of other rules of international law, including *jus ad bellum* and *jus in bello* and instruments regulating weapons of mass destruction and counter-terrorism;
 - (iv) Relevance of legal protections afforded by domestic law;
 - (v) Relevance of methods of execution (e.g., injection, gas, stoning);
 - (vi) Legitimate and non-legitimate reasons for deprivation of life (e.g., self-defense, excessive use of force by state officials, use of lethal force in connection with detention powers, use of lethal force in connection with protection of property);
 - (vii) Relevant *non refoulement* obligations;
 - (viii) The need to meet necessity and proportionality requirements in assessing arbitrariness of deprivation in different fields (e.g., criminal sentences, law enforcement, armed conflict, medical treatment etc.).

Article 6, paragraph 2

8. With regard to article 6, paragraph 2: “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide”, issues may include:
- (a) Meaning of “not abolished” (e.g., moratorium *de jure/ de facto*);
 - (b) Meaning of “most serious crimes”;
 - (c) Meaning of “law in force at the time of commission” (e.g., substantive/procedural retroactivity);
 - (i) Relationship to other articles of the Covenant, e.g. 14, 15;
 - (ii) Relationship to the Second Optional Protocol;
 - (iii) Relationship to the Genocide Convention;
 - (d) Applicability of the paragraph to extradition proceedings;
 - (e) The scope of the prohibition on the reintroduction of the death penalty;
 - (f) The scope of the prohibition on mandatory death sentences;
 - (g) Whether there is a need to periodically review the list of “most serious crimes”.
9. With regard to article 6, paragraph 2: “This penalty can only be carried out pursuant to a final judgment rendered by a competent court”, issues may include:
- (a) Meaning of “final judgment”;
 - (i) Relationship of this paragraph to article 6, paragraph 4;
 - (ii) Relevance of recourse to international review procedures in ascertaining finality;
 - (b) Meaning of a “competent court”;

- (i) Relationship of this paragraph to other articles of the Covenant, e.g. article 14;
 - (ii) Applicability to military justice, including in cases covered by reservations regulated in article 2 to Second Optional Protocol;
- (c) The extent of required judicial control over the manner of execution.

Article 6, paragraph 3

10. With regard to article 6, paragraph 3: “When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide”, issues may include:

- (a) Scope and nature of the obligations assumed under the Genocide Convention, which are relevant to this paragraph;
- (b) Regulation of substantive inconsistencies between article 6 and the Genocide Convention;
- (c) Potential jurisdictional competition between dispute settlement procedures under the Covenant and the Genocide Convention.

Article 6, paragraph 4

11. With regard to article 6, paragraph 4: “Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence”, issues may include:

- (a) Meaning of “pardon or commutation”;
 - (i) Relevant authorities who may grant pardon or commutation;
 - (ii) Procedural safeguards governing the process of reconsideration of sentence;
- (b) The duty to facilitate the exercise of the right to seek pardon or commutation (e.g., duty to inform the convict; legal aid etc.).

12. With regard to article 6, paragraph 4: “Amnesty, pardon or commutation of the sentence of death may be granted in all cases”, issues may include:
- (a) Meaning of “amnesty”;
 - (b) The duty on state authorities to consider amnesty, pardon or commutation *proprio motu*.

Article 6, paragraph 5

13. With regard to article 6, paragraph 5: “Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women”, issues may include:
- (a) Relationship between paragraph 5 and the prohibition on ‘arbitrary deprivation of life’;
 - (i) Possible extension of protection to persons with mental disabilities;
 - (ii) Possible extension of protection to lactating mothers;
 - (iii) Possible extension of protection to older persons;
 - (b) Relationship between paragraph 5 and other international treaties (e.g., article 37 of the Convention on the Rights of the Child, articles 76-77 of the First Additional Protocol to the Geneva Conventions, article 6 of the Second Additional Protocol).

Article 6, paragraph 6

14. With regard to article 6, paragraph 6: “Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant”, issues may include:
- (a) Relationship between paragraph 6 and the Second Optional Protocol;
 - (b) The relationship between paragraph 6 and article 7 of the Covenant.

B. Cross-cutting issues

15. Cross-cutting issues may include:

- (a) Division of labor between article 6 and other articles of the Covenant;
- (b) Absolute or non-absolute character of clauses;
- (c) Derogability in times of emergency;
- (d) Permissibility of reservations;
- (e) Application in international armed conflict and non-international armed conflict;
- (f) Application to non-State actors and multi-national actors;
- (g) Application to enforced disappearances;
- (h) Extraterritorial application of article 6;
- (i) Best practices in the implementation of article 6;
- (j) Procedural safeguards;
- (k) Remedies, including the duty to investigate, prosecute and provide reparation, compensation and satisfaction;
- (l) Special protection afforded to certain individuals and populations, including detainees, minorities, women, children, older persons, migrants, and persons with disabilities;
- (m) Discrimination in the application of the right to life;
- (n) Standards of review and burden proof applied in reviewing the implementation of article 6;
- (o) Indicators.

4. ACHR'S SUBMISSION TO THE HALF DAY OF GENERAL DISCUSSION ON ARTICLE 6 OF THE UN HUMAN RIGHTS COMMITTEE

Asian Centre for Human Rights (ACHR) welcomes the decision of the UN Human Rights Committee to revise the “General Comment No. 36 - Article 6: Right to life” and hold “Half Day of General Discussion on Article 6” on 14 July 2015.

In the light of the issues framed by the UN Human Rights Committee (CCPR/C/GC/R.36), Asian Centre for Human Rights makes this submission focusing on the right to life in the context of death penalty.

The submission focuses on three specific issues on the right to life in the context of death penalty:

First, imposition of death penalty without complying with the ICCPR constitutes arbitrary deprivation of the right to life as provided under Article 6, paragraph 1 of the ICCPR. The death penalty cases which could be considered as arbitrary deprivation of the right to life are: mandatory death sentencing; imposition of death penalty by the courts without procedural guarantees commonly available under national laws consistent with the ICCPR and as per Article 14 of the ICCPR; execution without exhausting all legal remedies including review of the decisions pertaining to pardon and commutation by the competent court; and execution in violation of the principles of equality and non-discrimination. Arbitrary deprivation of the right to life need not be committed by the security forces only but by the judiciary too.

Second, ‘final judgement’ as provided in Article 6, Para 2, should be read with access to pardon and commutation. The finality of the conclusion of finding an accused guilty of an offence punishable with death by the highest court of the country is not necessarily the “final judgement”. Considering that seeking pardon and commutation is recognized as a right under Article 6, paragraph 4, its violation must be subject to judicial review. Therefore, “final

judgement” under Article 6, Para 2, should mean “final judgement” delivered after reviewing rejection of mercy plea.

A court established by national law is not necessarily the ‘competent court’. A ‘court’ cannot be considered as ‘competent’ unless the trial complies with the fair trial standards provided in the ICCPR and the court itself meets the UN Basic Principles on the Independence of the Judiciary.

Third, as stated above seeking ‘pardon and commutation’ is recognized as a right under Article 6, paragraph 4. The consideration of this right i.e. *the right to seek pardon or commutation of the sentence*’ cannot be arbitrary. Therefore, the process and decisions on pardon and commutation must be subject to judicial review.

Asian Centre for Human Rights requests the UN Human Rights Committee to consider inclusion of these elements on the right to life in the context of death penalty in its General Comment No.36.

Article 6: Right to life – and its relations with death penalty

2.1. Article 6, paragraph 1 relating to arbitrary deprivation of the right to life

A. Issues framed by the UN Human Rights Committee

The Human Rights Committee framed the following issues:

- “7. *With regard to article 6, paragraph 1: “No one shall be arbitrarily deprived of his life”,*
- (a) *Meaning of “deprivation of life”, and whether it includes anything other than deliberate killings and other acts or omissions intentionally or inevitably leading to loss of life;*
 - (b) *Meaning of “arbitrary deprivation”;*
 - (i) *Substantive requirements of non-arbitrariness;*
 - (ii) *Relevance of other provisions of the Covenant (e.g., article 7, 14, 20);*

- (iii) *Relevance of other rules of international law, including jus ad bellum and jus in bello and instruments regulating weapons of mass destruction and counter- terrorism;*
- (iv) *Relevance of legal protections afforded by domestic law;*
- (v) *Relevance of methods of execution (e.g., injection, gas, stoning);*
- (vi) *Legitimate and non-legitimate reasons for deprivation of life (e.g., self-defense, excessive use of force by state officials, use of lethal force in connection with detention powers, use of lethal force in connection with protection of property);*
- (vii) *Relevant non refoulement obligations;*
- (viii) *The need to meet necessity and proportionality requirements in assessing arbitrariness of deprivation in different fields (e.g., criminal sentences, law enforcement, armed conflict, medical treatment etc.).*

B. Submission of ACHR

Asian Centre for Human Rights submits that imposition of death penalty without complying with the ICCPR amounts to arbitrary deprivation of the right to life.

The Human Rights Committee while revising its General Comment on the right to life should take note of the following elements of arbitrary deprivation of the right to life relating to death penalty.

First, mandatory death sentencing has been declared as arbitrary and unconstitutional by Supreme Courts across the world as given below.

In 1983, India’s Supreme Court had declared mandatory death penalty under Section 303 of the Indian Penal Code¹ as unconstitutional in *Mithu v. State of Punjab*.² Further, relying upon *Mithu v. State of Punjab*, the Supreme Court struck down Section

1. Section 303 in The Indian Penal Code states, “303. *Punishment for murder by life-convict –Whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death*”.

2. *Mithu v. State of Punjab Etc.* 1983 AIR 473, 1983 SCR (2) 690

27(3)g of the Arms Act 1959 which provided for mandatory death penalty in *State of Punjab V. Dalbir Singh* in 2012.

On 23.06.1987, the Supreme Court of the United States struck down mandatory death penalty as unconstitutional.³

On 30.07.2010, the Court of Appeal of Kenya declared unconstitutional the application of a mandatory death sentence on all prisoners convicted of murder.⁴

On 7 July 2004, Judicial Committee of the Privy Council in Jamaica struck down the mandatory death penalty in *Lambert Watson v. The Queen*, [Appeal No. 36 of 2003] and the current penal code no longer provides for the mandatory death penalty.⁵

In 2005, the Judicial Committee of the Privy Council (JCPC) of Dominica ruled in *Balson v. The State* that the mandatory death penalty amounts to inhuman treatment and is thus unconstitutional in Dominica, observing that any barrier to constitutional challenge was identical to those addressed in its decision in *The Queen v. Hughes* regarding the mandatory death penalty in Saint Lucia. The Eastern Caribbean Supreme Court has consistently applied its and the JCPC's decisions in *Hughes* to limit application of the death penalty to "exceptional cases where there is no reasonable prospect of reform and the object of punishment would not be achieved by any other means," in other words, where a murder is the "worst of the worst."⁶

In *Bowe v. The Queen* (2006), the Judicial Committee of the Privy Council (JCPC) —the highest constitutional court for the Bahamas—struck down the mandatory death penalty for murder in the Bahamas, holding that the relevant legal provision should be construed as imposing a discretionary and

3. Please see <http://www.nytimes.com/1987/06/23/us/court-eliminates-mandatory-death-sentence.html>

4. Please see <http://www.worldcoalition.org/Kenyas-mandatory-death-penalty-ruled-unconstitutional.html>

5. Please see <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Jamaica#f21-3>

6. Please see <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Dominica>

not a mandatory sentence of death. The court reasoned that the mandatory death sentence contravened the constitutional prohibition on inhuman or degrading punishment because of its lack of individualization.⁷ In response to the JCPC’s decision, the Bahamas repealed the mandatory death penalty for murder in 2011 and enacted a law establishing that the punishment for aggravated murder is either the death penalty or life imprisonment, at the court’s discretion.⁸

In May 2015, the Supreme Court of Bangladesh declared mandatory death sentencing as unconstitutional.⁹

Second, imposition of death penalty by the courts without procedural guarantees commonly available under national laws and as per Article 14 of the ICCPR constitutes “arbitrary deprivation of the right to life”.

In this regard, it is pertinent to mention that anti-terror laws, anti-drug laws have been enacted to circumvent procedural guarantees commonly available to the accused. The special courts or designated courts constituted under the special laws are effectively reduced to military tribunal/summary trial.

Asian Centre for Human Rights cites two specific cases of imposition of death penalty in India to illustrate the situation:

Devender Pal Singh Bhullar was arrested under the Terrorists and Disruptive Activities (Prevention) Act (TADA) and the Indian Penal Code and he was sentenced to death solely based on his confessional statements recorded by Deputy Commissioner of Police B.S. Bhola under Section 15¹⁰ of the TADA. While

7. Please see <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Bahamas>

8. Please see <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Bahamas>

9. “Press Release: Landmark Appellate Division Judgment Declaring Unconstitutional Mandatory Death Penalty under Special Law on Violence against Women and Children 1995”, Bangladesh Legal Aid and Services Trust, 5 May 2015, available at <http://www.blast.org.bd/content/pressrelease/05-05-2015-Press-Release-SukurAli.pdf>

10. “Section 15 of the TADA. Certain confessions made to police officers to be taken into consideration. - (1) Notwithstanding anything in the Code or in the Indian Evidence Act, 1872, but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or sound tracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under this Act or rules made thereunder:

two judges of the Supreme Court confirmed the conviction and death sentence on Bhullar on 22 March 2002, the third judge in the bench Justice M. B. Shah delivered a dissenting judgement, and pronounced Bhullar as “innocent”. Justice Shah held that there was nothing on record to corroborate the confessional statement of Bhullar and police did not verify the confessional statement including the hospital record to find out whether D. S. Lahoria, one of the main accused went to the hospital and registered himself under the name of V. K. Sood on the date of incident and left the hospital after getting first aid. None of the main accused, i.e. Harnek or Lahoria was convicted¹¹ but Bhullar, the alleged conspirator, was sentenced to death. In April 2013, Anoop G Chaudhari, the Special Public Prosecutor who had appeared against Bhullar in the Supreme Court in 2002 stated that though two of the three judges on the Supreme Court bench upheld his arguments, he found himself agreeing with the dissenting verdict delivered by the presiding judge, M B Shah, who had acquitted Bhullar. Chaudhari had stated “*Surprising as it may sound, I believe that Shah was right in not accepting my submissions in support of the trial court’s decision to convict Bhullar in a terror case, entirely on the basis of his confessional statement to the police*”.¹²

Similarly for assassination of Rajiv Gandhi, former Prime Minister of India, Perarivlan @ Arivu, one of the four convicts, was sentenced to death. The Central Bureau of Investigation (CBI) charge-sheeted 26 accused for various offences under the TADA and the IPC¹³ and the Special Judge of the TADA Court sentenced

Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2) *The police officer shall, before recording any confession under subsection (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily.*

11. ACHR “Death Penalty Through Self Incrimination in India”, October 2014, <http://www.achrweb.org/reports/india/Incrimination.pdf>
12. Public prosecutor turns surprise ally for Bhullar, *The Times of India*, 18 April 2013, <http://timesofindia.indiatimes.com/india/Public-prosecutor-turns-surprise-ally-for-Bhullar/articleshow/19606737.cms>
13. All the accused were charged under Section 302 read with Section 120-B of the Indian Penal Code and Section 3 & 4 of the TADA.

all 26 main accused to death.¹⁴ On 11 May 1999, the Supreme Court set aside convictions under the TADA but confirmed the death sentence passed by the TADA Court on Nalini, Santhan, Murugan and Arivu under the IPC.¹⁵ Arivu was sentenced to death based on his confessional statement. Interestingly, in a documentary released in November 2013 on Arivu, the former Superintendent of Police of the CBI Mr P V Thiagarajan admitted that he had manipulated Arivu's confessional statement in order to join the missing links in the narrative of the conspiracy in order to secure convictions. Thiagarajan stated, "*But [Perarivalan] said he did not know the battery he bought would be used to make the bomb. As an investigator, it put me in a dilemma. It wouldn't have qualified as a confession statement without his admission of being part of the conspiracy. There I omitted a part of his statement and added my interpretation. I regret it.*"¹⁶

In the cases of both Arivu and Bhullar, the confessions made to the police officers are in violation of the Indian Evidence Act,¹⁷ which does not allow confessions made to police officers as admissible evidence, and Article 14(3)(g) of the ICCPR which prohibits self-incrimination.¹⁸ Had they been tried under the IPC based on the evidence taken under the Indian Evidence Act, both would have certainly been acquitted. Had they been tried only under the TADA, they would not have been sentenced to death as the maximum punishment for abetment under the TADA is five years imprisonment.¹⁹ Since Arivu was discharged under

14. All the accused were sentenced under Section 302 read with Section 120-B IPC. One of accused was also sentenced to death under Section 3(1)(ii) of the TADA.

15. The death sentence was under Section-120B read with Section 302 IPC. State through Superintendent of Police, CBI/SIT v. Nalini and Ors. [AIR1999SC2640]

16. Ex-CBI man altered Rajiv death accused's statement, *The Times of India*, 24 November 2013, available at: <http://timesofindia.indiatimes.com/india/Ex-CBI-man-altered-Rajiv-death-accuseds-statement/articleshow/26283700.cms>

17. Section 25 of the Indian Evidence Act, Confession to police officer not to be proved - "No confession made to police officer shall be proved as against a person accused of any offence."

18. Article 14 (3) of the ICCPR. "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (g) Not to be compelled to testify against himself or to confess guilt."

19. Under Section 3(3) of the TADA the punishment for abetting terrorism is "imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine".

the TADA, the evidence (confession made to police officer) extracted under the TADA should not have been used as evidence to prosecute him under the IPC offences. In such a case Arivu would have been released as confession made to a police officer is not admissible under the Indian Evidence Act. Devender Pal Singh Bhullar too, if tried under the IPC without relying on the evidence obtained under the TADA (confession made to a police officer) would have certainly been acquitted.

Third, execution without access to pardon and commutation constitutes arbitrary deprivation of the right to life.

In this regard, it is pertinent to draw attention to a recent judgement of the Supreme Court of India. Shabnam and Salim were convicted for murder and sentenced to death vide order dated 15.07.2010 by the sessions court. The High Court of Allahabad confirmed the death sentence vide judgment dated 26.04.2013. The Supreme Court vide order dated 15.05.2015 also affirmed the death sentences.²⁰ On 21.05.2015, death warrants were issued by the Sessions Judge for their execution.

A petition was filed before the Supreme Court challenging the death warrants, which are impermissible inasmuch as various remedies which are available to the convicts, even after the dismissal of the appeals by the highest court, are still open and yet to be exercised by them. It is submitted that these convicts can file review petition seeking review of the judgment dated 15.05.2015. They also have the right to file mercy petitions to the Governor of Uttar Pradesh and to the President of India.²¹

The Supreme Court of India while staying the executions stated that *“condemned prisoners also have a right to dignity and execution of death sentence cannot be carried out in a arbitrary, hurried and secret manner without allowing the convicts to exhaust all legal*

20. Supreme Court judgement dated 27.05.2015 in the case of Shabnam Vs Union of India Writ Petition (Criminal) No. 89 of 2015 available at <http://judis.nic.in/supremecourt/imgs1.aspx?filename=42719>

21. Ibid

*remedies*²² including filing of mercy petition before the President of India.

Fourth, execution in violation of the principles of equality and non-discrimination is arbitrary deprivation of the right to life. Asian Centre for Human Rights cites below as to how arbitrary executions are carried out.

On 28 October 2012, the Secretariat of the President of India displayed all the mercy petitions pending before President Pranab Mukherjee on its webpage. As per that list, there were altogether 12 pending mercy pleas which were listed in sequential order as per the date of recommendation received by the President's Secretariat from the Ministry of Home Affairs (MHA), with the oldest listed first. In that list, the mercy plea of Ajmal Kasab, sentenced to death for 26/11 Mumbai terror attack, was put at the last being number 12 based on the receipt of the recommendations of the MHA dated 16.10.2012 to reject the mercy plea.²³ However, President Pranab Mukherjee jumped the queue of 11 other convicts whose cases appeared first in sequential order and rejected the mercy plea of Kasab on 05.11.2012.²⁴ Soon after rejection of his mercy plea Kasab was executed on 21.11.2012 and buried at Pune's Yerwada Central Prison.²⁵

Similarly, the mercy plea of Mohammad Afzal Guru, convicted for the attack on Indian Parliament in 2001, had been listed at number 6 based on the receipt of the recommendation of the MHA dated 04.08.2011.²⁶ The President rejected his mercy plea

22. Ibid

23. Ajmal Kasab's mercy petition last among 12 pending petitions in President Pranab Mukherjee's office, The Times of India, 30 October 2012; link http://articles.economicstimes.indiatimes.com/2012-10-30/news/34817055_1_mercy-petitions-mercy-plea-afzal-guru

24. President Secretariat: Statement of Mercy Petition cases - Rejected as on 01.08.2014; available at: <http://rashtrapatisachivalaya.gov.in/pdfs/mercy.pdf>

25. Ajmal Kasab hanged, buried at Pune's Yerwada Jail, Indiatoday.com, 21 November 2012; available at: <http://indiatoday.intoday.in/story/ajmal-kasab-hanged-after-president-rejected-his-mercy-plea/1/230103.html>

26. Ajmal Kasab's mercy petition last among 12 pending petitions in President Pranab Mukherjee's office, The Times of India, 30 October 2012; link http://articles.economicstimes.indiatimes.com/2012-10-30/news/34817055_1_mercy-petitions-mercy-plea-afzal-guru

ahead of the other pending cases²⁷ on 03.02.2013²⁸ and he was hanged on 09.02.2013²⁹ without his family being informed about the hanging as required under the Jail Manual.

2.2 Article 6, paragraph 2, inter alia, relating to final judgement and competent court

A. Issues framed by CCPR

Article 6, paragraph 2

8. *With regard to article 6, paragraph 2: “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide”, issues may include:*

- (a) *Meaning of “not abolished” (e.g., moratorium de jure/ de facto);*
- (b) *Meaning of “most serious crimes”;*
- (c) *Meaning of “law in force at the time of commission” (e.g., substantive/ procedural retroactivity);*
 - (i) *Relationship to other articles of the Covenant, e.g. 14, 15;*
 - (ii) *Relationship to the Second Optional Protocol;*
 - (iii) *Relationship to the Genocide Convention;*
- (d) *Applicability of the paragraph to extradition proceedings;*
- (e) *The scope of the prohibition on the reintroduction of the death penalty;*
- (f) *The scope of the prohibition on mandatory death sentences;*
- (g) *Whether there is a need to periodically review the list of “most serious crimes”.*

27. Afzal Guru hanged in secrecy, buried in Tihar Jail, The Hindu, 10 February 2013 available at: <http://www.thehindu.com/news/national/afzal-guru-hanged-in-secrecy-buried-in-tihar-jail/article4396289.ece>

28. President Secretariat: Statement of Mercy Petition cases - Rejected as on 01.08.2014; available at: <http://rashtrapatisachivalaya.gov.in/pdfs/mercy.pdf>

29. Afzal Guru hanged in secrecy, buried in Tihar Jail, The Hindu, 10 February 2013 available at: <http://www.thehindu.com/news/national/afzal-guru-hanged-in-secrecy-buried-in-tihar-jail/article4396289.ece>

9. *With regard to article 6, paragraph 2: “This penalty can only be carried out pursuant to a final judgment rendered by a competent court”, issues may include:*
- (a) Meaning of “final judgment”;*
 - (i) Relationship of this paragraph to article 6, paragraph 4;*
 - (ii) Relevance of recourse to international review procedures in ascertaining finality;*
 - (b) Meaning of a “competent court”;*
 - (i) Relationship of this paragraph to other articles of the Covenant, e.g. article 14;*
 - (ii) Applicability to military justice, including in cases covered by reservations regulated in article 2 to Second Optional Protocol;*
 - (c) The extent of required judicial control over the manner of execution.*

B. Submission of ACHR

ACHR reiterates that mandatory death sentencing is arbitrary and therefore cannot be imposed even in the most serious crimes.

With respect to “final judgement *rendered by a competent court*” as provided in Article 6, paragraph 2, ACHR submits the following:

i. Meaning of ‘final judgement’

The finality of the conclusion of finding an accused guilty punishable with death by the highest court of the country is not necessarily the “final judgement”. ‘Final judgement’ as provided in Article 6, Para 2, should be read with access to pardon and commutation which is recognized as a right under Article 6, paragraph 4 of the ICCPR. In many countries including India the decision on mercy plea by the Head of the State are subject to judicial review by the Supreme Court or the Constitutional Court. Considering the arbitrariness and denial of equality and non-discrimination and violations of the principles of natural justice in consideration of the mercy pleas, in the context

of death penalty, “final judgement” should mean “final judgement” delivered by the competent court after reviewing the rejection of mercy plea.

ii. Meaning of a ‘competent court’

ACHR submits that a court established by national law itself is not the competent court. A court cannot be considered as ‘competent’ unless the trial complies with the fair trial standards provided in the ICCPR and the court itself meets the UN Basic Principles on the Independence of the Judiciary.

A competent court must conduct the trial through the common laws of the country such as Code of Criminal Procedure (CrPC) and Evidence Act. However, when the common laws relating to trial are circumscribed and made subservient to special laws while trying the cases relating to national security, counter terrorism or anti-drug measures, the special courts or designated courts are effectively reduced to military tribunal/summary trial. The Government of India under the Terrorist and Disruptive Activities (Prevention) Act (TADA) and the Prevention of Terrorism Act (POTA) made self-incrimination prohibited under ICCPR admissible for the purposes of imposing death penalty and further allowed in camera trial including under the National Investigation Agency Act.³⁰ Though the courts under the TADA and the POTA were established by law, because of the violations of the principles of fair trial, these courts cannot be considered as “competent court” as provided in the ICCPR; and therefore imposition of death sentences by these courts are illegal irrespective of the review by the Supreme Court.

30. Section 13 of the TADA, 1985 refers to protection of the identity and address of the witness and in camera proceedings. Section 16 of TADA, 1987 followed the TADA, 1985 as it provided camera trial for the protection of identity of witnesses. It was mandatory to hold proceedings in camera under Section 13 of TADA, 1985 whereas the proceedings could be held in camera under Section 16 of TADA, 1987 only where the Designated Court so desired.

Section 30 of POTA 2002 also provided camera proceedings on the same lines as Section 16 of TADA, 1987.

Section 17 of National Investigative Agency Act, 2008 also provides for camera proceedings for the protection of identity of witnesses if the Special Court so desires.

2.3. Article 6, paragraph 4 relating to pardon and commutation of the sentence

A. Issues framed by CCPR

“11. With regard to article 6, paragraph 4: “Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence”, issues may include:

- (a) Meaning of “pardon or commutation”;
 - (i) Relevant authorities who may grant pardon or commutation;
 - (ii) Procedural safeguards governing the process of reconsideration of sentence;
- (b) The duty to facilitate the exercise of the right to seek pardon or commutation (e.g., duty to inform the convict; legal aid etc.).

12. With regard to article 6, paragraph 4: “Amnesty, pardon or commutation of the sentence of death may be granted in all cases”, issues may include:

- (a) Meaning of “amnesty”;
- (b) The duty on state authorities to consider amnesty, pardon or commutation *proprio motu*.

B. Submission of ACHR

It is submitted that seeking ‘pardon and commutation’ is recognized as a right under Article 6, paragraph 4. The consideration of this right i.e. *the right to seek pardon or commutation of the sentence*’ cannot be arbitrary. Therefore, the process and decisions on pardon and commutation must be subject to judicial review.

Based on the experiences in India, the following elements can be drawn:

First, consideration of ‘pardon or commutation of the sentence’ cannot be arbitrary decision of the executive including the Head of the State. With respect to consideration of mercy plea by the President of India, the Supreme Court of India in the landmark decision in the *Shatrughan Chauhan v. Union of India* delivered on 21 January 2014 held: “It is well settled law that executive action and the legal procedure adopted to deprive a person of his life or liberty must be fair, just and reasonable and the protection of Article 21 of the Constitution of

*India inheres in every person, even death row prisoners, till the very last breath of their lives. We have already seen the provisions of various State Prison Manuals and the actual procedure to be followed in dealing with mercy petitions and execution of convicts.*³¹

*Second, in India, the Supreme Court has intervened in plethora of cases to review the decision of the President of India. On the consideration of the mercy pleas, Supreme Court of India held that “exercising of power under Article 72/161 (on commutation) by the President or the Governor is a constitutional obligation and not a mere prerogative. Considering the high status of office, the Constitutional framers did not stipulate any outer time limit for disposing the mercy petitions under the said Articles, which means it should be decided within reasonable time. However, when the delay caused in disposing the mercy petitions is seen to be unreasonable, unexplained and exorbitant, it is the duty of this Court to step in and consider this aspect. Right to seek for mercy under Article 72/161 of the Constitution is a constitutional right and not at the discretion or whims of the executive. Every Constitutional duty must be fulfilled with due care and diligence; otherwise judicial interference is the command of the Constitution for upholding its values.”*³² The review by the judiciary is an indispensable element.

Third, the right to life does not get extinguished following confirmation of the death sentence. The execution must not violate the principles of equality and non-discrimination i.e. State must not carry out executions selectively and arbitrarily.

31. Shatrughan Chauhan vs Union of India [(2014)35SCC1]

32. Shatr Chauhan vs Union of India [(2014)35SCC1]

5. LIST OF WRITTEN CONTRIBUTIONS MADE BY NGOs FOR THE HALF DAY OF DISCUSSION

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Written contributions for the half day of discussion

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- Human Rights Committee Concluding Observations on Small Arms and Light Weapons - Compiled by the Human Rights Program, University of Minnesota
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6. DRAFT GENERAL COMMENT No. 36 ON ARTICLE 6: RIGHT TO LIFE

United Nations



**International Covenant
on Civil and Political Rights**

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**Organizational and other matters, including the adoption
of the report of the pre-sessional working group
on individual communications**

Draft General Comment No. 36

Article 6: Right to Life

Draft prepared by Yuval Shany and Nigel Rodley, Rapporteurs

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 individuals. It is the supreme right from which no derogation is permitted.¹ The right to life has profound importance both for individuals and for society as a whole. It is most precious for its own sake, but also serves as a basic right,² facilitating the enjoyment of all other human rights.

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

2. General Comment 14, para. 1.

3. The right to life 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 their legitimate expectation to enjoy a dignified existence. Article 6 guarantees this right for all individuals, including persons suspected or convicted of serious crimes, such as terrorist crimes.
4. Paragraphs 2, 4, 5 and 6 of article 6 of the Covenant set out specific safeguards for ensuring that where national or international legal instruments do not totally prohibit the death penalty, it shall be exercised only in the most exceptional cases and under the strictest limits. Additional limitations on the ability of States parties to apply the death penalty are found in article 6, paragraph 1. 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').
5. Deprivation of life involves a deliberate³ or otherwise foreseeable and preventable infliction of life-terminating harm or injury that goes beyond mere damage to health, body integrity or standard of living. Examples of deprivations of life regulated by article 6 include the carrying out of a death penalty, extra-judicial killings, murder, road-traffic deaths, death resulting from medical malpractice, assisted suicide, euthanasia and infanticide. Deprivation of life also represents a more serious attack against the lives of individuals than general threats or attacks directed against their personal security.⁴ Still, article 6 may require States parties to address threats to life and life-threatening harms and injuries that do not result in loss of life.⁵
6. Disappearances constitute a unique and integral series of acts and omissions intended to remove an individual from the protection of the law, resulting in a flagrant violation of the right to life or constituting

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

4. General Comment 35, para. 9.

5. Communication No. 821/1998, Chongwe v. Zambia, Views of the Committee of 25 Nov. 2000, para. 5.2. Cf. Ilhan v Turkey, Judgment of the ECtHR of 27 June 2000, at para. 75-76; Rochela Massacre v Colombia, I/A CHR Judgment of 11 May 2007, para. 127.

a grave threat thereto.⁶ States parties must take adequate measures to prevent the disappearance of individuals and establish prompt and effective procedures to investigate thoroughly, by independent and impartial procedures, cases of disappearance, with the aim of minimizing their adverse effects on the right to life.⁷

7. Unlike the American Convention on Human Rights,⁸ the Covenant does not explicitly refer to the rights of unborn children, including to their right to life.⁹ In the absence of subsequent agreements regarding the inclusion of the rights of the unborn within article 6 and in the absence of uniform State practice which establishes such subsequent agreements, the Committee cannot assume that article 6 imposes on State parties an obligation to recognize the right to life of unborn children.¹⁰ Still, States parties may choose to adopt measures designed to protect the life, potential for human life or dignity of unborn children, including through recognition of their capacity to exercise the right the life, provided that such recognition does not result in violation of other rights under the Covenant, including the right to life of pregnant mothers and the prohibition against exposing them to cruel, inhuman and degrading treatment or punishment. Thus, any legal restrictions on the ability of women to seek abortion must not jeopardize their lives or subject them to severe physical or mental pain or suffering. States parties whose laws generally prohibit voluntary terminations of pregnancy must, nonetheless, maintain legal exceptions for therapeutic abortions necessary for protecting the life of mothers, inter alia by not exposing them to serious health risks, and for situations in which carrying a pregnancy to term would cause the mother severe mental anguish, such as cases where the pregnancy is the result of rape or incest or when the fetus suffers from fatal abnormalities.¹¹ Furthermore,

6. See e.g., Communication No. 992/2001, *Saker v. Algeria*, Views of the Committee of 15 March 2006, para. 9.2.
7. Communication No. 161/1983, *Rubio v. Colombia*, Views of the Committee of 2 Nov. 1987, para. 10.3; General Comment 6, para. 4.
8. American Convention on Human Rights, 22 Nov. 1969, art. 4.
9. This omission is deliberate, since proposals to include the right to life of the unborn within the scope of article 6 were considered and rejected during the process of drafting the Covenant. UN Doc. E/CN.4/21, UN Doc. E/CN.4/SR.35, p. 16. See also the reference in article 1 of the Universal Declaration on Human Rights to all human beings “born free and equal in dignity and rights”
10. Cf. *Vo v France*, Judgment of the ECtHR of 8 July 2004, para. 81
11. See Concluding Observations: Ireland (2014), para. 9.

States parties should not regulate pregnancy or abortion in a manner that would compel women to seek clandestine illegal abortions that could endanger their lives.¹² For example, they should not criminalize pregnancies by unmarried women¹³ or apply criminal sanctions against women undergoing abortion or against physicians assisting them in doing so. Nor should States parties introduce excessively burdensome¹⁴ or humiliating requirements for seeking permission to undergo abortion,¹⁵ including the introduction of lengthy mandatory waiting periods before a legal abortion can be carried out.¹⁶ The duty to protect the lives of women against the health risks associated with the termination of undesirable pregnancies requires State parties to provide women, and, in particular, adolescents,¹⁷ with information about reproductive options,¹⁸ with access to contraception¹⁹ and with access to adequate prenatal health care.²⁰

8. Although, for reasons similar to those mentioned in paragraph 7, the Covenant does not directly regulate questions relating to the right to life of frozen embryos,²¹ eggs or sperms, stem cells or human clones. States parties may regulate the protection of these forms of life or potential life, while respecting their other obligations under the Covenant.
9. The Covenant does not define the moment of death – in particular, whether it should be determined by the end of cardiovascular or cerebral activity. In the Committee’s view such determinations ought

12. See e.g., Concluding Observations: Argentina (2010) para. 13; Concluding Observations: Jamaica (2011), para. 14; Concluding Observations: Madagascar (2007), para. 14.

13. Concluding Observations: Tanzania (1998), para. 15.

14. See e.g., Concluding Observations: Zambia (2007), para. 18 (concern about the requirement of consent of three physicians to abortion)

15. See e.g., Concluding Observations: Panama (2008), para. 9 (concern about limiting abortion in cases of rape to the first two months of pregnancy and only if the crime was documented in court proceedings).

16. For example, State parties should avoid excessive pre-abortion waiting periods that run contrary to WHO Guidelines on Safe Abortions World Health Organization, *Safe Abortion: Technical and Policy Guidance for Health Systems* (2nd ed., 2012) 96-97.

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

18. Concluding Observations: Colombia (2010), para. 19; Concluding Observations: Equatorial Guinea (2004), para. 9 (recommending removal of restrictions on family planning services).

19. Concluding Observations: Poland (2010), para. 12.

20. Concluding Observations: Malawi (2014), para. 9.

21. Cf. *Evans v UK*, Judgment of the ECtHR of 10 April 2007, para. 56; *Murillo et al v Costa Rica*, I/A CHR Judgment of 28 Nov 2012, para. 186.

to be undertaken by medical professionals on the basis of the available scientific data, and in light of applicable ethical considerations.

10. While generally respecting personal autonomy and the importance of freely exercising rights under the Covenant, States parties should presume that individuals planning or attempting to commit suicide may experience a temporary crisis that hinders their ability to take rational decisions with long term implications, and they should take adequate measures to prevent suicides, especially among vulnerable population groups,²² without violating their other Covenant obligations. For example, they should seek to limit access by suicidal individuals to firearms.²³ States parties may also allow medical professionals to assess on a case-by-case basis whether or not to accommodate, on a highly exceptional basis²⁴ and as a method of last resort, explicit, unambiguous, free and informed requests for the termination of life-prolonging treatment made by mortally wounded or terminally ill adults, who experience intolerable pain and suffering and wish to die with dignity.²⁵ The assessment of such requests must be based on medical, psychological and ethical considerations, and any decision taken must be subject to robust legal and institutional safeguards in order to prevent pressure and abuse.²⁶
11. States parties have the duty to respect the right to life and refrain from engaging in conduct resulting in deprivation of lives. When taking lawful measures that may nonetheless result in deprivation of life, such as police raids targeting violent criminals or military operations during armed conflicts, State authorities must adequately plan their actions and introduce appropriate safeguards in order to minimize the risk posed to human life.²⁷ They must also take all suitable measures, which

22. Concluding Observations: Ecuador (1998), para. 11.

23. Concluding Observations: Switzerland (2009), para. 12.

24. Concluding Observations: Netherlands (2001), para. 5 (criticizing a euthanasia program for appearing to be used not only in extreme cases).

25. Cf. Committee on Economic, Social and Cultural Rights, 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”).

26. Concluding Observations: Netherlands (2009), para. 7 (recommending the introduction of judicial review into a medical euthanasia program).

27. Cf. *McCann v UK*, Judgment of the ECtHR of 27 Sept, 1995, para. 150.

can reasonably be expected from them,²⁸ to protect the right to life of individuals against deprivations caused by persons or entities not acting on behalf of the State.

12. When private individuals or entities are empowered or authorized by a State party to employ lethal force, the State party remains responsible for their compliance with the provisions of article 6, and must ensure their actual adherence to 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 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 past human rights violations are excluded from private security forces employing lethal force.²⁹ They must also provide victims of arbitrary deprivation of life by private actors an effective remedy.³⁰
13. The use of lethal force in military operations is primarily regulated by international jus ad bellum and international humanitarian law. Still, States parties engaged in the study, development, acquisition or adoption of new weapons, and means or methods of warfare must always consider their impact on their right to life. For example, the development of new lethal autonomous robotics lacking in human compassion and judgment, raises difficult legal and ethical questions, including question relating to legal responsibility for their use. The Committee is therefore of the view that such weapon systems should not be put into operation before a normative framework has been established with a view to ensuring that their use conforms with article 6 and other relevant norms of international law.³¹
14. The threat or use of weapons of mass destruction, including nuclear weapons, is prima facie incompatible with respect for the right to life.

28. Cf. *Osman v UK*, Judgment of the ECtHR of 28 Oct. 1998, para. 116.

29. *Concluding Observations Guatemala (2012)*, para. 16.

30. See *Concluding observations Guatemala (2012)*, para. 16.

31. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions of 9 April 2013, at para. 113-114.

States parties must take all feasible measures to stop the proliferation of weapons of mass destruction and to prevent their development and use.³²

15. States parties should also study and 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),³³ rubber-coated metal bullets,³⁴ and attenuating energy projectiles.³⁵ The use of such weapons must be strictly regulated and restricted only to security agents who have undergone the necessary training. Furthermore, such less-lethal weapons can only be employed in situations of exceptional nature in which other less harmful measures have proven to be, or clearly are inadequate. For example, State parties should not resort to them in routine situations of crowd control and demonstrations.³⁶

II. The Prohibition against Arbitrary Deprivation of Life

16. Although it inheres in every human being by virtue of membership in the human family,³⁷ the right to life is not absolute. By requiring that deprivations of life must not be arbitrary in nature, Article 6, paragraph 1 implicitly recognizes that some deprivations of life may be justified in some cases. For example, the use of lethal force against a person who poses an immediate threat to the lives of others when no other, less harmful, means of protection are or could have been available does not prima facie constitute an arbitrary deprivation of life.
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.

32. General Comment 14, at para. 3-4. *Cf.*

33. Concluding Observations: USA (2014), para. 11; Concluding Observations: USA (2006), para. 30.

34. Concluding Observations: Israel (1998), para. 17.

35. Concluding Observations: UK (2006), para. 11.

36. Concluding Observations: Sweden (2012), para. 10.

37. Universal Declaration of Human Rights, preamble.

For example, a death sentence issued following a trial conducted in violation of domestic law of criminal procedure will generally be both arbitrary and unlawful, as would be an act of extrajudicial killing in violation of the laws of armed conflicts.

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 law³⁸ as well as elements of reasonableness, necessity, and proportionality. For example, in order not to be qualified as arbitrary, the application of lethal force in self-defense 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,³⁹ have been exhausted or deemed inadequate;⁴⁰ 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;⁴¹ and the threat responded to must be extreme, involving imminent death or serious injury.⁴² The deliberate use of lethal force for law enforcement purposes which is intended to address less extreme threats, such as protecting private property⁴³ 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.⁴⁴
19. States parties are expected to take reasonable long-term measures intended to prevent arbitrary deprivations of life by their law-enforcement organs, such as police training, mandatory reporting

38. 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.

39. Cf. *Guiliani and Gaggio v. Italy*, Judgment of the ECtHR of 24 March 2011, para. 177.

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

41. Communication No. R.11/45, *Suarez de Guerrero v. Colombia*, Views adopted on 31 March 1982, para. 13.2-13.3.

42. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions of 23 May 2011, para. 60.

43. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 1 April 2014, para. 72.

44. Cf. *Kazingachire v Zimbabwe*, Report of the ACHR of 12 Oct. 2013, para. 120.

of lethal incidents,⁴⁵ and the equipping of police forces responsible for crowd control with effective non-lethal means. 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),⁴⁶ and law enforcement agents should undergo appropriate training designed to inculcate these standards⁴⁷ so as to ensure, in all circumstances, the fullest respect for the right to life.⁴⁸

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 killings of demonstrators exercising their right of freedom of assembly;⁴⁹ gender-related violence involving the application of lethal force against women on account of discriminatory attitudes;⁵⁰ and enforced disappearances – a practice that violates numerous substantive and procedural provisions of the Covenant, and which often constitutes a particularly aggravated form of arbitrary deprivation of life.

45. Concluding Observations: Chile (2013), para. 11.

46. Concluding Observations: Nepal (2014), para. 10; Concluding Observations: Liechtenstein (2004), para. 10.

47. Concluding Observations: Kenya (2012), para. 11.

48. Concluding Observations: Central African Republic (2006), para. 12.

49. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 1 April 2014, para. 75.

50. *González v. Mexico*, Judgment of the I/A CHR of 16 Nov. 2009, para. 399-400.

22. Persons with disabilities, including psychosocial and intellectual disabilities, are entitled to special measures of protection against deprivation of their life so that they will continue to enjoy the right to life on equal basis with others.⁵¹ In criminal proceedings involving the application of the death penalty in those countries which have not yet abolished it, and in any subsequent pardon or commutation proceedings, the relevant State organs must afford considerable weight to the extent in which persons with disabilities could defend themselves on an equal basis with others, and, in appropriate cases, to their level of moral culpability for the crime they were charged with, and their ability to understand the reasons for their punishment.

III. The Duty to Protect Life

23. The second sentence of paragraph 1 provides that the right to life “shall be protected by law”. This implies that a legal framework must exist in order to ensure the enjoyment of the right to life by all individuals. It also implies that State are under an obligation to take appropriate positive measure in order to protect life from all possible threats, including from threats emanating from private persons and entities.
24. 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.⁵² 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 authorities⁵³ 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 prescribe and regulate measures necessary to protect lives, and to organize all State organs and governance structures through which public authority is exercised in a manner

51. Convention on the Rights of Persons with Disabilities, article 10.

52. Cf. General Comment 35, para. 22.

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

consistent with the need to respect and ensure the right to life.⁵⁴ This protective legal framework must include effective criminal prohibitions on all forms of arbitrary deprivations of life, including extrajudicial killings,⁵⁵ murder, homicide, disproportionate use of firearms,⁵⁶ negligent manslaughter, disappearance, femicide, infanticide,⁵⁷ honor killings,⁵⁸ lynching,⁵⁹ terrorism, violent hate crimes,⁶⁰ blood feuds,⁶¹ death threats 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.⁶²

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. State parties are thus required to undertake positive measures in response to foreseeable threats to life originating from private persons and entities,⁶³ which do not impose on them unreasonable or disproportionate burdens.⁶⁴ Hence, State parties must take adequate preventive measures in order to protect individuals against being murdered or killed by criminals and organized crime or militant groups, including armed or terrorist groups.⁶⁵ State parties should also disband private armies and vigilante groups responsible for extrajudicial killings⁶⁶ reduce the proliferation of illegal weapons,⁶⁷ and clear areas in which land mines

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

55. Concluding Observations: Dominican Republic (2012), para. 13.

56. Concluding Observations: Liechtenstein (2004), para. 10.

57. Concluding Observations: Madagascar (2007), para. 17.

58. Concluding Observations: Turkey (2012), para. 13.

59. Concluding Observations: Mozambique (2013), para. 12; Concluding Observations: Guatemala (2012), para 18.

60. Concluding Observations: Indonesia (2013), para. 6; Concluding Observations: Russia (2009), para. 11.

61. Concluding Observations: Albania (2013), para. 10.

62. Concluding Observations: Russia (2009), para. 14.

63. See Communication No. 1862/2009, *Peiris v Sri Lanka* (26.10.11) para. 7.2.

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

65. Concluding Observations: Israel (1998), para. 17.

66. Concluding Observations: Philippines (2012), para. 14.

67. Concluding Observations: Angola (2013), para. 12.

were laid.⁶⁸ Adequate measures of protection, including ongoing supervision,⁶⁹ must further be taken by States parties in order to prevent, investigate, punish and remedy arbitrary deprivation of life by lawful organizations, such as public transportation service-providers, hospitals⁷⁰ and private security firms⁷¹ States parties should also take appropriate measures to protect individuals against deprivations of life by other States operating within their territory,⁷² and to ensure that all activities taking place in whole or in part within their territory, but having a direct, foreseeable and significant impact on individuals outside their territory, including activities taken by corporate entities,⁷³ be consistent with the right to life.

26. The duty to protect the right to life requires States parties to take exceptional measures of protection towards vulnerable persons, including women, children,⁷⁴ members of ethnic and religious minorities,⁷⁵ and of indigenous peoples,⁷⁶ displaced persons, and lesbian, gay, bisexual, transgender and inter-sex (LGBTI) persons,⁷⁷ persons with albinism,⁷⁸ alleged witches,⁷⁹ asylum seekers and refugees,⁸⁰ and individuals whose lives have been placed at particular risk because of specific threats⁸¹ or pre-existing patterns of violence. For example, States parties must respond urgently and effectively to threats to the lives of human rights defenders,⁸² journalists,⁸³ prominent

68. Concluding Observations: Angola (2013), para. 12.

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

70. Cf. *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.

71. Concluding Observations: Bulgaria (2011)

72. Communication No. 319/1988, *Garcia v. Ecuador*, Views adopted on 5 Nov. 1991, paras. 5.1-5.2.

73. Concluding Observations: Germany (2102), para. 16.

74. Concluding Observations: Honduras (2006), para. 9.

75. Concluding Observations: France (2008), para. 24.

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

77. Concluding Observations: Colombia (2010), para. 12.

78. Concluding Observations: Tanzania (2009), para. 15.

79. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions of 27 May 2009, para. 68.

80. Concluding Observations: Kenya (2012), para. 12.

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

82. Concluding Observations: Paraguay (2013), para. 15

83. Concluding Observations: Serbia (2011), para. 21; Report of the Special Rapporteur on extrajudicial, summary

public figures, witnesses to crime,⁸⁴ and victims of domestic violence. Special measures of protection of vulnerable individuals may include 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.

27. States parties also have a heightened obligation to take effective measures⁸⁵ to protect the lives of individuals incarcerated by the State, since by arresting, detaining and imprisoning individuals States parties assume the responsibility to care for their life,⁸⁶ and they may not rely on lack of financial resources or other logistical problems to reduce this responsibility.⁸⁷ The duty to protect all incarcerated individuals includes providing prisoners with the necessary medical care to combat life threatening diseases,⁸⁸ to regularly monitor their health,⁸⁹ and to protect them from inter-prisoner violence.⁹⁰ A similar heightened duty to protect applies to individuals held in State-run mental health facilities,⁹¹ military camps,⁹² refugee and internally displaced persons camps⁹³ and orphanages, and to individuals held in private incarceration facilities operating with the State's support.⁹⁴ State parties are deemed to violate the right to life of persons who died while in their custody, unless it can be shown that there is no causal relationship between their death and their incarceration.⁹⁵

or arbitrary executions of 10 April 2012, para. 105.

84. Concluding Observations: Colombia (2010), para. 14.

85. Communication No. 546/1993, *Burrell v. Jamaica*, Views adopted on 18 July 1996, at para. 9.5.

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

87. Communication No. 763/1997, *Lantsov v. the Russian Federation*, Views adopted on 26 March 2002, para. 9.2.

88. Communication No. 1020/2001, *Cabal and Pasini v. Australia*, Views adopted on 7 August 2003 at para 7.7. (“a failure to separate detainees with communicable diseases from other detainees could raise issues primarily under articles 6, paragraph 1”); Concluding Observations: Moldova (2002), para. 9; Concluding Observations: Tajikistan (2013), para. 9.

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

90. Cf. *Edwards v. UK*, ECtHR Judgment of 14 June 2002, para. 60.

91. Cf. *Campeanu v. Romania*, Judgment of the ECtHR of 17 July 2014, para. 131.

92. Concluding Observations: Armenia (2012), para. 15.

93. Concluding Observations: UN administration for Kosovo (2006), para. 14.

94. CF. General Comment 35, para. 8.

95. Communication No. 1473/2006, *Tornel v. Spain*, Views adopted on 20 March 2009, para. 7.2

28. The duty to protect life also imposes on States parties a due diligence obligation to take long-term measures to address the general conditions in society that may eventually give rise to direct threats to life. These general conditions may include high levels of criminal and gun violence,⁹⁶ pervasive traffic and industrial accidents,⁹⁷ the prevalence of life threatening diseases, such as AIDS or malaria,⁹⁸ extensive substance abuse, widespread hunger and malnutrition and extreme poverty and homelessness.⁹⁹ States parties should also take adequate measures to protect the environment against life-threatening pollution,¹⁰⁰ and work to mitigate other risks associated with natural catastrophes, such as droughts.¹⁰¹ When adopting long-term measures designed to ensure the enjoyment of the right to life, States parties should aim to facilitate and promote adequate conditions for a dignified existence for all individuals.¹⁰² Long-term measures required for ensuring the right to life may include facilitating access by individuals to basic goods and services such as food,¹⁰³ health-care, electricity, water sanitation,¹⁰⁴ and promoting the development of life-saving and life-extending drugs and treatments, and of effective emergency health services and emergency response operations (including fire-fighters, ambulances and police forces). Furthermore, States parties should adopt action plans for attaining long-term goals designed to realize more fully the right to life of all individuals, including the introduction of strategies to fight the stigmatization associated with diseases, including sexually-transmitted diseases, which hamper access to medical care;¹⁰⁵ promotion of education to non-violence and de-radicalization programs; development of witness protection programs;¹⁰⁶ raising awareness against domestic violence¹⁰⁷

96. Concluding Observations: USA (2014), para. 10.

97. Cf. *Önerildiz v. Turkey*, Judgment of the ECtHR of 30 Nov. 2004, para. 71.

98. Concluding Observations: Kenya (2012), para. 9.

99. General Comment 6, at para. 5. Concluding Observations: Canada (1999), at para 12.

100. Cf. *SERAC v Nigeria*, Report of the ACHR of 27 Oct. 2001, para. 67.

101. Concluding Observations: Democratic People's Republic of Korea (2001), at para. 12.

102. Cf. *Villagran-Morales et al.* v. Guatemala, Judgment of the I/A CHR of 19 Nov. 1999, para. 144.

103. Concluding Observations: Democratic People's Republic of Korea (2001), at para. 12.

104. Concluding Observations: Israel (2014), at para. 12.

105. Concluding Observations: Jamaica (2011), para. 9.

106. Concluding Observations: Philippines (2012) para. 16; Concluding Observations: Bosnia and Herzegovina (2012), para. 13.

107. Concluding Observations: Uzbekistan (2001), para. 19.

and improving access to medical examinations and treatments designed to reduce maternal and infant mortality.¹⁰⁸ States parties should also develop contingency plans designed to increase preparedness for natural and man-made disasters, which may adversely affect enjoyment of the right to life, such as hurricanes, tsunamis, industrial pollution, radioactive accidents and cyber-attacks. Although article 6, paragraph 1 of the Covenant imposes on State parties both short-term and long-term obligations, individuals claiming to be victims of a violation of the Covenant under article 1 of the Optional Protocol to the Covenant can only invoke short-term obligations, as the status of victims is reserved to those individuals whose rights under the Covenant were directly violated by acts or omissions attributable to the States parties, or are under an imminent prospect of a direct violation.¹⁰⁹

29. 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 authorities¹¹⁰ or by private individuals and entities,¹¹¹ including allegations of excessive use of lethal force.¹¹² This obligation arises both 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, and from the duty to provide an effective remedy to victims of human rights violations¹¹³ and their families,¹¹⁴ 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 should be aimed at ensuring that those responsible are brought

108. General Comment 6, at para. 5; Concluding Observations: DRC (2006), para. 14.

109. Communication No. 429/1990. *E.P. v Netherlands*, Views adopted on 8 April 1993, para. 6.4.

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

111. Concluding Observations: Yemen (2012), para. 24.

112. Concluding Observations: Kyrgyzstan (2014), para. 13.

113. 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).

114. Concluding Observations: Israel (2010), para. 12.

to justice,¹¹⁵ at promoting accountability and preventing impunity,¹¹⁶ at avoiding denial of justice¹¹⁷ and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations.¹¹⁸ They should explore, inter alia, the legal responsibility of superior officials for violations of the right to life committed by their subordinates.¹¹⁹ Given the importance of the right to life, States parties should refrain from addressing possible 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.¹²⁰ Immunities and amnesties provided to perpetrators of intentional killings and to their superiors, leading to de facto 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.¹²¹

30. Investigations into allegations of violation of article 6 must always be independent,¹²² impartial,¹²³ prompt,¹²⁴ thorough,¹²⁵ effective,¹²⁶ credible¹²⁷ and transparent,¹²⁸ and in the event that a violation is found, a remedy must be provided that would include, in view of the particular circumstances of the case, adequate measures of compensation, rehabilitation and satisfaction, including guarantees for non-repetition.¹²⁹ Where relevant, the investigation should include a

115. 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 Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 29 March 2004 (HRI/GEN/1/Rev.8), paragraphs 15 and 18.

116. Concluding Observations: Angola (2013), para. 14.

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

118. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 8 March 2006, para. 41.

119. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions of 1 April 2014, para. 81.

120. 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.

121. *Cf. Barrios Altos v. Peru*, Judgment of the I/A CHR of 14 March 2001, para. 43 +GC 31 para. 18.

122. Concluding Observations: Cameroon (2010), para. 15.

123. Concluding Observations: Bolivia (2013), para. 15.

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

125. Concluding Observations: Mauritania (2013), para. 13.

126. Concluding Observations: UK (2015), para. 8.

127. Concluding Observations: Israel (2010), para. 9.

128. Concluding Observations: UK (2015), para. 8.

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

rigorous autopsy of the victim's body.¹³⁰ The State party should 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,¹³¹ and identifying bodies of individuals who had lost their lives.¹³² It should also disclose relevant details about the investigation to the victim's next of kin¹³³ and make public its findings, conclusions and recommendations,¹³⁴ unless absolutely prevented from doing so due to a compelling need to protect the public interest or the legal rights of directly affected individuals. 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.¹³⁵ States should cooperate in good faith with international mechanisms of investigation and prosecutions looking into possible violations of article 6.¹³⁶

31. 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 through the conduct of a proper investigation.¹³⁷ 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,¹³⁸ or when civilians were found dead by firearms outside the theatre of military operations in

130. See Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E.S.C. res. 1989/65, annex, para 12-14, U.N. Doc. E/1989/89 (1989); *Kawas-Fernández v. Honduras*, Judgment of the I/A CHR of 3 April 2009 para. 102.

131. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions of 28 May 2010, at para. 93.

132. Report of the Working Group on Enforced or Involuntary Disappearances of 2 March 2012, para. 56, 59.

133. Cf. *Ogur v Turkey*, Judgment of the ECtHR of 20 May 1999, para. 92.

134. Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E.S.C. res. 1989/65, annex, para 17, U.N. Doc. E/1989/89 (1989); Cf. *Ramsahai v The Netherlands*, Judgment of the ECtHR of 15 May 2007, para. 353 (requiring sufficient public scrutiny on inquiry proceedings).

135. Cf. *Tanrikulu v Turkey*, Judgment of the ECtHR of 8 July 1999, para. 103.

136. Concluding Observations: Kenya (2012), para. 13.

137. 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.

138. 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.

circumstances fitting a pattern of alleged violations of the right to life by State authorities.¹³⁹

32. The duty to respect and ensure the right to life requires States parties to refrain from deporting or extraditing 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.¹⁴⁰ Such a risk must be personal in nature¹⁴¹ and cannot derive merely from the general conditions in the receiving State. For example, it would be contrary to article 6 to extradite an individual from a country that abolished the death penalty to a country which retained the death penalty on the basis of a warrant for a capital offence without adequate assurances for not applying the death penalty.¹⁴² 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;¹⁴³ 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.¹⁴⁴ 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,¹⁴⁵ and the availability of credible 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 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 effective

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

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

141. Communication No. 1792/2008, *Dauphin v Canada*, Views adopted on 28 July 2009, para. 7,4,

142. Communication No. 1442/2005, *Yin Fong v Australia*, Views adopted on 23 Oct. 2009, para. 9.7.

143. Communication No. 1881/2009, *Shakeel v Canada*, Views adopted on 24 July 2013, para. 8.5.

144. Communication No. 1959/2010 *Warsame v Canada*, Views adopted on 21 July 2011, para. 8.3.

145. 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, *Israel v Kazakhstan*, Views adopted on 31 Oct. 2011, para. 9.5.

mechanisms for ensuring compliance by the receiving State with the issued assurances from the moment of removal onwards.¹⁴⁶

33. The obligation not to extradite or deport 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.¹⁴⁷

IV. Imposition of the death penalty

34. 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.
35. 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 be narrowly construed.¹⁴⁸
36. 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. 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 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 which abolished the

146. Concluding Observations: Sweden (2002), para. 12.

147. Concluding Observations: Tajikistan (2013), para. 11; Concluding Observations: Estonia (2003), para. 13.

148. Communication No. 829/1998, *Judge v Canada*, Views adopted on 5 Aug. 2002, para. 10.5.

death penalty cannot deport or extradite persons to a country in which they are facing criminal charges that carry the death penalty, unless credible assurances against the imposition of the death penalty have been obtained.¹⁴⁹ 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 not carrying the death penalty in the removing State, unless credible assurances against imposition of the death penalty have been obtained.

37. The term “the most serious crimes” must be read restrictively¹⁵⁰ and appertain to crimes of extreme gravity,¹⁵¹ such as those involving premeditated murder¹⁵² or genocidal killings. Crimes not resulting directly and intentionally in death,¹⁵³ such as drug offences,¹⁵⁴ attempted murder,¹⁵⁵ corruption,¹⁵⁶ armed robbery,¹⁵⁷ piracy,¹⁵⁸ abduction,¹⁵⁹ repeated evasion of compulsory military service¹⁶⁰ and sexual offences, although serious in nature, do not manifest the extraordinary high levels of violence, utter disregard for human life, blatant anti-social attitude and irreversible consequences that could conceivably justify the imposition of the death penalty as a form of legal retribution.¹⁶¹ In the same vein, a limited degree of involvement or complicity in the commission of even the most serious crimes, such as providing the physical means for the commission of murder or not preventing it, cannot justify the imposition of the death penalty. States parties are under an obligation to constantly review their criminal laws so as to

149. Communication No. 829/1998, *Judge v Canada*, Views adopted on 5 Aug. 2002, para. 10.6.

150. Communication No. 1132/2002, *Chisanga v. Zambia*, Views adopted on 18 Oct. 2005, para. 7.4.

151. ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, ESC Res. 1984/50 of 25 May 1984, para. 1.

152. Communication No. 470/ 1991, *Kindler v. Canada*, Views adopted on 30 July 1993, para. 14.3.

153. Concluding Observations: Iran (1993), para. 8.

154. Concluding Observations: Thailand (2005), para. 14.

155. Communication No. 1132/2002, *Chisanga v. Zambia*, Views adopted on 18 Oct. 2005, para. 7.4

156. Concluding Observations: Libya (1998), para. 8 (“a person whose life endangers or corrupts society”).

157. 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.

158. Concluding Observations: UK (2001), para. 37.

159. Concluding Observations: Guatemala (2001), para. 17.

160. Concluding Observations: Iraq (1997), para. 11.

161. Check Report of Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, UN DOC< CCPR.C.79/Add.85, 19 Nov. 1997, para. 13.

ensure that the death penalty can be imposed, if at all, only for the most serious crimes and for their chief perpetrators only.¹⁶²

38. Under no circumstances can the death penalty ever be applied as a sanction against conduct whose very criminalization violates the Covenant, including adultery, homosexuality, apostasy¹⁶³ establishing opposition groups,¹⁶⁴ or insulting a head of state.¹⁶⁵ States parties that retain the death penalty for such offences commit a serious violation of their obligations under article 6 read alone and in conjunction with article 2, paragraph 2 of the Covenant.
39. 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 specific aggravating or attenuating elements¹⁶⁶ 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 of the most serious nature¹⁶⁷ and on whether or not to issue the death sentence in the particular circumstances of the case, are arbitrary in nature.¹⁶⁸ 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.¹⁶⁹
40. 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

162. General Comment 6, at para. 6

163. Concluding Observations: Mauritania (2013), para. 21 (defining change of religion as an act of apostasy, punishable by death).

164. Concluding Observations: Libya (2007), para. 24,

165. Concluding Observations: Iraq (1997), para. 16.

166. Communication No. 390/1990, Luboto v Zambia, Views adopted on 31 Oct. 1995, para. 7.2.

167. Communication No. 775/1997, Brown v Jamaica, Views adopted on 11 May 1999, para. 6.14.

168. 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.

169. 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.

are also parties to the Genocide Convention of their obligations to prevent and punish the crime of genocide, including the obligation to prevent and punish all deprivations of life authorized by domestic law, which constitute part of a crime of genocide.

41. 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 *nullum peona sine lege* found in article 15, paragraph 1 of the Covenant. As a result, the introduction of the death penalty or new capital offences after a crime has been committed can never produce retroactive results. Nor can the imposition of the death penalty be based on unclearly defined criminal provisions,¹⁷⁰ whose application to the convicted individual would depend on essentially subjective criteria,¹⁷¹ and which would not be reasonably foreseen.¹⁷² At the same time, the abolition of the death penalty should apply retroactively to individuals charged or convicted of a capital offence in accordance with the *lex mitior* principle, which finds expression in the third sentence of article 15, paragraph 1 requiring States parties when imposing sentences to benefit offenders of lighter penalties adopted after the commission of the offence. The need to retroactively apply legislation abolishing the death penalty or certain capital offences is also dictated by the impossibility of justifying the need for imposing the death penalty after the legislature has deemed this penalty to be no longer appropriate.
42. Like any other deprivation of life, application of the death penalty for the most serious crimes must be done in a manner consistent with all other provisions of the Covenant. This includes conformity with all aspects of article 7 of the Covenant governing the manner of execution. Hence, the use of execution methods, such as stoning,¹⁷³ injection of

170. Concluding Observations: Algeria (2007) para. 17; Concluding Observations: Cameroon (1999) para. 14..

171. Concluding Observations: Democratic Republic of Korea (2001), para. 13.

172. 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”).

173. Concluding Observations: Iran (2011), para. 12.

untested lethal drugs,¹⁷⁴ firing squad, gas chambers,¹⁷⁵ burning and burying alive,¹⁷⁶ and decapitation are cruel, degrading and inhuman and thus contrary to article 7 and ipso facto article 6, paragraphs 1 and 2 of the Covenant. Public executions are a degrading form of punishment, and are thus also incompatible with articles 6 and 7 of the Covenant.¹⁷⁷ Failure to provide individuals awaiting the application of the death penalty with timely notification about the date of their execution constitutes another form of ill-treatment, which renders the subsequent carrying out of the death penalty contrary to articles 6 and 7 of the Covenant.¹⁷⁸ Extreme delays in the implementation of a death penalty sentence, which exceed any reasonable period of time necessary to exhaust all legal remedies,¹⁷⁹ may also involve the violation of articles 6 and 7 of the Covenant, especially when the conditions of detention are exceptionally harsh¹⁸⁰ or stressful, and when the individual in question is particularly vulnerable due to factors such as age or mental state.¹⁸¹

43. Violation of the fair trial guarantees provided for in article 14 of the Covenant in proceedings resulting in the imposition of the death penalty also violate ipso facto article 6 of the Covenant.¹⁸² Unfair trial proceedings in death penalty cases include the use of forced confessions;¹⁸³ inability of the accused to question witnesses,¹⁸⁴ lack of effective representation during all stages of the criminal proceedings,¹⁸⁵

174. Concluding Observations: US (2014), para. 8.

175. Cf. Communication No. 469/1991, *Ng v Canada*, Views adopted on 5 Nov. 1993, para. 16.4 (execution by gas violates article 7; no holding that it also violated article 6).

176. Cf. *Malawi Africa Association v Mauritania*, Report of the ACHR of 11 May 2000, para. 120.

177. Concluding Observations: Democratic Republic of Korea (2001), para. 13.

178. Concluding Observations: Japan (2014), para. 13;

179. Communication No. 588/1994, *Johnson v. Jamaica*, Views adopted on 22 March 1996), at 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.

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

181. Communication No. 470/1991, *Kindler v. Canada*, Views adopted on 30 July 1993, para. 15.3.

182. Communication No. 1096/2002, *Kurbanov v Tajikistan*, Views adopted on 6 Nov. 2003, para. 7.7.

183. 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.

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

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

including criminal interrogation,¹⁸⁶ preliminary hearings,¹⁸⁷ trial¹⁸⁸ and appeal,¹⁸⁹ failure to respect the presumption of innocence manifesting itself in the accused being placed in a cage or handcuffed during the trial;¹⁹⁰ lack of an effective right of appeal;¹⁹¹ inability to access legal documents essential for conducting the legal defense or appeal, such as access to official prosecutorial applications to the the court,¹⁹² the court's judgment¹⁹³ or the trial transcript; excessive delays in the trial¹⁹⁴ or the appeal process;¹⁹⁵ and general lack of fairness of the criminal process,¹⁹⁶ or lack of independence or impartiality of the trial or appeal court. The issuance of a death penalty without a trial, for example in the form of a religious fatwa which the State plans to carry out or allows to be carried out, also violates both article 14 and 6 of the Covenant.¹⁹⁷

44. Other serious procedural flaws, not 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, 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 invoke available appeal procedures¹⁹⁸ may violate article 6, paragraph 1 of the Covenant.

45. The application of the death penalty to convicts whose guilt has not been proven beyond reasonable doubt also constitutes an arbitrary

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

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

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

189. Communication No. 546/1993, *Burrell v. Jamaica*, Views adopted on 18 July 1996, at para. 9.4.

190. Communication No. 2120/2011, *Kovalev v Belarus*, Views adopted on 29 Oct. 2012, para. 11.4.

191. Communication No. 829/1998, *Judge v Canada*, Views adopted on 5 Aug. 2002, para. 10.6.

192. Communication No. 1545/2007, *Gunan v Kyrgyzstan*, Views adopted on 25 July 2011, para. 6.3.

193. Communication No. 445/1991, *Champagne v Jamaica*, par. 7.3-7.4.

194. Communication No. 775/1997, *Brown v Jamaica*, Views adopted on 11 May 1999, para. 6.6, 6.8, 6.15 (noting that the delay in opening of the trial also amounted to a violation of article 9, paragraph 3).

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

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

197. Concluding Observations: Iran (1993), para. 9.

198. Communication No. 829/1998, *Judge v Canada*, Views adopted on 5 Aug. 2002, para. 10.9.

deprivation of life. States parties must therefore take all feasible precautions in order to avoid wrongful convictions in death penalty cases,¹⁹⁹ including re-examination of past convictions on the basis of new evidence, including new DNA evidence, and consideration of the implications on conviction in capital offences of new studies suggesting the prevalence of false confessions and the unreliability of eyewitness testimony.

46. The application of the death penalty must also meet the non-discrimination requirements of article 2(1) and 26 of the Covenant. Data about the disproportionate representation on death row of members of religious or ethnic minorities or foreign nationals may suggest that the application of the death penalty has an unequal effect on members of such groups and it may be, as a result, contrary to article 6, paragraphs 1 and 2.

47. 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 before the commission of the offence, and it must be independent of the executive and legislative branches.²⁰⁰ Although military courts may enjoy functional independence when adjudicating ordinary military crimes,²⁰¹ the Committee is of the view that it is unlikely that military courts would be regarded in the eyes of a reasonable observer²⁰² as sufficiently independent and impartial when trying the most serious capital crimes, since such crimes inevitably involve issues of exceptional political sensitivity. As a result, offences carrying the death penalty need, as a rule, to be tried before civilian courts 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.²⁰³

199. Concluding Observations: US (2014), para. 8.

200. *Cf. Egyptian Initiative for Personal Rights v Egypt*, Report of the ACHR of 1 March 2011, para. 203.

201. General Comment 35, para. 45.

202. See Prosecutor v Furundzija, ICTY Appeals Chamber Judgment of 21 July 2000, para. 189.

203. Concluding Observations: Madagascar (2007), para. 16.

48. Any penalty of death can only be carried out pursuant to a final judgment, after all judicial appeal procedures have been exhausted, and after all other petitions to available non-judicial avenues have been attempted, including supervisory review by prosecutors, and requests for a private pardon (*Diyvai*) from family members of crime victims. Furthermore, death sentences should 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 monitoring bodies, international courts, human rights courts and commissions, and the UN Treaty Bodies, and States have a good faith duty to comply with them even in the absence of a specific treaty provision to that effect.²⁰⁴
49. 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 conclusively decided upon.²⁰⁵ No category of convicts can be a priori excluded from such measures of relief, nor should the conditions for attainment of relief be ineffective, exceptionally burdensome, discriminatory in nature or applied in an arbitrary manner.²⁰⁶ 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.²⁰⁷ Still, such procedures should be specified in domestic legislation,²⁰⁸ and they should not afford the families of victims a preponderant role in determining whether the death sentence should be carried out.²⁰⁹ Furthermore, pardon or commutation procedures must offer certain essential guarantees, including clarity about the processes followed and the substantive criteria applied; a right for individuals sentenced

204. General comment 33, para. 19.

205. Communication No. 1043/2002, *Chikunova v Uzbekistan*, Views adopted on 16 March 2007, para. 7.6

206. Communication No. 1132/2002, *Chisanga v Zambia*, Views adopted on 18 Oct. 2005, para. 7.5.

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

208. Concluding Observations: Guatemala (2001), para. 18.

209. Concluding Observations: Yemen (2001), para. 15.

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.²¹⁰

50. Article 6, paragraph 5 prohibits the application of the death penalty to minors and pregnant women. Whereas for minors, the provision pertains to the time of the offence²¹¹ and, by necessary implication, also to the time in which the sentence is to be carried out, for pregnant women, it pertains only to the time of carrying out the sentence. The special protection afforded to minors stems from a recognition of their limited ability to defend themselves, their reduced moral culpability, and their diminished ability to understand the reasons for the sentence due to their immaturity. It also reflects concerns about the exceptional harshness of depriving a minor of the remainder of his or her life. The special protection afforded to pregnant women stems from an interest in protecting the rights and interests of affected family members, including the the unborn fetus and the fetus's father.
51. Similar rationales, such as limited ability to defend oneself, reduced moral culpability, diminished ability to understand the reasons for the sentence, exceptional harshness of deprivation of life in certain circumstances and the need to respect the rights and interests of others, would normally require State parties to refrain from applying the death penalty to other categories of individuals. These include individuals with serious mental disabilities,²¹² lactating mothers, individuals at a very advanced age and individuals who have suffered in the past serious human rights violations, such as torture victims.²¹³ The carrying out of the death penalty with respect to such vulnerable individuals could constitute an arbitrary deprivation of life, contrary to article 6, paragraph 1.

210. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions of 2 May 2008, para. 67.

211. Concluding Observations: Yemen (2012), para. 14.

212. 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 (executing a mentally incompetent individual, who became incompetent after the imposition of the death penalty, violated article 7 of the Covenant; the Committee did not find an article 6 violation).

213. Concluding Observations: Japan (2009), para. 16.

52. Article 6, paragraph 6 reflects 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 human dignity, and abolition of the death penalty is both desirable,²¹⁴ and necessary for the enhancement of human dignity and progressive development of human rights, including the right to life.²¹⁵ It would appear to run contrary to the object and purpose of article 6, paragraph 5 for States parties to increase de facto the rate and extent in which they resort to the death penalty,²¹⁶ and to reduce the number of pardons and commutations they grant.
53. 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 regard the death penalty as a cruel, inhuman or degrading punishment per se,²¹⁷ subsequent agreements by the State parties or subsequent practice establishing such agreements, may lead at some point in time in the future to the conclusion that the death penalty runs contrary to article 7 of the Covenant under all circumstances.²¹⁸ 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 may have been made towards establishing an agreement among the State parties to consider the death penalty as a cruel, inhuman or degrading form of punishment.²¹⁹ Such a legal development ought to be welcomed as it 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.

214. General Comment 6, para. 6.

215. Second Additional Protocol, preamble.

216. Concluding Observations: Chad (2009), para. 19.

217. Communication No. 470/1991, *Kindler v. Canada*, Views adopted on 30 July 1993, para. 15.1.

218. Cf. *Ocalan v Turkey*, Judgment of the ECtHR of 12 May 2005, para. 163-165. + *Ng v Canada*, para. 16.2.

219. Cf. Communication No. 829/1998, *Judge v Canada*, Views adopted on 5 Aug. 2002, para. 10.3 (“there has been a broadening international consensus in favor of abolition of the death penalty, and in states which have retained the death penalty, a broadening consensus not to carry it out”).

IV. Relationship of article 6 with other articles of the Covenant

54. The standards and guarantees of article 6 both overlap and interact with other provisions of the Covenant. Some forms of conduct amount independently to a violation of article 6 and another article, such as applying the death penalty in response to a crime not constituting the most serious crime, which may 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 19.²²⁰
55. Article 6 also reinforces the obligations of States parties under the Covenant and the Optional Protocol to protect individuals against reprisals for having cooperated or communicated with the Committee, including obligations to take the necessary measures to respond to death threats and to provide adequate protection to human rights defenders whose lives are under threat.²²¹ Such measures should reflect, inter alia, the importance attributed to the work of human rights defenders in promoting human rights.²²²
56. 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 entailing 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 6.²²³
57. Returning individuals to countries where there are substantial grounds for believing that they face a real risk to their lives may cause them severe

220. See also paragraph 17 above.

221. See General Comment No. 33, para. 4; Communication No. 241/1987, *Birhashwiwa v. Zaire*, Views adopted on 2 Nov. 1989, para. 12.5; see *Concluding observations Maldives 2012*, para. 26.

222. UNGA Resolution 53/144 of 9 Dec. 1998, para. 18(2).

223. 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.

mental suffering in violation of articles 6 and 7 of the Covenant.²²⁴ In addition, making an individual sentenced to death believe that the sentence was commuted only to inform him later that it was not,²²⁵ and placing an individual on death row pursuant to a death sentence that is void ab initio,²²⁶ may run contrary to both articles 6 and 7.

58. The arbitrary deprivation of life of individuals may cause their relatives severe mental suffering, which could amount to a violation of their own rights under article 7 of the Covenant, as would failure to provide such relatives with information on the circumstances surrounding the deprivation of life,²²⁷ including the date in which the carrying out of the death penalty is anticipated,²²⁸ and the location of the body.²²⁹ For similar reasons, relatives of executed individuals should be able to receive back their body for burial.²³⁰
59. 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, such as enforced disappearances, and failure to respect the important procedural guarantees found in article 9, paragraphs 3 and 4, designed inter alia to prevent disappearances, may violate the right to personal liberty and personal security as well as the right to life.²³¹
60. A particular connection exists between article 6 and article 20, which prohibits any propaganda to war and certain forms of advocacy constituting incitement to violence. Failure to comply with the obligations under article 20, may also constitute a failure to take the necessary measures to ensure the right to life under article 6.

224. Cf. General Comment No. 31, para. 12.

225. Communication No. 1132/2002, *Chisanga v. Zambia*, Views adopted on 18 Oct. 2005, para. 7.3.

226. Communication No. 592/1994, *Johnson v. Jamaica*, Views adopted on 25 Nov. 1998, para. 10.4.

227. Communication No. 1225/2003, *Eshonov v. Uzbekistan*, Views adopted on 22 July 2010, para. 9.10.

228. Concluding Observations: Japan (2014), para. 13.

229. Communication No. 2120/2011, *Kovalev v. Belarus*, Views adopted on 29 Oct. 2012, para. 11.10.

230. Concluding Observations: Botswana (2008), para. 13.

231. 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.

61. 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.²³² When taking special measures of protection, State parties should be guided by the best interests of the child,²³³ and by the need to ensure the survival and development of all children.²³⁴
62. In light of article 2, paragraph 1, of the Covenant, States parties have obligations to respect and to ensure the rights under article 6 of all persons who are found within their territory and all persons subject to their jurisdiction, power and effective control.²³⁵ Given that the act of detention brings a person within a state’s effective control, States parties must respect and protect the right to life of all individuals detained inside or outside their territory.²³⁶ Furthermore, States parties must respect and protect the lives of individuals residing 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 hoisting the State parties’ flag or 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 State parties have assumed de facto responsibility, including pursuant to the relevant international norms governing rescue at sea.
63. With regard to article 4 of the Covenant, the Committee first observes that, like the rest of the Covenant, article 6 continues to apply also in situations of armed conflict to which the rules of international

232. See General Comment No. 17, para. 1; General Comment No. 32, paras. 42-44.

233. Convention on the Rights of the Child, art. 3(1).

234. Convention on the Rights of the Child, art. 6(2).

235. General Comment No. 31, para. 10; Concluding Observations: United Kingdom (2008), para. 14.

236. 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.

humanitarian law are applicable.²³⁷ 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.²³⁸ 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 real risk to the lives of civilians and persons hors de combat, including the targeting of civilians and civilian objects, 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.²³⁹ Furthermore, State parties should, subject to compelling security considerations, disclose the criteria for attacking with lethal force individuals or objects whose targeting is excepted 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,²⁴⁰ and whether less lethal alternatives for attaining the same military objective were considered.

64. 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.²⁴¹ 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 positive obligations that can be reasonably incurred by the State party. Although some other rights may be subject to derogation, derogable rights which support the application of article 6, and, in particular, the right to fair trial in death penalty cases and duty to take all feasible measures to investigate,

237. General Comment No. 31, para. 11; General Comment No. 29, para. 3.

238. General Comment No. 31, para. 11; General Comment No. 29, para. 3, 12, 16.

239. Concluding Observations: Israel (2010), para. 9-10.

240. Concluding Observations: USA (2014), para. 9.

241. General Comment No. 29, paras. 7.

prosecute, punish and remedy violations of the right to life, must not be diminished by measures of derogation.²⁴²

65. Given the peremptory and non-derogable nature of article 6, the Committee is of the view that reservations to it cannot be accepted. In particular, it would be incompatible with the object and purpose of the Covenant for a State party to reserve the right to engage in arbitrary deprivation of life of persons, or to apply the death penalty outside the strict limits provided in Article 6, paragraphs 2,4 and 5 of the Covenant.²⁴³
66. Wars and other mass violence events 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 to strengthen international peace and security, would count among the most important conditions and guarantees for safeguarding the right to life.²⁴⁴
67. States parties engaged in aggressive wars contrary to the United Nations Charter violate ipso facto article 6 of the Covenant. Moreover, States parties that fail to take measures to peacefully resolve their international conflicts so as to avoid the need to deploy military force do not comply in full with their positive obligation to ensure the right to life. At the same time, all members of the international community are reminded of their responsibility to protect lives and to oppose widespread and systematic attacks on the right to life, including military aggression, international terrorism and crimes against humanity, while respecting all of their obligations under the United Nations Charter.

242. General Comment No. 29, para. 16.

243. General Comment No. 24, para. 8.

244. General Comment 6, at para. 2.

The National Campaign for Abolition of Death Penalty in India - a programme of the Asian Centre for Human Rights (ACHR) supported by the European Commission under the European Instrument for Democracy and Human Rights (EIDHR) - conducts research, analysis and advocacy on issues relating to death penalty with the aim for its eventual abolition.

The National Campaign for Abolition of Death Penalty in India has published the following reports relating to the issue of death penalty in India:

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The following publications are expected:

- Death Penalty in India: Issues and contentions, November 2015

All the reports are available at http://www.achrweb.org/death_penalty.html

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