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**Written Contribution to the Human Rights Committee**

Half-day of general discussion on the preparation for a General Comment on Article 6 (Right to Life) of the International Covenant on Civil and Political Rights

Program on Global Health and Human Rights

University of Southern California Institute for Global Health

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**Proposed General Comment No. 36 on ICCPR Article 6 (Right to Life) – Initial Observations for Half-Day Discussion**

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In preparation for the half-day of general discussion on General Comment 36, focused on Article 6 of the International Covenant on Civil and Political Rights (ICCPR), the Program on Global Health and Human Rights at the University of Southern California Institute for Global Health wishes to emphasize three substantive issues for consideration. These are (1) the importance of recognizing and addressing new issues that concern the death penalty; (2) the importance of attention to the basic conditions related to health that support the right to life— including the availability, accessibility, acceptability and quality of the full range of recognized sexual and reproductive health services; and (3) the importance of attention to the positive obligation of states to ensure the right to life by taking measures to prevent and control epidemics—with full attention to the respect, protection, and fulfillment of human rights in doing so.

**ICCPR Article 6 and the Death Penalty**

Any discussion of the normative content of ICCPR Article 6 clearly requires a substantive discussion of the death penalty, as it involves state deprivation of life, and is directly addressed in 4 of 6 paragraphs in Article 6. The general progression of human rights law, and a considerable and growing majority of state practice continue to suggest a clear trend towards abolition of the death penalty in all circumstances, but additional guidance is still needed.[[1]](#footnote-1)

ICCPR Article 6, in addition to reiterating the fundamental right to life and prohibition of arbitrary deprivation of life (paragraph 1), directly discusses the death penalty in Article 6 paragraphs 2, 4, 5, and 6. They read as follows:

***Article 6***

(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. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

(4) Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

(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.

(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.[[2]](#footnote-2)

While a plain language reading of the article immediately reveals that the death penalty as a key concern at the time of drafting, the way that each paragraph functions as a *limitation* of state practice deserves additional consideration in light of changes in the technologies employed and relevant legal provisions in countries where the death penalty continues to exist. The limitations are as follows: *only* for the most serious crimes; *only* pursuant to a final judgment rendered by a competent court; *with* the right to seek pardon, commutation, or amnesty; *not* for persons below eighteen years of age; *not* for pregnant women; and *not* to be read to delay or prevent abolition of the death sentence. *Each of these limitations ought to be revisited and any additional specific elaboration needed in 2015 addressed in the new General Comment.*

The idea of limiting the death penalty with an aim to abolishment has also appeared in subsequent international human rights instruments, standards, and guidelines, including but not limited to the Economic and Social Council’s “Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty” (1984); the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty (1989); and the Convention on the Rights of the Child (1995).[[3]](#footnote-3) The Human Rights Committee has already recognized and commented favorably on this trend, in its discussion in General Comment 6 (1982) (revisited in General Comment 20 (1992)).[[4]](#footnote-4)

6. While it follows from article 6 (2) to (6) that States parties are not obliged to abolish the death penalty totally they are obliged to limit its use and, in particular, to abolish it for other than the "most serious crimes". Accordingly, they ought to consider reviewing their criminal laws in this light and, in any event, are obliged to restrict the application of the death penalty to the "most serious crimes". The article also refers generally to abolition in terms which strongly suggest (paras. 2 (2) and (6)) that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life within the meaning of article 40, and should as such be reported to the Committee. The Committee notes that a number of States have already abolished the death penalty or suspended its application. Nevertheless, States' reports show that progress made towards abolishing or limiting the application of the death penalty is quite inadequate.

7. The Committee is of the opinion that the expression "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure. It also follows from the express terms of article 6 that it can only be imposed in accordance with the law in force at the time of the commission of the crime and not contrary to the Covenant. The procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the sentence.[[5]](#footnote-5)

Thus, the Committee has recognized abolition as desirable for more than thirty years, but *the issues relevant to ensuring this trend continues in the current legal and political climate within countries across the world deserve attention.*

Moreover, the limitation of the death penalty to the “most serious crimes” also merits careful consideration, and International Criminal Law can be instructive in this area. The International Criminal Tribunal for the former Yugoslavia (ICTY) does not provide for the death penalty as a sentencing option, despite the fact that the some of the most serious crimes known to humanity—genocide, crimes against humanity, and war crimes—fall within the jurisdiction of the Tribunal.[[6]](#footnote-6) The International Criminal Court also limits its penalties to imprisonment only, as demonstrated in Article 77 of the Rome Statute.[[7]](#footnote-7) Further, abolition of the death penalty is a trend for regional human rights bodies, e.g. Protocol 13 to the European Convention on Human Rights, which abolishes the death penalty in all circumstances without derogations or reservations.[[8]](#footnote-8) Though beyond the purview of this short submission, there is also a considerable body of work pointing to imposition of the death penalty as a per se violation of right to be free from torture or other forms of cruel, inhuman or degrading treatment or punishment.[[9]](#footnote-9)

Discussing the approach to abolition is of key concern today, as demonstrated by a 2014 Human Rights Council resolution “[n]oting that States with different legal systems, traditions, cultures and religious backgrounds have abolished the death penalty or are applying a moratorium on its use, [and] [s]trongly deploring the fact that the use of the death penalty leads to violations of the human rights of those facing the death penalty and of other affected persons.”[[10]](#footnote-10)

*Given the centrality of the death penalty to Article 6, we ask that the Committee give extensive consideration to the issues noted above in preparing General Comment 36.*

**ICCPR Article 6 (Right to Life) and the interrelated and interdependent nature of human rights: consonance with ICESCR Article 12 (Right to Health)**

 As noted by the Human Rights Committee in General Comment 6 in relation to Article 6, adopted on 30 April 1982, the right to life must be understood to encompass basic conditions related to health that support life:

5. the Committee has noted that the right to life has been too often narrowly interpreted. The expression "inherent right to life" cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.[[11]](#footnote-11)

This comment reflects what is now widespread recognition that human rights are interrelated and interdependent. In particular, the focus on reduction of infant mortality, increasing life expectancy, and eliminating malnutrition and epidemics are directly relevant to the right to health, as codified in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and recognized in numerous subsequent articulations of human rights.[[12]](#footnote-12) Simply put, realization of the right to the highest attainable standard of physical and mental health is necessary to ensure the right to life, and the right to life is therefore dependent on appropriate attention to the right to health. Thus, the necessity of health for realization of the right to life requires concrete measures to be taken by states to ensure relevant rights.

 *The time is right to give renewed attention to the consonance between the rights to health and life, with particular attention to General Comment 14 of the Committee on Economic, Social and Cultural Rights*. When General Comment 6 was considered, the idea of positive obligations in connection with Article 6, particularly regarding infant mortality, life expectancy, and elimination of malnutrition and epidemics, was a progressive idea. Since that point in time, jurisprudence, both internationally and within countries, has increasingly recognized the fundamental connection between the rights to health and lifemore generally and throughout the life course.[[13]](#footnote-13) As one important example, a critical component of the right to health—again an important determinant of the right to life—is “the right to control one's health and body, including sexual and reproductive freedom.”[[14]](#footnote-14) Mirroring several of the exact concerns that the Human Rights Committee has discussed in connection with the right to life, the Committee on Economic, Social and Cultural Rights provides the following in its General Comment 14 on the Right to Health:

“The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child" (art. 12.2 (a)) may be understood as requiring measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information.[[15]](#footnote-15)

One clear area of consonance between the right to life and the right to health that merits further scrutiny is access to and use of sexual and reproductive health services. There are a few key points to be made: (1) that *under international human rights law, these rights attach at birth, and (2) read together, the Right to Life and the Right to Health inter alia necessitate the availability,* *accessibility, acceptability and quality of the full range of recognized sexual and reproductive health services, including abortion services.*

The Human Rights Committee has highlighted its concern over highly restrictive state schemes and criminalization of abortion; lack of legal and procedural clarity regarding risk vs. the health of a pregnant woman; concern over excessive scrutiny and privacy; discrimination against those without means of travel to less restrictive jurisdictions; undue restrictions on health-related information as it relates to abortion, and mental suffering caused by denial of abortion in certain circumstances.[[16]](#footnote-16) All of these concerns, and more, suggest the need for *attention to the ways in which criminalization of abortion contribute to maternal mortality, and the need to ensure abortion is safe and legal in order to increase life expectancy.*

Another area that merits further consideration at this point in time is the obligation that states have under Article 6, as articulated previously in General Comment 6, to take positive measures to control epidemics, with full respect, protection and fulfillment of human rights in their responses.[[17]](#footnote-17) As a recent example, the ongoing 2014 epidemic of Ebola virus disease (EVD), primarily concentrated in West Africa, has resulted in 11, 222 deaths as of June of this year.[[18]](#footnote-18) The implications for both the right to life and right to health are readily apparent: *epidemics necessitate coordinated state action both in prevention and control, and pose a number of challenging issues with respect to the right to life for which normative guidance could be of great assistance*. Of importance, epidemics place tremendous strain on health systems, with particularly strong impacts on systems that are already overburdened, as epidemics can displace the provision of normal health services resulting in increased preventable mortality even among those seeking prevention or care for reasons separate from the epidemic. This can be seen most clearly in relation to the ways in which simple vaccinations will not be delivered to the children who need them or the ways in which people living with HIV and dependent on ARVs for survival will not access their treatment but it is relevant to the whole range of services offered by a health system. Additional issues include, but are not limited to, the implications of quarantines for mortality, which as noted by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein, “if imposed and enforced injudiciously, quarantine can very easily not only violate a wide range of human rights, but in so doing accelerate the spread of diseases like Ebola.”[[19]](#footnote-19) Among the issues raised are unwarranted restrictions on freedom of movement which can result in heightened mortality. Epidemics can also drive food crises, complicating the disease response, deepening poverty, and jeopardizing life beyond areas directly impacted by the epidemic.[[20]](#footnote-20) In this way, epidemics may lead to human rights violations, but human rights violations also worsen the impact of epidemics. Although Ebola is a recent example that garnered much attention internationally, the issue is far from limited to that disease—just a few epidemics that have recently proven to raise additional right to life concerns include SARS, the H1N1 Influenza, MERS, and others. To an extent, frameworks have been developed under the right to health and in other human rights instruments to provide guidance on responses to epidemics,[[21]](#footnote-21) but there is a dearth of normative guidance connected to the right to life, and as epidemics unfortunately continue to occur with the potential to pose a pervasive and continuous threat to life, guidance is necessary.

 Thus, *there is a need to expand the Committee’s prior normative guidance on the connection between the right to life and health, particularly in recognition of the Committee’s already-existing concluding observations, and key concerns in 2015 related to Ebola and other emerging or continuing epidemics*.

1. E.g. UN Economic and Social Council, *Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*, E.S.C. res. 1984/50, annex, 1984 U.N. ESCOR Supp. (No. 1) at 33, E/1984/84 (1984); UN General Assembly, *Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty*, 15 December 1989, A/RES/44/128, available at: <http://www.refworld.org/docid/3ae6b3a70.html>; UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html>, Article 37. According to Amnesty International, 140 countries have eliminated the death penalty in law or practice to date: https://www.amnesty.org/en/what-we-do/death-penalty/. [↑](#footnote-ref-1)
2. UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html>, Article 6. [↑](#footnote-ref-2)
3. UN Economic and Social Council, *Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*, E.S.C. res. 1984/50, annex, 1984 U.N. ESCOR Supp. (No. 1) at 33, E/1984/84 (1984); UN General Assembly, *Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty*, 15 December 1989, A/RES/44/128, available at: <http://www.refworld.org/docid/3ae6b3a70.html>; UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html>, Article 37. [↑](#footnote-ref-3)
4. UN Human Rights Committee (HRC), *CCPR General Comment No. 6: Article 6 (Right to Life)*, 30 April 1982, available at: <http://www.refworld.org/docid/45388400a.html>, paras. 6 and 7; UN Human Rights Committee (HRC), *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992, available at: <http://www.refworld.org/docid/453883fb0.html>, para. 6. [↑](#footnote-ref-4)
5. UN Human Rights Committee (HRC), *CCPR General Comment No. 6: Article 6 (Right to Life)*, 30 April 1982, available at: <http://www.refworld.org/docid/45388400a.html>, paras. 6 and 7. [↑](#footnote-ref-5)
6. UN Security Council, *Statute of the International Criminal Tribunal for the Former Yugoslavia (as amended on 17 May 2002)*, 25 May 1993, available at: <http://www.refworld.org/docid/3dda28414.html>, Article 24: “The penalty imposed by the trial chamber shall be limited to imprisonment.” [↑](#footnote-ref-6)
7. UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No. 92-9227-227-6, available at: <http://www.refworld.org/docid/3ae6b3a84.html>, Article 77. [↑](#footnote-ref-7)
8. Council of Europe, *Protocol 13 to the European Convention on Human Rights and Fundamental Freedoms on the Abolition of the Death Penalty in All Circumstances*, 3 May 2002, ETS 187, available at: http://www.refworld.org/docid/3ddd0e4c4.html [↑](#footnote-ref-8)
9. See e.g. UN Human Rights Council, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak*, 14 January 2009, A/HRC/10/44, available at: <http://www.refworld.org/docid/498c211e2.html>, paras 34-38. [↑](#footnote-ref-9)
10. UN Human Rights Council, *The question of the death penalty : resolution adopted by the Human Rights Council*, 16 July 2014, A/HRC/RES/26/2, available at: http://www.refworld.org/docid/5583dc864.html. [↑](#footnote-ref-10)
11. UN Human Rights Committee (HRC), *CCPR General Comment No. 6: Article 6 (Right to Life)*, 30 April 1982, available at: <http://www.refworld.org/docid/45388400a.html>, para. 5. [↑](#footnote-ref-11)
12. UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.refworld.org/docid/3ae6b36c0.html>, Article 12. [↑](#footnote-ref-12)
13. See e.g. UN Committee on the Elimination of Discrimination Against Women, *L.C. v. Peru*, CEDAW/C/50/D/22/2009 (2011): in which “timely access to necessary medical treatment was made conditional on carrying to term an unwanted pregnancy, which fulfills the stereotype of placing [the girl’s] reproductive function above her right to health, life and a life of dignity” in violation of the convention. [↑](#footnote-ref-13)
14. UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4, available at: <http://www.refworld.org/docid/4538838d0.html>, para. 8.   [↑](#footnote-ref-14)
15. UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)*, 11 August 2000, E/C.12/2000/4, available at: <http://www.refworld.org/docid/4538838d0.html>, para. 14.

 [↑](#footnote-ref-15)
16. E.g. UN Human Rights Committee (HRC), *Concluding observations on the fourth periodic report of Ireland*, 19 August 2014, CCPR/C/IRL/CO/4, available at: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fIRL%2fCO%2f4&Lang=en>, para. 9. [↑](#footnote-ref-16)
17. UN Human Rights Committee (HRC), *CCPR General Comment No. 6: Article 6 (Right to Life)*, 30 April 1982, available at: <http://www.refworld.org/docid/45388400a.html>, para. 5. [↑](#footnote-ref-17)
18. The current epidemic was first identified in March 2014. World Health Organization, *Ebola virus Disease, Fact Sheet*, April 2015, available at: http://www.who.int/mediacentre/factsheets/fs103/en/; World Health Organization, *Ebola Situation* Report, June 2015, available at: <http://apps.who.int/ebola/ebola-situation-reports>. [↑](#footnote-ref-18)
19. UN Office of the High Commissioner for Human Rights, *Press Conference by United Nations High Commissioner for Human Rights, Zeid Ra-ad Al Hussein*, 16 October 2014, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15173&LangID=E>. [↑](#footnote-ref-19)
20. UN Office of the High Commissioner for Human Rights, *West Africa on the brink of a major food crisis as Ebola threatens food security, warns UN expert*, 11 November 2014, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15276&LangID=E>. [↑](#footnote-ref-20)
21. E.g. UN Commission on Human Rights, *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, 28 September 1984, E/CN.4/1985/4, available at: http://www.refworld.org/docid/4672bc122.html.  [↑](#footnote-ref-21)