

THE UN HUMAN RIGHTS
COMMITTEE'S
PROPOSED GENERAL
COMMENT ON THE
RIGHT TO LIFE

AMNESTY INTERNATIONAL'S
PRELIMINARY OBSERVATIONS

AMNESTY
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I. INTRODUCTION

Following the Human Rights Committee's (the Committee) invitation to provide written information for the general day of discussion on 14 July 2015 on the preparation for a General Comment No. 36 on Article 6 (Right to Life) of the International Covenant on Civil and Political Rights (ICCPR, hereafter: the Covenant), Amnesty International welcomes the opportunity to provide the following preliminary observations on the right to life. Amnesty International would further appreciate additional opportunities to provide supplementary observations, including on a potential Draft General Comment in the future.

The organization would like to express at the outset its strong support for this initiative. The General Comment provides a key opportunity for the Committee to clarify important principles underlying the right to life so as to help to ensure better implementation of this right.

Rather than commenting on every question posed in the *issues for consideration* adopted by the Committee,¹ the present submission aims to inform the general discussion by commenting on elements of interpretation on some of the key aspects of Article 6 of the ICCPR, as well as providing Amnesty International's main observations and recommendations. Furthermore, while this present submission does not follow the structure of the *issues*, its own structure should not be seen as implying an order of prioritisation of the issues commented on. In addition to the Committee's practice, which forms the primary source of interpretation of Article 6 of the Covenant, this document also draws on pertinent international and regional standards, rulings, decisions and observations, as well as in some cases decisions of domestic courts and academic commentary, with a view to providing supplemental authority for the Committee's consideration.

II. GENERAL OBSERVATIONS

A. MEANING OF THE RIGHT TO LIFE

The right to life is recognized as a rule of customary international law.² The Committee has recognized that the right to life in Article 6(1) of the Covenant needs to be interpreted in a wide sense.³ The Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that "[T]he right to life is the precondition for the full realization of human dignity and the effective exercise of all human rights... The protection of the right to life is not merely a

¹ Human Rights Committee, *Draft general comment No. 36 - Article 6: Right to life*, [CCPR/C/GC/R.36](#), 1 April 2015.

² Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the General Assembly*, A/67/275, para. 105.

³ Human Rights Committee, *Judge v. Canada*, Communication No. 829/1998, para. 10.5; see also, Human Rights Committee, General Comment 6, *Article 6 (Right to life)*, para. 1: "It is a right which should not be interpreted narrowly."

matter of domestic concern; the equal protection of all lives is central to the international human rights system."⁴ According to the Inter-American Court of Human Rights, the right to life is a prerequisite for all other rights which may not be interpreted restrictively,⁵ and States must guarantee the right to unimpeded access to conditions for a dignified life.⁶ The African Commission on Human and Peoples' Rights has noted that infringements of the right to life should not be limited to actual deprivations of it, and found a violation of the "right to respect for one's life and the dignity of his person, which this article guarantees ... in a state of constant fear and/or threats".⁷

Furthermore, links have been made by both international bodies and national courts between the right to life and a range of socio-economic rights including health, work⁸ and working conditions, housing, livelihood, food, water and sanitation, social security and education.⁹ Regional jurisprudence has further found that the right of an Indigenous People to a life in dignity can be obstructed when they are prevented from accessing their customarily owned lands and clean water sources, engaging in traditional livelihoods and spiritual practices, and accessing natural medicines found on those lands.¹⁰ The Committee has recognized the threat that poverty and deprivation may pose for the right to life,¹¹ as well as environmental pollution.¹²

Amnesty International recommends that the General Comment reaffirms and clarifies that the right to life needs to be interpreted expansively, including a right to live in dignity, with a particular relevance to marginalized groups; that it should be interpreted to embrace a range of rights contained in other instruments, which are essential to meet basic needs and lead a dignified life; and that all aspects of Article 6 are of international concern.

⁴ Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the General Assembly, A/67/275*, paras 11, 12.

⁵ Inter-American Court of Human Rights, *Zambrano Vélez and Others v. Ecuador*, Judgment of 4 July 2007, para. 79

⁶ Inter-American Court of Human Rights, *Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela*, Judgment of 5 July 2006, para. 66

⁷ African Commission on Human and Peoples' Rights, *Kazeem Aminu v. Nigeria*, Communication No. 205/97, para. 18.

⁸ Committee on Economic, Social and Cultural Rights, General Comment 18, *The Right to work (Article 6 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/18, paras 1, 31.

⁹ See M. Langford, ed., *Social Rights Jurisprudence: Emerging Trends in International Law*, Cambridge University Press, 2008.

¹⁰ Inter-American Court of Human Rights, *Yakye Axa Indigenous Community v. Paraguay* (Merits, Reparations and Costs), Judgment of 17 June 2005, paras 161, 167, 168.

¹¹ See Human Rights Committee, General Comment 28, *Article 3 (The equality of rights between men and women)*, CCPR/C/21/Rev.1/Add.10, para. 10.

¹² Human Rights Committee, *EHP v. Canada*, Communication No. 87/1980, para. 8; Human Rights Committee, *Concluding observations on Kosovo*, CCPR/C/UNK/CO/1, para. 14; Human Rights Committee, *Concluding observations on Israel*, CCPR/C/ISR/CO/3, para. 18.

In particular, the Committee has explicitly confirmed that state obligations with respect to Article 6 of the ICCPR encompass a range of issues that relate to the *right to health*.¹³ In this vein, the Committee has required states to take positive measures under Article 6 to protect vulnerable individuals from risks to their lives and health, such as the homeless,¹⁴ women and girls at risk of pregnancy- and child-related deaths,¹⁵ and prisoners requiring health care and medical treatment.¹⁶ The right to life overlaps with the right to personal security (Article 9(1) of the ICCPR), especially with regard to injuries or extreme forms of detention that are life-threatening.¹⁷ The link between the right to life and the right to health has also been confirmed by other UN Treaty Bodies¹⁸ and Special Procedures¹⁹, together with regional human rights bodies²⁰ and a number of national courts across the world.²¹ In so doing, these national courts have affirmed that meeting positive obligations with respect to the right to life will require the provision of appropriate resources.²²

¹³ Human Rights Committee, General Comment 6, *Article 6 (Right to life)*, para. 5. Issues identified are reducing infant mortality, increasing life expectancy and adopting measures to eliminate malnutrition and epidemics.

¹⁴ Human Rights Committee, *Concluding observations on Canada*, CCPR/C/79/Add.105, para. 12.

¹⁵ See Human Rights Committee, General Comment 28, *Article 3 (The equality of rights between men and women)*, CCPR/C/21/Rev.1/Add.10, paras 10, 20.

¹⁶ Human Rights Committee, *Yekaterina Pavlovna Lantsova v. The Russian Federation*, Communication No. 763/1997, CCPR/C/74/D/173/1997, para. 9.2; Human Rights Committee, *Carlos Cabal and Marco Pasini Bertran v. Australia*, Communication No. 1020/2001, CCPR/C/78/D/1020/2001, para. 7.7; Human Rights Committee, *Titianhonjo v. Cameroon*, Communication No. 1186/2003, para. 6.2; Human Rights Committee, *Fabrikant v. Canada*, Communication No. 970/2001, para. 9.3; Human Rights Committee, *Concluding Observations on Moldova*, CCPR/CO/75/MDA, para. 9.

¹⁷ Human Rights Committee, General Comment 35, *Article 9 (Liberty and security of person)*, CCPR/C/GC/35, para. 55.

¹⁸ For example, the Committee on Economic, Social and Cultural Rights has stressed that “[h]ealth is a fundamental human right indispensable for the exercise of other human rights”, including – and especially – the right to a dignified life; Committee on Economic, Social and Cultural Rights, General Comment 14, *The right to the highest attainable standard of health*, E/C.12/2000/4, para. 1. See also, Committee on the Rights of the Child, General Comment 15, *Right of the Child to the Highest Attainable Standard of Health (Art 24)*, CRC/C/GC15, paras 16-18.

¹⁹ The Special Rapporteur on the right to physical and mental health has stated that access to health care is required for the full enjoyment of the right to life, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/69/299, para. 2.

²⁰ Inter-American Court of Human Rights, *Case of the “Juvenile Reeducation Institute” v. Paraguay*, Judgment of 2 September 2004, paras 149, 159, 168, 172; Inter-American Court of Human Rights, *Yakye Axa Indigenous Community v. Paraguay* (Merits, Reparations and Costs), Judgment of 17 June 2005, paras 161-167; European Court of Human Rights, *Cyprus v. Turkey*, Application No. 25781/94, para. 219; European Court of Human Rights, *Nitecki v. Poland*, Application No. 65653/01, para. 1; European Court of Human Rights, *D. v. United Kingdom*, Application No. 146/1996/767/964, para. 59.

²¹ For example, India (*Francis Coralie Mullin v. The Administrator, Union*, (1981) 1981AIR 746, para. 6) and the United Kingdom (*Burke, R (on the application of) v. General Medical Council and Ors*, [2005] EWCA Civ 1003, paras 39, 53). For further examples from other jurisdictions, particularly in South Asia and Latin America, see M. Langford, ed., *Social Rights Jurisprudence: Emerging Trends in International Law*, Cambridge University Press, 2008.

²² For example, see with regard to the right to access government (public) health facilities and receive a

Amnesty International recommends that the General Comment reaffirms the principle that the right to life entails positive obligations, by, for example, emphasising that providing insufficient health care resources may constitute a violation of the right to life where patients' lives are put at risk.²³

B. MEANING OF "ARBITRARY DEPRIVATION"

With regard to the meaning of arbitrary deprivation of life, the Committee has regularly pointed out that "the notion of 'arbitrariness' is not to be equated with 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality".²⁴

According to the Special Rapporteur on extrajudicial, summary or arbitrary executions, the requirement of non-arbitrariness in the context of the right to life entail various components; these include procedural aspects, centring on the requirements of legality and fair trial, and substantive ones, which, among other things, include adherence to limitations to the lawful deprivation of life spelled out in Article 6, but also the principles of equality and consistency.²⁵ The Special Rapporteur has further drawn attention to the discriminatory use of force within law enforcement operations.²⁶ The Inter-American Commission on Human Rights has found that discriminatory practices render the deprivation of the right to life arbitrary.²⁷

minimum standard of treatment and care, High Court of Delhi, *Laxmi Mandal v Deen Dayal Harinagar Hospital and Others*, WP(C) 8853/2008, Judgment of 4 June 2010, paras 20-21. See also, *Paschim Banga Khet Mazdoor Samity & Ors v. State of West Bengal & Anor* (1996) AIR SC 2426/ (1996) 4 SCC 37.

²³ See Committee on Economic, Social and Cultural Rights, General Comment 14, *The right to the highest attainable standard of health*, E/C.12/2000/4, para. 52, with regard to the non-enjoyment of the right to health by individuals or groups, particularly the vulnerable and marginalized.

²⁴ Human Rights Committee, General Comment 35, *Article 9 (Liberty and security of person)*, CCPR/C/GC/35, para. 12. See also, Human Rights Committee, *Mukong v. Cameroon*, Communication No. 458/1991, para. 9.8; Human Rights Committee, *Mikhail Marinich v. Belarus*, Communication No. 1502/2006, para. 10.4; Human Rights Committee, *Kulov v. Kirghizistan*, Communication No. 1369/2005, para. 8.3; Human Rights Committee, *Fongum Gorji-Dinka v. Cameroon*, Communication No. 1134/2002, para. 5.1; Human Rights Committee, *A v. Australia*, Communication No. 560/1993, para. 9.2; Human Rights Committee, *Van Alphen v. The Netherlands*, Communication No. 305/1988, para. 5.8. See also, with regard to the deprivation of life, Inter-American Court of Human Rights, *Gangaram Panday v. Suriname*, Judgment of 21 January 1994, paras 47, 62.

²⁵ Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the UN General Assembly*, A/69/265, para. 47. See also, European Court of Human Rights (Grand Chamber), *McCann and others v. United Kingdom*, Application No. 18984/91, para. 202.

²⁶ Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council*, A/HRC/26/36, para. 74. See also, Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council*, A/HRC/14/24/Add.8, para. 14.

²⁷ See, with regard to the imposition of the death penalty, Inter-American Commission on Human Rights, *William Andrews v. United States* (11.139), Report 57/96, 6 December 1996, para. 177; Inter-American Commission on Human Rights, Report, *The death penalty in the Inter-American human rights system: from restrictions to abolition* (2012), <http://www.oas.org/en/iachr/docs/pdf/deathpenalty.pdf>

The Committee has stated that arrest or detention on discriminatory grounds in violation of Articles 2(1), 3 or 26 is in principle arbitrary.²⁸ There is no reason not to apply the same *rationale* to discriminatory practices in the deprivation of life. The right to life must be “protected by law” (Article 6(1) of the ICCPR). Legal provisions, or their application, in violation of the non-discrimination provisions of the Covenant would not meet this requirement. The States’ duty to ensure the equal enjoyment of rights without any discrimination, to remove relevant obstacles and to act against discrimination by public and private agencies in all fields,²⁹ applies to the right to life as well. Furthermore, the Covenant states that death sentences may not be imposed “contrary to the provisions of the present Covenant” (Article 6(2) of the ICCPR), which includes the provisions on non-discrimination. Amnesty International submits that this should be read as a manifestation of the “basic and general principle” of non-discrimination,³⁰ and hence as applicable to the deprivation of life as a whole.

Amnesty International recommends that in addition to the points regularly emphasized, the General Comment clarifies that a deprivation of life in violation of any procedural or substantive safeguards in the Covenant, including on the basis of discriminatory grounds or practices, is arbitrary.

C. PREVENTION OF VIOLATIONS OF THE RIGHT TO LIFE

The notion of prevention is an important part of the protection of the right to life,³¹ and the States’ positive duty to facilitate this right; this includes the duties to take reasonable measures to prevent deaths. According to Article 2 of the ICCPR, States Parties have undertaken to respect and to ensure to all the rights recognized in the Covenant, including by adopting such laws or other measures as may be necessary to give effect to those rights. The Committee has recalled that “the purposes of the Covenant would be defeated without an obligation integral to article 2 to take measures to prevent a recurrence of a violation of the

(accessed 10 June 2015), para. 11: “[...] the kinds of deficiencies that have been identified by the Commission as rendering an execution arbitrary and contrary to Article I of the American Declaration include failing to limit the penalty to crimes of exceptional gravity set forth in pre-existing law, the failure to provide strict due process guarantees, and *the existence of demonstrably diverse practices that result in the inconsistent application of the penalty for the same crimes.*” (emphasis added); the Commission further includes as violations of the right to a fair trial, and hence an arbitrary deprivation of life, the execution of people protected by provisional measures ordered by the Commission, and violations of the right to information for foreign nationals established under Article 36(1)(b) of the Vienna Convention on Consular Relations, at paras 65 and 120, respectively. See also, Human Rights Committee, *Concluding observations on USA*, CCPR/C/USA/CO/4, para. 8.

²⁸ Human Rights Committee, General Comment 35, *Article 9 (Liberty and security of person)*, CCPR/C/GC/35, para. 17.

²⁹ Human Rights Committee, General Comment 28, *Article 3 (The equality of rights between men and women)*, CCPR/C/21/Rev.1/Add.10, paras 2-4, 26; Human Rights Committee, General Comment 18, *Non-discrimination*, paras 5, 10.

³⁰ Human Rights Committee, General Comment 18, *Non-discrimination*, paras 1-3.

³¹ Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the General Assembly, A/67/275*, para. 14. See also, Human Rights Committee, General Comment 6, *Article 6 (Right to life)*, para. 3 (“The Committee considers that State Parties should take measures ... *to prevent and punish deprivation of life by criminal acts...*” (emphasis added)).

Covenant.”³² A failure to take effective measures to prevent violations of the right to life, including by adopting the necessary laws and practices, could be considered as giving rise to a separate breach of the Covenant. This is also the case where States fail to prevent the continuance and recurrence of such violations.³³

The Committee has recently stated that, under the Covenant, “... States parties [are obliged] to take appropriate measures in response to death threats against persons in the public sphere, and more generally to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors.”³⁴ According to the Inter-American Court of Human Rights, States must adopt all necessary measures to create a legal framework that deters any possible threat to the right to life, and must exercise due diligence in the prevention of such a violation.³⁵ The European Court of Human Rights has explained that a positive obligation exists on the authorities to do all that can be reasonably expected of them take preventive operational measures to protect an individual whose life is at risk.³⁶

Amnesty International recommends that the General Comment clarifies the duty to prevent a violation of the right to life, and recurrence of such violations, including by adopting laws or other measures, including operational measures that can reasonably be expected, to give effect to this right.

D. REMEDIES, INCLUDING THE DUTY TO INVESTIGATE, PROSECUTE AND PROVIDE REPARATION

In accordance with Article 2(3) of the ICCPR, States should ensure that, where a person's right to life has been violated, accessible, effective and enforceable remedies are provided to the victims.³⁷

³² Human Rights Committee, General Comment 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, para. 17.

³³ Human Rights Committee, General Comment 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, para. 15 (“Cessation of an ongoing violation is an essential element of the right to an effective remedy”). Cessation of an ongoing violation can be seen as a form of prevention, i.e., a way to prevent the continuance of this violation.

³⁴ Human Rights Committee, General Comment 35, *Article 9 (Liberty and security of person)*, CCPR/C/GC/35, para. 9; see also, Human Rights Committee, *Choudhary v. Canada*, Communication No. 1898/2009, para. 9.8; Human Rights Committee, *Peiris v. Sri Lanka*, Communication No. 1862/09, para. 7.2.

³⁵ Inter-American Court of Human Rights, *Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela*, Judgment of 5 July 2006, para. 66; Inter-American Court of Human Rights, *Velasquez Rodriguez v. Honduras*, Judgment of 29 July 1988 (merits), para. 172.

³⁶ European Court of Human Rights (Grand Chamber), *Osman v. United Kingdom*, Application No. 87/1997/871/1083, paras 115, 116; European Court of Human Rights, *Rantsev v. Cyprus and Russia*, Application No. 25965/04, para. 218; European Court of Human Rights, *Medova v. Russia*, Application No. [25385/04](#), para. 95; European Court of Human Rights, *Opuz v. Turkey*, Application No. [33401/02](#), para. 128

³⁷ See, among others, Human Rights Committee, General Comment 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, para. 15 (“Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights States Parties must

Amnesty International recommends that the General Comment sets out clearly that this entails a positive duty of States Parties to: investigate violations of the right to life; prosecute those suspected of committing crimes under domestic or international law; provide full reparation to victims; and prevent similar violations in the future.

1. DUTY TO INVESTIGATE SUSPECTED VIOLATIONS OF THE RIGHT TO LIFE AND TO PROSECUTE THOSE SUSPECTED OF COMMITTING CRIMES UNDER DOMESTIC OR INTERNATIONAL LAW

In General Comment No. 31, the Committee emphasized the requirement “to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies”, and that “[a] failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.”³⁸ It continued that, where investigations reveal violations of certain Covenant rights, “States Parties must ensure that those responsible are brought to justice... These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as [...] summary and arbitrary killing (article 6).”³⁹ The Committee’s jurisprudence also reflects the position that criminal investigation and consequential prosecution are necessary remedies for violations of human rights such as those protected by Article 6.⁴⁰ It has applied these principles to killings by non-state actors as well as by state actors.⁴¹ The duty to investigate and prosecute suspected violations of the right to life is further reflected in the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions,⁴² and the case law of regional courts.⁴³

In addition to setting out these general obligations, the General Comment provides an opportunity to provide detailed guidance to States to ensure that investigations and prosecutions relating to suspected violations of the right to life comply fully with their human

ensure that individuals also have accessible and effective remedies to vindicate those rights”); Human Rights Committee, *Al-Rabassi v. Libya*, Communication No. 1860/2009, para. 7.8.

³⁸ Human Rights Committee, General Comment 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, para. 15. See also, Human Rights Committee, *Al-Rabassi v. Libya*, Communication No. 1860/2009, para. 7.8; Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the General Assembly, A/67/275*, para. 105.

³⁹ Human Rights Committee, General Comment 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, para.18.

⁴⁰ See, for example, Human Rights Committee, Communication No. 1436/2005, *Sathasivam v. Sri Lanka*, para. 6.4; Human Rights Committee, *Umetaliev and Tashanbekova v. Kyrgyzstan*, Communication No. 1275/2004, para. 9.2; Human Rights Committee, *Krasovsky v. Belarus*, Communication No. 1820/2008, para. 8.3. In Amnesty International’s view, prosecutions should always be conducted without recourse to the death penalty; see Section III F.

⁴¹ See, for example, Human Rights Committee, *Orly Marcellana and Daniel Gumanoy v. Philippines*, Communication No. 1560/2007, paras 7.3, 7.4.

⁴² UN Economic and Social Council, Resolution 1989/65 of 24 May 1989, E/1989/89, Principles 9-19.

⁴³ See, among others, European Court of Human Rights: *Ognyanova and Choban v. Bulgaria*, Application No. 46317/99, para. 13; *Mladenović v. Serbia*, Application No. 1099/08, para. 51; *Branko Tomašić and Others v. Croatia*, Application No. 46598/06, para. 62; Inter-American Court of Human Rights: *Myrna Mack Chang Case*, Judgment of 25 November 2003, paras 156-157; *Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela*, Judgment of 5 July 2006, para. 66.

rights obligations, as set out in the Committee's jurisprudence, international standards and the jurisprudence of regional human rights courts.

Core elements of a prompt, thorough and effective investigation into suspected violations of the right to life include, among other things: the need for those conducting the investigation to be independent from those who are implicated in the death; that all reasonable steps must be taken to secure evidence concerning the incident, including eye witness testimony and forensic evidence; and the need for an autopsy.⁴⁴ Furthermore, victims and witnesses need to be effectively protected.⁴⁵ The applicable rights during investigations and prosecutions of family members of those killed need to be set out. In particular, they should have access to all information relevant to the investigation; be entitled to present evidence; be involved in the procedure to the extent necessary to safeguard their interests;⁴⁶ and be kept informed of the proceedings and the outcome.⁴⁷ Investigations must be carried out within a reasonable timeframe, and must reach a definitive conclusion.⁴⁸ Specific measures must be taken in relation to cases of *enforced disappearances*, in particular that the authorities investigating enforced disappearances must give the families a timely opportunity to fully contribute their knowledge to the investigation and that information regarding the progress of the investigation must be made promptly accessible to the families.⁴⁹

⁴⁴ Human Rights Committee, *Concluding observations on Israel*, CCPR/C/ISR/CO/3, para. 8; Human Rights Committee, *Durić v. Bosnia and Herzegovina*, Communication No. 1956/2010, para. 9.6; Human Rights Committee, *Olmedo v. Paraguay*, Communication No. 1828/2008, para. 7.5; Human Rights Committee, *Eshonov v. Uzbekistan*, Communication No. 1225/2003, para. 9.6. See also, Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Principles 9-17; Special Rapporteur on extrajudicial, summary or arbitrary executions, *Handbook*, Chapter 5: Investigation and Prosecution of Killings, <http://www.extrajudicialexecutions.org/application/media/Handbook%20Chapter%205%20Investigation%20and%20Prosecution%20of%20Killings.pdf> (accessed 10 June 2015); European Court of Human Rights, *Slimani v. France*, Application No 57671/00, para. 32.

⁴⁵ Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Principle 15; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the UN General Assembly on 29 November 1985, Principle 6(d); Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the General Assembly*, A/63/313, paras 12-47.

⁴⁶ Human Rights Committee, *Eshonov v. Uzbekistan*, Communication No. 1225/2003, para. 9.6. See also, European Court of Human Right, *Koku v. Turkey*, Application No. [27305/95](#), para. 158; European Court of Human Right, *Slimani v. France*, Application No. 57671/00, para. 47.

⁴⁷ See also, Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Principle 16; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Principle 6(a).

⁴⁸ Human Rights Committee, *Olmedo v. Paraguay*, Communication No. 1828/2008, para. 7.5.

⁴⁹ Human Rights Committee, *Prutina and others v. Bosnia and Herzegovina*, Communications Nos. 1917/2009, 1918/2009, 1925/2009 and 1953/2010, para. 9.6; Human Rights Committee, *Durić v. Bosnia and Herzegovina*, Communication No. 1956/2010, para. 9.6; Human Rights Committee, Communication No. 1970/2010, *Emina Kožljak and Sinan Kožljak v. Bosnia and Herzegovina*, para. 9.6; Human Rights Committee, *Krasovsky v. Belarus*, Communication No. 1820/2008, para. 8.3. The Committee has found in a number of cases that the anguish and distress caused to the family of a disappeared person by the states' failure to investigate can result in a violation of Article 7 of the ICCPR; see for example Human Rights Committee, *Amirov v. Russian Federation*, Communication No. 1447/2006, para. 11.7. See also Committee on Enforced Disappearances, *Report on its eighth session*,

Amnesty International recommends that the General Comment includes detailed guidance on how States Parties are to implement the duty to investigate and prosecute suspected violations of the right to life.

2. DUTY TO PROVIDE FULL REPARATION TO VICTIMS AND PREVENT SIMILAR VIOLATIONS IN THE FUTURE

In addition, the Committee in General Comment No. 31 set out the general obligation of states to make reparation to individuals whose rights under the Covenant have been violated, which entails appropriate compensation, and noted that, where appropriate, reparation can also involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials and guarantees of non-repetition.⁵⁰ In cases involving violations of Article 6, the Committee has concluded that, in accordance with Article 2(3), the State is under an obligation to provide “full reparation”, including appropriate compensation⁵¹ and satisfaction.⁵² The Committee has also regularly found that the State Party is under an obligation to prevent similar violations in the future, requiring measures of guarantees of non-repetition.⁵³ The right to reparation for violations of the right to life, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, is also reflected in other international standards.⁵⁴ Guarantees of non-repetition should include a range of measures tailored to address the failings of the state in each situation. This may include review of procedures, training, equipment, and supervision and control of state actors. Loss of life resulting from the failure of the State to take such measures effectively in response to violations of Article 6 must be considered an arbitrary deprivation of life.

As with the duty to investigate and prosecute suspected violations of the right to life, the General Comment provides an opportunity to provide specific guidelines to States Parties to ensure that the procedures and measures taken to provide full reparation to victims of violations of the right to life comply with their human rights obligations. In particular,

http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/1_Global/INT_CED_SED_8_23242_E.pdf (accessed 11 June 2015), Annex VI, para. 3. See also Section III C.

⁵⁰ Human Rights Committee, General Comment 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, para. 16 (“Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy ... is not discharged.”).

⁵¹ See for example, Human Rights Committee, *Turdukan Zhumbaeva v. Kyrgyzstan*, Communication No. 1756/2008, para. 10.

⁵² Human Rights Committee, *Kedar Chaulagain v. Nepal*, Communication No. 2018/2010, para. 13.

⁵³ See for example, Human Rights Committee, *Turdukan Zhumbaeva v. Kyrgyzstan*, Communication No. 1756/2008, para. 10; Human Rights Committee, *Kedar Chaulagain v. Nepal*, Communication No. 2018/2010, para. 13. See also, Human Rights Committee, General Comment 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, para. 15 (“Cessation of an ongoing violation is an essential element of the right to an effective remedy.”). Cessation of an ongoing violation can be seen as a form of prevention, i.e., a way to prevent the continuance of this violation.

⁵⁴ See, among others, Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Principle 20; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Principle 4; Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Principle 3(d).

international standards have affirmed that the victims of violations of the right to life who are entitled to reparation, include the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.⁵⁵ Furthermore, the Committee has highlighted common obstacles to reparation for violations of the right to life and emphasised the obligation of States to remove these to ensure that the right to a remedy is effective, including, for example, that relatives of victims of enforced disappearances should not be required by law to obtain certification of the death of the victim as a condition for obtaining social benefits and measures of reparation.⁵⁶

The General Comment should set out that full reparation for violations of the right to life should include, as appropriate, all recognized forms of reparation, including: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, illustrating specific measures that may be appropriate, taking into account the specific harm caused in each case, for each form. For example, regional courts have stated, in relation to deaths involving torture and other ill-treatment or resulting from extrajudicial executions and enforced disappearance, that as a measure of satisfaction, families have a specific right to the verification of the facts and full and public disclosure of the truth relating to a violation, including the fate or whereabouts of the missing.⁵⁷

Amnesty International recommends that the General Comment includes detailed guidance on how States Parties are to implement the duty to provide full reparation to victims of violations of the right to life, and to secure the right to the truth.

E. EXTRA-TERRITORIAL APPLICATION

In General Comment No. 31, the Committee affirmed that States Parties must ensure Covenant rights to “anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party.”⁵⁸ The Committee has further stated “that

⁵⁵ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Principle 2; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Principle 8.

⁵⁶ Human Rights Committee, *Tija Hero, Ermina Hero, Armin Hero v. Bosnia and Herzegovina*, Communication No. 1966/2010, para. 11; Human Rights Committee, *Prutina and others v. Bosnia and Herzegovina*, Communications Nos. 1917/2009, 1918/2009, 1925/2009 and 1953/2010, para. 9.6.

⁵⁷ See, among others, European Court of Human Right, *Cyprus v. Turkey*, Application no. [25781/94](#), (Judgment), para. 136 (“[...] the Court concludes that there has been a continuing violation of Article 2 on account of the failure of the authorities of the respondent State to conduct an effective investigation aimed at clarifying the whereabouts and fate of Greek-Cypriot missing persons who disappeared in life-threatening circumstances.”); Inter-American Court of Human Rights, *Barrios Altos v. Peru*, Judgment of 14 March 2001, para. 45-49 (“[...] the right to the truth is subsumed in the right of the victim or his next of kin to obtain clarification of the events that violated human rights and the corresponding responsibilities from the competent organs of the State [...]”. See also, Article 24(2) of the International Convention for the Protection of All Persons from Enforced Disappearance; Committee against Torture, General Comment 3, *Implementation of article 14 by States parties*, CAT/C/GC/3, para. 16; Working Group on Enforced or Involuntary Disappearances, *General Comment on the Right to the Truth in Relation to Enforced Disappearances*, A/HRC/16/48. See also Sections III B and C.

⁵⁸ Human Rights Committee, General Comment 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, para. 10. See also, Human Rights Committee, General Comment 35, *Article 9 (Liberty and security of person)*, CCPR/C/GC/35, para. 63;

a State party may be responsible for extra-territorial violations of the Covenant, if it is a link in the causal chain that would make possible violations in another jurisdiction. Thus, the risk of an extra-territorial violation must be a necessary and foreseeable consequence and must be judged on the knowledge the State party had at the time [...]."⁵⁹ The Committee's jurisprudence indicates that the State's duties under the Covenant apply when the exercise of the rights of the person concerned are within its power or effective control.

The Committee has recognized, first, that the Covenant applies extra-territorially to situations in which a State exercises *physical custody over a person or effective control over the territory* on which they are located.⁶⁰ The Committee's interpretation of the Covenant on this point is consistent with that taken by other UN human rights Treaty Bodies,⁶¹ UN Special Procedures,⁶² the International Court of Justice⁶³ and regional human rights bodies.⁶⁴

However, beyond this situation the extra-territorial scope of the Covenant, including the extra-

Human Rights Committee, *Concluding observations on Israel*, CCPR/C/ISR/CO/3, para. 5.

⁵⁹ Human Rights Committee, *Munaf v. Romania*, Communication No. 1539/2006, para. 14.2.

⁶⁰ Human Rights Committee, *Concluding observations on the United Kingdom*, CCPR/C/GBR/CO/6, para. 14; Human Rights Committee, *Concluding observations on the United States of America*, CCPR/C/USA/CO/3/Rev.1, para. 10; Human Rights Committee, *Concluding observations on Croatia*, CCPR/C/79/Add.15, para. 7. With regard to situations of arrest on foreign soil and subsequent transfer to the state's territory, see Human Rights Committee, *Domukovsky, Tsiklauri, Gelbakhiani, Dokvadze v. Georgia*, Communications Nos. 623/1995, 624/1995, 626/1995, 627/1995, para. 18.2; Human Rights Committee, *Celiberti de Casariego v. Uruguay*, Communication No. 56/1979, paras 10.1 to 11; Human Rights Committee, *Sergio Euben López Burgos v. Uruguay*, Communication No. R.12/52, paras 12.1 to 13.

⁶¹ See, among others, Committee against Torture, General Comment 2, *Implementation of article 2 by States parties*, CAT/C/GC/2, paras 7, 16; Committee against Torture, *Concluding observations on the United Kingdom*, CAT/C/CR/33/3, para. 4(b); Committee against Torture, *Concluding observations on the United States of America*, CAT/C/USA/CO/2, para. 15; Committee against Torture, *Concluding observations on Israel*, CAT/C/ISR/CO/4, para. 11; Committee against Torture, *JHA v. Spain*, Communication 323/07, para. 8.2.

⁶² Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Special Rapporteur on the independence of judges and lawyers, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Special Rapporteur on freedom of religion or belief, Special Rapporteur on the rights of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Report to the UN Commission on Human Rights, Situation of detainees at Guantanamo Bay*, E/CN.4/2006/120, para. 11.

⁶³ International Court of Justice: *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories*, Advisory Opinion, I.C.J. Reports 2004, para. 111; *Armed Activities in the territory of the Congo (Democratic Republic of Congo v. Uganda)*, I.C.J. Reports 2005, 168, paras 175, 220; *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation)*, Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008, 353, para. 109.

⁶⁴ See, for example, European Court of Human Rights, *Al-Skeini and others v. The United Kingdom*, Application 55721/07, paras. 133-7; European Court of Human Rights, *Al-Saadoon and Mufdhi v. United Kingdom*, Application No. 61498/08 (dec.), para. 88; European Court of Human Rights, *Ivantoc and others v. Moldova and Russia*, Application No. 23687/05, paras 116 to 120; European Court of Human Rights, *Ilaşcu and others v. Russia and Moldova*, Application No. 48787/99, paras 314 to 316; European Court of Human Rights, *Cyprus v. Turkey*, Application No. 25781/94 (judgment), para. 77; European Court of Human Rights, *Loizidou v. Turkey (Merits)*, Application No. 15318/89, para. 52.

territorial application of Article 6, has further been recognized by the Committee for cases in which a State exercises *control over the exercise of the right of a person* outside of its borders, such as: targeted killings in extra-territorial counter-terrorism operations using unmanned aerial vehicles in another country over which that State did not exercise effective control;⁶⁵ backing of military factions in another country who were carrying out human rights abuses;⁶⁶ pronouncement of a death sentence on a non-national resident in another country, and general appeals made or condoned by that country for the execution of this sentence outside of its territory;⁶⁷ and failure to provide effective remedies to people abroad who have been victims of activities of business enterprises domiciled in that State's territory and/or its jurisdiction.⁶⁸ The Committee's interpretation on the extra-territorial application of the Covenant *beyond* cases of effective control over territory or physical custody over persons is likewise consistent with that taken by other UN human rights Treaty Bodies,⁶⁹ UN Special Procedures,⁷⁰ the International Court of Justice⁷¹ and regional human rights bodies.⁷² Furthermore, the Committee has stated that it would be "unconscionable" to interpret the Covenant in a manner that would permit a State Party to perpetrate violations of the Covenant on the territory of another State that it could not perpetrate on its own.⁷³

⁶⁵ Human Rights Committee, *Concluding Observations on the United States of America*, CCPR/C/USA/CO/4, para. 9; the Committee also applied the Covenant to the country's surveillance of communications "both within and outside the United States", para. 22. See also Section III D 2.

⁶⁶ Human Rights Committee, *Concluding observations on Croatia*, CCPR/C/79/Add.15, para. 7; Human Rights Committee, *Concluding observations on Yugoslavia*, CCPR/C/79/Add.16, paras 5, 8.

⁶⁷ Human Rights Committee, *Concluding Observations on Iran*, CCPR/C/79/Add.25, para. 9.

⁶⁸ Human Rights Committee, *Concluding Observations on Germany*, CCPR/C/DEU/CO/6, para. 16. Further examples include: Discrimination in pension rights of non-nationals resident in another country who were former members of its army (Human Rights Committee, *Gueye et al v. France*, Communication 196/1985, CCPR/C/35/D/196/1985, para. 9.4); and trial of a person who was not present in the country (Human Rights Committee, *Mbenge v. Zaire*, Communication 16/1977, CCPR/C/OP/2, para. 21).

⁶⁹ See, among others, CERD Committee, *Concluding observations on the United States of America*, CERD/C/USA/CO/6, para. 30; CEDAW Committee, General Recommendation 28 on the Core Obligations of States Parties under Article 2, CEDAW/C/GC/28, para. 12: "States parties are responsible for all their actions affecting human rights, regardless of whether the affected persons are in their territory."

⁷⁰ Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council: Study on targeted killings*, A/HRC/14/24/Add.6, paras 86, 93.

⁷¹ International Court of Justice, *Armed Activities in the territory of the Congo (Democratic Republic of Congo v. Uganda)*, I.C.J. Reports 2005, 168, para. 220; *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation)*, Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008, 353, para. 109.

⁷² See, for example, Inter-American Commission on Human Rights, *Armando Alejandro Jr. and Others v. Cuba ('Brothers to the Rescue')*, (11.589), Report 86/99, 29 September 1999, para. 23; African Commission on Human and Peoples' Rights, *Association Pour la Sauvegarde de la Paix au Burundi v. Tanzania, Kenya, Uganda, Rwanda, Zaire and Zambia*, Communication No. 157/96, para. 75. In some cases, the European Court of Human Rights has applied the European Convention to situations where a state harmed the right to life of people outside its borders without control over territory or physical custody over them, for example: *Pad and others v. Turkey*, Application No. 60167/00, paras 53-55; *Drozd and Janousek v. France and Spain*, Application No. 12747/87, para. 91; *Solomou and others v. Turkey*, Application No. 36832/97, paras 50-51.

⁷³ Human Rights Committee, *Sergio Euben López Burgos v. Uruguay*, Communication No. R.12/52, para. 12.3.

The Committee has added that the States' obligations under Article 2(1) of the ICCPR "also applies to those within the power or effective control of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State Party assigned to an international peace-keeping or peace-enforcement operation".⁷⁴

Amnesty recommends that the General Comment clarifies that States Parties have the duty to respect and ensure the right to life of those persons whose exercise of the right to life is within the power or control of that State Party, whether the persons are within or outside of its territory. This applies, but is not limited to, situations in which a State exercises physical custody over a person or effective control over the territory on which they are located. This duty also arises when a State controls circumstances giving rise to the risk of human rights abuse, and in regard to the State's regulation of non-state actors within its jurisdiction that might foreseeably carry out or contribute to interferences with the right to life in other countries.⁷⁵

F. APPLICATION TO NON-STATE AND MULTINATIONAL ACTORS

Following States Parties' positive obligation under Article 2(1) of the ICCPR to ensure to everyone within their jurisdiction the rights recognized in the Covenant, States Parties also have a duty to protect the right to life from interference by private persons or entities, including business enterprises.⁷⁶ The Committee in its General Comment No. 31 has elaborated on this duty, clarifying that a failure to ensure Covenant rights could take the form of "permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused" by such actors.⁷⁷ The general obligation of

⁷⁴ Human Rights Committee, General Comment 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, para. 10. See also, Human Rights Committee, *Concluding Observations on Belgium*, CCPR/C/79/Add.99, para. 14; Human Rights Committee, *Concluding Observations on Netherlands*, CCPR/CO/72/NET, para. 8; Committee against Torture, General Comment 2, *Implementation of article 2 by States parties*, CAT/C/GC/2, para. 16; Committee against Torture, *Concluding observations on the United Kingdom*, CAT/C/CR/33/3, para. 4(b); European Court of Human Rights (Grand Chamber), *Jaloud v. Netherlands*, Application No. 47708/08, paras 151, 152. On the issue of jurisdiction with regard to detention conducted by a national contingent of a multinational force, see, among others, Human Rights Committee, *Concluding Observations on the United Kingdom of Great Britain and Northern Ireland*, CCPR/C/GBR/CO/6, para. 14; European Court of Human Rights, *Al-Jedda v. United Kingdom*, Application No. 27021/08, paras 84-85. See also, International Law Commission, *Draft Articles on Responsibility of International Organizations with Commentaries*, in: Report of the International Law Commission on the Work of its 63rd session (2011), A/66/10, 2011, Article 7 (and related commentary, including p. 22, para. 8).

⁷⁵ On the duties of a State which provides financial or other substantial support to business enterprises carrying out commercial activities abroad, see also, Committee on Economic, Social and Cultural Rights, *Concluding Observations on Germany*, E/C.12/DEU/CO/5, para. 10 ("The Committee expresses concern that the State party's policy-making process in, as well as its support to, investments by German companies abroad does not give due consideration to human rights.").

⁷⁶ Human Rights Committee, General Comment 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, para. 8.

⁷⁷ Human Rights Committee, General Comment 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, para. 8. With regard to States' positive obligations under the European Convention on Human Rights, see, among others, European Court of Human Rights, *Cyprus v. Turkey*, Application No. 25781/94, para. 81 ("[...] the acquiescence or

states to provide effective remedies under Article 2(3) of the ICCPR is likewise critical, including the state obligation to put an end to an ongoing abuse by private individuals or entities.⁷⁸ Article 6(1) of the ICCPR states explicitly that the right to life must be “protected by law”. The horizontal effect of the right to life has been specifically recognized by the Committee and regional bodies.⁷⁹

Amnesty International recommends that the General Comment reaffirms the State duty to protect the right to life against acts inflicted by third parties, and elaborates on the type of measures States must take to ensure protection against abuses of the right to life by third parties, including by private individuals and entities such as companies, as well as foreign states.

In particular, Amnesty International submits that this General Comment is an opportunity to specify that the duty to protect includes taking measures, including legislative measures, to require business enterprises to put in place due diligence processes to ensure they do not cause or contribute to abuses to the right to life throughout their global operations. Adverse human rights impacts by corporations occur not only through their direct conduct, but also indirectly, for example, through abuses of the right in a company's supply chain or in the context of government security operations requested by the company.⁸⁰ Widely accepted standards of corporate behaviour are included in the UN Guiding Principles on Business and

connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage that State's responsibility under the Convention. Any different conclusion would be at variance with the obligation contained in Article 1 of the Convention”). See also, Inter-American Court of Human Rights, *Velasquez Rodriguez v. Honduras*, Judgment of 29 July 1988 (merits), para. 172 (“[...] lack of due diligence to prevent the violation or to respond to it [...]”).

⁷⁸ Human Rights Committee, General Comment 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, para. 8 (“States are reminded of the interrelationship between the positive obligations imposed under article 2 and the need to provide effective remedies in the event of breach under article 2, paragraph 3”) and para. 15 (“Cessation of an ongoing violation is an essential element of the right to an effective remedy.”). See also Section II D.

⁷⁹ See, among others, Human Rights Committee, General Comment 6, *Article 6 (Right to life)*, para. 3 (“The Committee considers that State Parties should take measures ... to prevent and punish deprivation of life by criminal acts...”); Human Rights Committee, *Choudhary v. Canada*, Communication No. 1898/2009, para. 9.8; Human Rights Committee, *Peiris v. Sri Lanka*, Communication No. 1862/09, para. 7.2; Human Rights Committee, *Krasovsky v. Belarus*, Communication No. 1820/2008, para. 8.3; Human Rights Committee, *Novakovic v. Serbia*, Communication No. 1556/2007, para. 7.3; Human Rights Committee, *Marcellena and Gumanoy v. Philippines*, Communication No. 1560/2007, paras 7.2-7.4; Human Rights Committee, *Concluding observations on Yemen*, CCPR/C/YEM/CO/5, para. 24. See also, among others, European Court of Human Rights (Grand Chamber), *Osman v. United Kingdom*, Application No. 87/1997/871/1083, para. 116; European Court of Human Rights, *Cyprus v. Turkey*, Application No. 25781/94, para. 131; European Court of Human Rights, *Rantsev v. Cyprus and Russia*, Application No. 25965/04, para. 218; European Court of Human Rights, *Medova v. Russia*, Application No. [25385/04](#), para. 95; European Court of Human Rights, *Opuz v. Turkey*, Application No. [33401/02](#), para. 128; Inter-American Court of Human Rights, *Velasquez Rodriguez v. Honduras*, Judgment of 29 July 1988 (merits), para. 172; Inter-American Court of Human Rights, *Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela*, Judgment of 5 July 2006, para. 66.

⁸⁰ See for example, Amnesty International, [Myanmar: Open for business? Corporate crime and abuses at Myanmar copper mine](#) (Index: ASA 16/0003/2015); Amnesty International, [The dark side of migration: Spotlight on Qatar's construction sector ahead of the World Cup](#) (Index: MDE 22/010/2013).

Human Rights⁸¹ and the OECD Guidelines for Multinational Enterprises.⁸²

Amnesty International recommends that the General Comment makes clear that business enterprises should comply with all applicable national laws designed to protect the right to life⁸³ and have a responsibility to respect the right to life wherever in the world they operate, regardless of the state's ability or willingness to do so.⁸⁴

In regard to international organisations, the International Law Commission's adopted Draft Articles on the responsibility of international organizations stipulate that "[a] State member of an international organization incurs international responsibility if, by taking advantage of the fact that the organization has competence in relation to the subject-matter of one of the State's international obligations, it circumvents that obligation by causing the organization to commit an act that, if committed by the State, would have constituted a breach of the obligation," whether or not the act is internationally wrongful for the international organization.⁸⁵ The Committee on Economic, Social and Cultural Rights (ESCR Committee) has repeatedly stated that States Parties have an obligation to ensure that their actions as members of international organizations take due account of the rights in the Covenant on Economic, Social and Cultural Rights.⁸⁶ In several Concluding Observations on periodic reports, the ESCR Committee has asked the State Party "to do all it can to ensure that the policies and decisions of those organizations are in conformity with the obligations of States parties under [that] Covenant [...]"⁸⁷

Amnesty recommends that the General Comment specifies that States Parties to the ICCPR, acting as members of international organizations, have an obligation to take whatever measures they can to ensure that the policies and decisions of those organizations are in conformity with the States' obligations under Article 6 of the Covenant.

⁸¹ *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, A/HRC/17/31.

⁸² OECD Guidelines for Multinational Enterprises (2011), <http://mneguidelines.oecd.org/text/> (accessed 10 June 2015).

⁸³ UN Guiding Principles on Business and Human Rights, General Principles, page 1.

⁸⁴ UN Guiding Principles on Business and Human Rights, Principle 11, and Commentary to Principle 11; OECD Guidelines, Chapter IV on Human Rights, Commentary on Human Rights, para. 37.

⁸⁵ International Law Commission, *Draft Articles on Responsibility of International Organizations with Commentaries*, in: Report of the International Law Commission on the Work of its 63rd session (2011), A/66/10, Article 61 (and related commentary, paras 3-5).

⁸⁶ Committee on Economic, Social and Cultural Rights: General Comment 13, *The Right to Education*, E/C.12/1999/10, para. 56; General Comment 14, *The right to the highest attainable standard of health*, E/C.12/2000/4, para. 39; General Comment 15, *The Right to Water*, E/C.12/2002/11, para. 36; see also, Committee on Economic, Social and Cultural Rights, *Guidelines on treaty-specific documents to be submitted by States Parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, E/C.12/2008/2, para. 3 (c).

⁸⁷ Committee on Economic, Social and Cultural Rights: *Concluding observations on Ireland*, E/C.12/1/Add.77, para. 37. See also, *Concluding observations on Italy*, E/C.12/1/Add.43, para. 20; *Concluding observations on Germany*, E/C.12/1/Add.68 para. 31.

G. APPLICABILITY OF THE RIGHT TO LIFE PRENATALLY

International and regional human rights treaty provisions protecting the right to life, and the official bodies that interpret articles protecting life and other human rights guarantees, do not extend such protections prenatally.⁸⁸ No international human rights body has ever recognized the foetus as a subject of protection under the right to life of this or other provisions of international human rights treaties, including the Convention on the Rights of the Child.⁸⁹ The Covenant likewise rejects the proposition that the protection of the right to life, in Article 6(1), applies before birth.⁹⁰ Thus, international human rights standards are clear that the right to life protections apply only after birth.⁹¹

This is evidenced also in the concluding observations and jurisprudence of the Committee on abortion. The Committee has repeatedly emphasized the threat to women's and girls' lives posed by prohibitions on abortion that cause women to seek unsafe abortions, and called upon States to liberalize laws on abortion,⁹² a position that would be problematic if the

⁸⁸ The Inter-American Convention on Human Rights, which is the only human rights treaty to have a provision which protects life prenatally, has been interpreted by the Inter-American Commission not to confer an equivalent right to life on the foetus or require invalidation of permissive abortion laws; see Inter-American Commission on Human Rights, *Baby Boy* (case 2141), Resolution 23/81, 6 March 1981, 25/OEA/ser.L./II.54, Doc. 9 Rev.1.

⁸⁹ See R. Copelon et. al., "Human Rights Being at Birth: International Law and the Claim of Fetal Rights", *Reproductive Health Matters* (2005), vol. 13, issue 26, pp. 120-129. An argument to the contrary is erroneously built upon Paragraph 9 of the Convention on the Rights of the Child Preamble, which provides: "Bearing in mind that, as indicated in the Declaration of the Rights of the Child, 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth'." The history of negotiations by States on the treaty clarify that these safeguards "before birth" must not affect a woman's choice to terminate an unwanted pregnancy. As originally drafted, the Preamble did not contain the reference to protection "before as well as after birth," although this language had been used in the earlier Declaration on the Rights of the Child. The Holy See led a proposal to add this phrase, at the same time as it "stated that the purpose of the amendment was not to preclude the possibility of an abortion" (UN Commission on Human Rights, *Question of a Convention on the Rights of a Child: Report of the Working Group*, 36th Session, E/CN.4/L/1542 (1980)). Although the words "before or after birth" were accepted, their limited purpose was reinforced by the statement that "the Working Group does not intend to prejudice the interpretation of Article 1 or any other provision of the Convention by States Parties." (UN Commission on Human Rights, *Report of the Working Group on a Draft Convention on the Rights of the Child*, 45th Session, E/CN.4/1989/48, p. 10).

⁹⁰ The history of the negotiations on the Covenant indicates that an amendment was proposed and rejected that stated: "the right to life is inherent in the human person from the moment of conception, this right shall be protected by law." UN GAOR Annex, 12th Session, Agenda Item 33, at 96, A/C.3/L.654; UN GAOR, 12th Session, Agenda Item 33, at 113, A/3764, 1957. The Commission ultimately voted to adopt Article 6, which has no reference to conception, by a vote of 55 to nil, with 17 abstentions.

⁹¹ International standards, do however support numerous state measures that support the development of prenatal life through the protection of the pregnant woman or girl's human rights, but not through prenatal right to life protections. See, for example, Committee on Economic, Social and Cultural Rights, General Comment 14, *The right to the highest attainable standard of health*, E/C.12/2000/4, para. 14.

⁹² Human Rights Committee, *Concluding Observations on Chile*, CCPR/C/79/Add.104, para. 15; Human Rights Committee, *Concluding Observations on Argentina*, CCPR/CO/70/ARG, para. 14; Human Rights Committee, *Concluding Observations on Costa Rica*, CCPR/C/79/Add.107, para. 11; Human Rights Committee, *Concluding Observations on Peru*, CCPR/C/PER/CO/5, para. 14; Human Rights Committee, *Concluding Observations on United Republic of Tanzania*, CCPR/C/79/Add.97, para. 15; Human Rights

Covenant's protection of the right to life extended before birth.⁹³ In addition, in its General Comment No. 28, the authoritative interpretation of the principle of equality protected by the Covenant, the Committee has also emphasized the States' responsibility to reduce maternal mortality from clandestine abortions and recognized that restrictive abortion laws could violate women and girls' right to life.⁹⁴ Notably, the Committee has also criticized a State Party's Constitution which grants the right to life of the "unborn" on an equal footing with a pregnant woman's right to life, recognizing the impact this has on women's access to abortion and calling for reform of the Constitutional provision and liberalization of the abortion law.⁹⁵ In this regard, Amnesty International notes that the use of the language of "unborn" currently contained in sub-paragraph A. 5 (c) of the *issues for consideration* for the proposed General Comment⁹⁶ conflicts with both the Committee's and other treaty bodies prior and consistent position rejecting the right to life prenatally.

Recognition of the right to life protections to apply prenatally would inevitably lead to conflicts between a pregnant woman or girl and her foetus. A position such as this would not just be problematic in the context of abortion, but also in other maternal health and general health care services as required.⁹⁷ UN bodies have, however, recognized that prenatal interests can be protected through promoting the health and well-being of pregnant women, through adequate maternal health care, information and goods and services.⁹⁸ The Committee against Torture has found that the denial of safe and legal abortion services for rape victims constitutes a breach of victims' right to be free from cruel, inhuman and degrading treatment under Article 16, as well as their right to redress and reparation under Article 14, of the Convention against Torture.⁹⁹

Amnesty International recommends that the General Comment makes clear that the right to life protection under the Covenant extends only after birth; and that, since the right to life

Committee, *Concluding Observations on Venezuela*, CCPR/CO/71/VEN, para. 19; Human Rights Committee, *Concluding Observations on Poland*, CCPR/CO/82/POL, para. 8; Human Rights Committee, *Concluding Observations on Bolivia*, CCPR/C/79/Add.74, para. 22.

⁹³ Human Rights Committee, *Concluding Observations on Colombia*, CCPR/C/79/Add.76, para. 24; Human Rights Committee, *Concluding Observations on Ecuador*, CCPR/C/79/Add.92, para. 11; Human Rights Committee, *Concluding Observations on Mongolia*, CCPR/C/79/Add.120, para. 8(b); Human Rights Committee, *Concluding Observations on Poland*, CCPR/C/79/Add.110, para. 11; Human Rights Committee, *Concluding Observations on Senegal*, CCPR/C/79/Add.82, para. 12.

⁹⁴ Human Rights Committee, General Comment 28, *Article 3 (The equality of rights between men and women)*, CCPR/C/21/Rev.1/Add.10, paras 10, 20. See also, Human Rights Committee, *Karen Noelia Llantoy Huamán v. Peru*, Communication No. 1153/2003, in which the Committee found a violation of Article 7 of the ICCPR in the refusal of medical authorities to carry out a therapeutic abortion.

⁹⁵ Human Rights Committee, *Concluding observations on Ireland*, CCPR/C/IRL/CO/4, para. 9.

⁹⁶ Human Rights Committee, *Draft general comment No. 36 - Article 6: Right to life*, [CCPR/C/GC/R.36](#), 1 April 2015.

⁹⁷ Amnesty International, [She is not a criminal: the impact of Ireland's restrictive abortion laws](#) (Index: EUR 29/1597/2015).

⁹⁸ See, for example, Committee on Economic, Social and Cultural Rights, General Comment 14, *The right to the highest attainable standard of health*, E/C.12/2000/4, para. 14.

⁹⁹ See, for example, Committee against Torture, *Concluding observations on Peru*, CAT/C/PER/CO/5-6, para 15.

does not extend prenatally, the Committee reaffirms its long held position that abortion should not be listed as a possible exception to the duty to protect life by law.

H. DEROGATIONS AND RESERVATIONS

The right to life, in its entirety, is a non-derogable right under international law.¹⁰⁰ The Committee has furthermore recognized that the prohibition of arbitrary deprivation of life presents a norm of customary international law,¹⁰¹ even a peremptory norm of international law (*jus cogens*).¹⁰² Consequently, the obligations under Article 6 may never be restricted.¹⁰³

It would be contrary to the object and purpose of the Covenant if non-derogable rights and guarantees, including the ones similar to those available under customary international humanitarian law, could be made subject to reservations. Any deprivation of life that is not in conformity with other provisions of the Covenant, including those enumerated in Articles 6(2-5), 7 and 14, amounts to an arbitrary deprivation of life.¹⁰⁴ But as the prohibition of arbitrary deprivation of life is non-derogable and a peremptory norm of international law, this means that any of the stipulations of Article 6(2) to 6(5) must not be open to reservations either, as otherwise the level of protection afforded would sink below that guaranteed by the protection from arbitrariness.

The fact that no reservation should be allowed to any part of Article 6 of the ICCPR is also

¹⁰⁰ Article 4(2) of the ICCPR; Human Rights Committee, General Comment 6, *Article 6 (Right to life)*, para. 1; Human Rights Committee, General Comment 29, *States of emergency (article 4)*, CCPR/C/21/Rev.1/Add.11, paras 7, 15; Human Rights Committee, General Comment 32, *Article 14: Right to equality before courts and tribunals and to a fair trial*, CCPR/C/GC/32, para. 6. See also, Article 27(2) of the American Convention; Article 4(2) of the Arab Charter excludes the right to life from derogations (Article 5), but not Article 6 and 7 with regard to the death penalty; Article 15(2) of the European Convention allows derogations from the right to life only "in respect of deaths resulting from lawful acts of war".

¹⁰¹ Human Rights Committee, General Comment 24, *Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant*, CCPR/C/21/Rev.1/Add.6, para. 8. See also, Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the General Assembly, A/67/275*, para. 11.

¹⁰² Human Rights Committee, General Comment 24, *Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant*, CCPR/C/21/Rev.1/Add.6, para. 10.

¹⁰³ For example, the Committee has stated that proceedings in capital cases must conform to the provisions of the ICCPR, including Articles 14 and 15, also during states of emergency; Human Rights Committee, General Comment 29, *States of emergency (article 4)*, CCPR/C/21/Rev.1/Add.11, paras 15, 16. See also, Inter-American Court of Human Rights, *Case of the Caracazo v. Venezuela*, Judgment of 29 August 2002, para. 127: "The pretext of maintenance of public security cannot be invoked to violate the right to life." See also, Inter-American Commission on Human Rights, [Report on Terrorism and Human Rights](#), OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr. (2002), Section III, para. 94.

¹⁰⁴ Human Rights Committee, General Comment 6, *Article 6 (Right to life)*, para. 7; Human Rights Committee, General Comment 32, *Article 14: Right to equality before courts and tribunals and to a fair trial*, CCPR/C/GC/32, paras 6, 59. See also, Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the General Assembly, A/67/275*, paras 13, 25; Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council, A/HRC/4/20*, para. 55, n. 140.

borne out by States Parties' practice. Most of the reservations made in the past have concerned the imposition of death sentences for crimes committed by persons below 18 years of age (Article 6(5)).¹⁰⁵ However, these reservations have by now either been withdrawn, or have become obsolete for other reasons.¹⁰⁶ The Committee itself has recommended the withdrawal of such reservations.¹⁰⁷ The Committee and the Inter-American Commission on Human Rights consider the prohibition on executing children to be a peremptory norm of customary international law.¹⁰⁸ One purpose of reservations is to encourage States to accept the *generality* of obligations under a treaty, even if they may have difficulties, and need for adaption of domestic law, in guaranteeing *all* the rights contained in the instrument.¹⁰⁹ However, if States Parties are already under a duty to observe a specific rule under domestic or other international law, the *rationale* justifying reservations is not applicable anymore. Therefore it appears that subsequent State practice and the development of international law since the adoption of the Covenant recognize that no part of Article 6 should be open to reservations. In light of the fundamental nature of the right to life, and the respective minimum guarantees listed in Article 6 of the ICCPR, Amnesty International therefore submits that any reservations to Article 6 would be against its object and purpose.¹¹⁰

Amnesty International recommends that the General Comment reaffirms that Article 6, in its entirety, is non-derogable; and explicitly rejects reservations to the right to life and to the legal and procedural safeguards essential to its protection, including the ones explicitly mentioned in Article 6 of the Covenant.

¹⁰⁵ Norway has withdrawn a reservation formulated in respect of Article 6(4) of the ICCPR.

¹⁰⁶ Withdrawn by Ireland, Pakistan and Thailand ("interpretative declaration"); in the case of the USA (reservation objected to by Belgium, Finland, France, Germany, Netherlands, Norway, Portugal, and Sweden), this reservation has been made redundant by the outlawing of this practice on the domestic level (US Supreme Court, *Roper v. Simmons*, 543 U.S. 551 (2005)).

¹⁰⁷ Human Rights Committee, *Concluding observations on the United States of America*, CCPR/C/USA/CO/3/Rev.1, para. 6.

¹⁰⁸ Human Rights Committee, General Comment 24, *Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant*, CCPR/C/21/Rev.1/Add.6, para. 8; Inter-American Commission on Human Rights, [Michael Domingues v. United States](#) (12.285), Report 62/02, 22 October 2002, paras 84, 85. See also, Article 37(a) of the Convention on the Rights of the Child; Committee on the Rights of the Child, General Comment 10: *Children's rights in juvenile justice*, paras 75, 76; Amnesty International, [The exclusion of child offenders from the death penalty under general international law](#) (Index: ACT/50/004/2003).

¹⁰⁹ Human Rights Committee, General Comment 24, *Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant*, CCPR/C/21/Rev.1/Add.6, para. 4.

¹¹⁰ On the prohibition of the imposition of death sentences after trials that did not fully met the requirements of Article 14 of the ICCPR, see Human Rights Committee, General Comment 32, *Article 14: Right to equality before courts and tribunals and to a fair trial*, CCPR/C/GC/32, para. 59.

III. OBSERVATIONS IN RELATION TO SPECIFIC AREAS OF APPLICATION

A. THE RIGHT TO LIFE IN LAW ENFORCEMENT

The Committee has recognized that the use of force by law enforcement officials that leads to a loss of life is an act of “utmost gravity”.¹¹¹ The Special Rapporteur on extrajudicial, summary or arbitrary executions sees the “protect life principle” as the overarching principle governing the use of (lethal) force in law enforcement.¹¹² In this regard, the UN Basic Principles for the Use of Force and Firearms by Law Enforcement Officials (UN BPUFF) have been seen as central to defining the limits to the use of force, and in particular its Basic Principle No. 9 has been recognized as reflecting binding international law.¹¹³ The Committee, the Human Rights Council, the Special Rapporteur on extrajudicial, summary or arbitrary executions, and regional human rights courts have on various occasions set out the framework, based on the UN Basic Principles, with which governments should align their domestic legislation.

The use of lethal force is allowed only as the absolute last resort when no other means are available to achieve the objective (i.e. to prevent the loss of another life or serious injury).¹¹⁴ Any use of lethal force in situations that do not reach this threshold of danger must be considered disproportionate to the requirements of law enforcement in the circumstances of the case, and is an arbitrary deprivation of life, if resulting in the death of a person.¹¹⁵

In view of the fact that firearms are weapons designed to kill, and of their high potential to cause death,¹¹⁶ any use of a firearm, even without the intention to kill, must be seen as lethal force that is allowed only in defence against an imminent threat of death or serious

¹¹¹ Human Rights Committee, *Suarez de Guerrero v. Colombia*, Communication No. 45/79, para. 13.1; Human Rights Committee, *Umateliev v. Kyrgyzstan*, Communication No. 1275/04, para. 9.5; Human Rights Committee, *Baboeram et al. v. Suriname*, Communications Nos. 146/1983 and 148 to 154/1983, Supp. No. 40 (A/40/40), at 187, para. 14.3.

¹¹² Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the General Assembly, A/66/330*, para. 88: “[...] (b) The starting point is the sanctity of life. International norms in this regard are premised on what has been called the ‘protection of life principle’: the right to life may be limited only in order to protect life.”

¹¹³ Special Rapporteur on extrajudicial, summary or arbitrary executions, *Interim Report to the General Assembly, A/61/311*, para. 35.

¹¹⁴ Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Commission on Human Rights, E/CN.4/2006/53*, para. 48. See also UN BPUFF Basic Principles Nos. 4 and 9.

¹¹⁵ Human Rights Committee, *Suarez de Guerrero v. Colombia*, Communication No. 45/79, para. 13.3; Human Rights Committee, *Concluding observations on Liechtenstein*, CCPR/CO/81/LIE, para. 10.

¹¹⁶ Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council, A/26/36*, para. 70: “All uses of firearms against people should be treated as lethal or potentially lethal.”

injury, or to prevent a crime involving a grave threat to life.¹¹⁷ In particular, the use of firearms must not be allowed for the purpose of protecting property;¹¹⁸ nor in the case of arrest or escape without an assessment that the individual to be arrested or re-captured presents a danger to the lives of other persons.¹¹⁹

Neither may firearms be used as a means of public order management, e.g., for the dispersal of assemblies.¹²⁰ Even if an assembly turns violent, the use of such lethal force must remain restricted to situations of an imminent threat to life or of serious injury, subject to the requirements of necessity and proportionality.¹²¹

State authorities are obliged to provide medical assistance to those injured by the use of force and firearms by law enforcement officials.¹²² A lack of appropriate medical treatment and equipment on the spot, resulting in loss of life, must be considered a violation of the right to life.¹²³

When resorting to lethal force, e.g. by way of firearms, the targeted person must be given a chance of survival. The use of lethal force that is *intended* to cause death (e.g. by intentionally shooting in the head, or multiple shots at the central body mass) may only be permitted in extreme situations, that is, only when the death of the targeted person will enable the saving of another life.¹²⁴ This may only be the case in absolute emergency

¹¹⁷ See UN BPUFF Principle No. 9.

¹¹⁸ Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the General Assembly, A/66/330*, para. 88. See also, Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council, A/HRC/17/28*, 23 May 2011, para. 61.

¹¹⁹ See Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council, A/26/36*, para. 95. See also, Human Rights Council, *Resolution on the promotion and protection of human rights in the context of peaceful protests, A/HRC/RES/25/38*, para. 10; Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council, A/HRC/17/28*, 23 May 2011, para. 60; European Court of Human Rights, *Nachova and others v. Bulgaria*, Applications Nos. 43577/98 and 43579/98, para. 95.

¹²⁰ Human Rights Council, *Resolution on the promotion and protection of human rights in the context of peaceful protests, A/HRC/RES/25/38*, paras 10, 11. See also UN BPUFF Basic Principle No. 14.

¹²¹ Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council, A/HRC/17/28*, paras 60, 61.

¹²² Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council, A/26/36*, para. 77. See also UN BPUFF Basic Principle No. 5c); Article 6 of the Code of Conduct for Law Enforcement Officials; European Court of Human Rights, *Jasinskis v. Latvia*, Application No. 45744/08, para. 67.

¹²³ European Court of Human Rights, *Finogenov and others v. Russia*, Applications Nos. 18299/03 and 27311/03, para. 266.

¹²⁴ UN BPUFF Basic Principle No. 9: “[...] In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.” See also, Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Commission on Human Rights, E/CN.4/2006/53*, paras 58 and especially 59: “When States confronting the threat of suicide bombers adopt policies permitting the use of lethal force without prior warnings, a prior graduated use of force, or clear signs of an imminent threat, they must provide alternative safeguards to ensure the right to life. The reliance on intelligence information in such contexts means that States must develop legal frameworks to properly incorporate intelligence information and analysis into both the operational planning and post-incident

situations of a threat that is already under way at that very moment, and there is no other means to stop it. In such situations, the overall law enforcement purpose must be to stop the threat: the killing of a person may never in itself be the purpose in law enforcement.

Amnesty International recommends that the General Comment firmly expresses that use of lethal force may only be permitted if it is for the purpose of protecting another person against an imminent threat of death or serious injury,¹²⁵ or to protect against a grave threat to life, and only as a last resort when less extreme means are insufficient to achieve this.¹²⁶

Amnesty International also recommends that the General Comment affirms that it recognizes the UN Basic Principles for the Use of Force and Firearms by Law Enforcement Officials as reflecting international law.¹²⁷

These general principles are also applicable to the use by law enforcement officials of lethal and less-lethal *weapons or autonomous systems*, including unmanned aerial vehicles (“drones”), and fully autonomous weapons systems (AWS) currently being developed.¹²⁸ The decision to resort to lethal force must be based on a continuous and thorough assessment of the situation, establishing the degree of threat, whether the threat is ongoing, whether there are other means available to respond to the threat, whether a person might be convinced to surrender, and whether overall the use of force in the circumstances would be lawful.¹²⁹ Such an assessment requires a human decision at the moment when lethal force is supposed to be used.¹³⁰ Lethal and less-lethal AWS that are capable of selecting targets and triggering an attack without effective or meaningful human control, which could ensure the lawful use

accountability phases of State responsibility; and ensure that officers are aware that there is no legal basis for shooting to kill for any reason other than near certainty that to do otherwise will lead to loss of life.” See also, Human Rights Committee, *Suarez de Guerrero v. Colombia*, 45/79, paras 13.2-13.3.

¹²⁵ I.e., a life-threatening or –changing injury or a risk of similar serious nature; see Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council, A/26/36*, para. 70: “The first part of Principle 9 provides that potentially lethal force may be used only to avert a potentially lethal threat or a risk of a similarly serious nature (e.g. self-defence against a violent rape).”

¹²⁶ UN BPUFF Principle No. 9.

¹²⁷ See Human Rights Committee, *Concluding observations on the United States*, CCPR/C/79/Add.50, para. 297; Human Rights Committee, *Concluding observations on Portugal*, CCPR/CO/78/PRT, para. 9; Human Rights Committee, *Concluding observations on Israel*, CCPR/ISR/CO/4, para. 13; Human Rights Committee, *Concluding observations on Liechtenstein*, CCPR/CO/81/LIE, para. 10.

¹²⁸ OHCHR, *Summary of the Human Rights Council interactive panel discussion of experts on the use of remotely piloted aircraft or armed drones in compliance with international law, A/HRC/28/38*, para. 6. On the use of drones in the conduct of hostilities, see Section III D 2.

¹²⁹ Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the General Assembly, A/66/330*, paras 31-34. See also, Human Rights Committee, *Suarez de Guerrero v. Colombia*, Communication No. 45/79, paras 13.2-13.3.

¹³⁰ Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the General Assembly, A/66/330*, para. 35: “Also important is that the decision to use lethal force should be taken as closely as possible to the time when that decision is executed, in order to allow for the suspect’s autonomy and free will to change his behaviour. Only in the most exceptional cases will it not be required to allow the suspect the opportunity to surrender.”

of force, do not meet this requirement and should therefore be prohibited.¹³¹

Amnesty International would further like to draw the Committee's attention to the threat to the right to life emanating from the use of *less-lethal weapons and equipment* in law enforcement. Some items of such equipment have no legitimate law enforcement purpose, as they are inherently more injurious than others, are intrinsically cruel, or have no other purpose than torture or other ill-treatment; they should therefore be prohibited.¹³² However, even such equipment that has a legitimate role in law enforcement can still cause death or serious injury if it is not used in compliance with international policing and human rights standards.¹³³ The Special Rapporteur on extrajudicial, summary or arbitrary executions has pointed out that whilst less lethal equipment enables law enforcement officials to respond to situations with a graduated use of force as required by the UN BPUFF,¹³⁴ "Almost any use of force against the human person can under certain circumstances lead to loss of life or serious injury."¹³⁵

For example, kinetic impact projectiles (also known as baton rounds or plastic/rubber bullets) can result in serious injury and even death. Chemical irritants used as riot control agents, such as pepper spray and tear gas, can cause death through asphyxiation or toxic poisoning, especially when used in confined spaces, and can result in a wide range of other medical effects and injuries which may be life threatening to those particularly vulnerable to such effects, including people with compromised health. Projectile electric-shock weapons ("tasers") cause different degrees of pain and incapacitation and occasionally lead to death, including through secondary injuries from falls after the target collapses without control, or if used against individuals who are highly agitated or disturbed, whose health is compromised by factors such as heart disease or who are elderly, or if used in combination with forms of restraint that can impair breathing.¹³⁶ The Committee has stated that such devices should only be allowed "in situations where greater or lethal force would otherwise have been justified".¹³⁷

¹³¹ See Amnesty International, [Autonomous weapons systems: Five key human rights issues for consideration](#) (Index: ACT 30/1401/2015), pp. 14-15; Amnesty International, [United States of America: 'Targeted killing' policies violate the right to life](#) (Index AMR 51/047/2012), pp. 5-6.

¹³² See Committee against Torture, *Conclusions on the United States of America*, A/55/44, paras 179, 180; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Interim Report to the General Assembly*, A/68/295, para. 58. [Examples](#) include equipment such as spiked batons, electric shock batons/shields and weighted leg cuffs.

¹³³ Amnesty International, [The human rights impact of less lethal weapons and other law enforcement equipment](#) (Index: ACT 30/1305/2015).

¹³⁴ See UN BPUFF Principles Nos. 2, 4 and 5.

¹³⁵ Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the UN General Assembly*, A/69/265, para. 69.

¹³⁶ Amnesty International, ['Less than lethal'? The use of stun weapons in US law enforcement](#) (Index: AMR 51/010/2008).

¹³⁷ Human Rights Committee, *Concluding observations on Australia*, CCPR/C/AUS/CO/5, para. 21. See also, Human Rights Committee, *Concluding observations on USA*, CCPR/C/USA/CO/4, para. 11.

Amnesty International recommends that the General Comment expresses the need for clear standards for rigorous, independent testing, selection, use and evaluation of less-lethal weapons and equipment, based on international law and standards. In addition, there is a clear need for strict regulation over the transfer and deployment of less-lethal weapons, to ensure that law enforcement officers only use such equipment proportionally, lawfully and to the minimum extent necessary.

These principles for the use of force and firearms apply to law enforcement officials not only in the context of the control and prevention of crime, but in all situations in which they exercise police powers, including demonstrations,¹³⁸ custodial situations¹³⁹ and border control.¹⁴⁰ Utmost attention must be given to the protection of third persons.¹⁴¹ The Committee should further clearly affirm that the concept of an acceptable incidental harm to the lives or physical integrity of other persons (sometimes referred to as “collateral damage” in situations of armed conflict)¹⁴² is not applicable in law enforcement: planning and conducting a law enforcement operation in which incidental harm is accepted from the outset would, if this results in loss of life, amount to an arbitrary deprivation of life.

Law enforcement agencies must be called on to ensure that law enforcement officials receive clear instructions, appropriate training and equipment that ensure the prevention of loss of life as much as possible.¹⁴³ This includes the obligation to attempt other means first, to develop sufficient skills for communication, de-escalation and negotiation, as well as the availability of, and training in the use of, less-lethal equipment.¹⁴⁴ Failure by a law enforcement agency to do so must be considered as a violation of Article 6 of the Covenant.

The responsibility to respect and protect life lies not only with the acting law enforcement official, but also with the command leadership of law enforcement agencies. The loss of life as a result of failure by the command leadership to take all possible measures and precautions to prevent this, for example through a lack of control, preparation and organization of the operation as a whole, must be considered an arbitrary deprivation of life,¹⁴⁵ and commanders must be held accountable for such failures.

¹³⁸ Human Rights Committee, *Umateliev v. Kyrgyzstan*, Communication No. 1275/04, para. 9.5; Human Rights Committee, *Olmedo v. Paraguay*, Communication No. 1828/08, para. 7.5

¹³⁹ Human Rights Committee, *Burrell v. Jamaica*, Communication No. 546/93, para. 9.5; Human Rights Committee, *Eshonov v. Uzbekistan*, Communication No. 1225/03, para. 9.4. See also, Article 6 of the UN Code of Conduct for Law Enforcement Officials; European Court of Human Rights, *Jasinskis v. Latvia*, Application No. 45744/08, para. 67.

¹⁴⁰ See Section III E.

¹⁴¹ See also UN BPUFF Basic Principle No. 3.

¹⁴² See Section III D 1.

¹⁴³ Human Rights Committee, *Concluding observations on Romania*, CCPR/C/79/Add.111, para. 12; Human Rights Committee, *Concluding observations on Germany*, CCPR/CO/80/DEU, para. 15(b).

¹⁴⁴ See also UN BPUFF Basic Principles Nos. 1, 2, 19, 20.

¹⁴⁵ Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council, A/HRC/26/36*, para. 63. See also, European Court of Human Rights, *McCann and Others v. United Kingdom*, Application No. 18984/91, para. 211.

The use of lethal force by law enforcement officials is of such a serious nature that it must be subject to particularly stringent controls, including thorough and detailed reporting as well as prompt, independent and impartial investigation, allowing an assessment of the lawfulness of the use of force¹⁴⁶ - independent of whether the use of such force has in the end resulted in death or serious injury. Where the use of force in the context of law enforcement operations has resulted in death, the duty to carry out a thorough, effective and independent investigation means that the investigation should be carried out within an appropriate time frame; where relevant include eye-witness testimony, autopsies, exhumations and the appropriate safe-guarding of forensic evidence; address potential failures of intelligence gathering and exchange, and a review of police training; and reach a definitive conclusion.¹⁴⁷ Such an investigation is indispensable to prevent future unlawful resort to lethal force and thus constitutes an essential element of the State's positive obligation to prevent the arbitrary deprivation of life.¹⁴⁸

Amnesty International recommends that in the General Comment all relevant domestic authorities are called upon to implement the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials in their entirety through domestic legislation, operational instructions and training of law enforcement officials.¹⁴⁹

¹⁴⁶ Human Rights Committee, *Concluding observations on Israel*, CCCPR/C/ISR/CO/3, para. 10; Human Rights Committee, *Concluding observations on Germany*, CCPR/CO/80/DEU, para. 15(a); Human Rights Committee, *Concluding observations on USA*, CCPR/C/USA/CO/4, para. 11. See also, Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the General Assembly, A/66/330*, para. 88: "(g) All instances where lethal force has been used should be investigated through an effective process, and where appropriate those who have violated the right to life are to be held accountable. [...]" See also, Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council, A/HRC/14/24/Add.8*, para. 74; UN BPUFF Basic Principle Nos. 11 (f) and 22.

¹⁴⁷ Human Rights Committee, *Olmedo v. Paraguay*, Communication No. 1828/08, para. 7.5; Human Rights Committee, *Eshonov v. Uzbekistan*, Communication No. 1225/03, para. 9.6; Human Rights Committee, *Concluding observations on the United Kingdom*, CCCPR/C/GBR/CO/6, para. 10. See also, European Court of Human Rights, *Nachova and others v. Bulgaria*, Applications Nos. 43577/98 and 43579/98, paras 111-113; Inter-American Court of Human Rights, *Nadege Dorzema et al. v. Dominican Republic*, Judgment of 24 October 2012, para. 101.; Inter-American Court of Human Rights, *Baldeón-García v. Perú*, Judgment of 6 April 2006, para. 95. Generally, for remedies to violations of the right to life, see Section II D.

¹⁴⁸ On the duty to prevent violations of the right to life, see Section II C.

¹⁴⁹ Human Rights Committee, *Concluding observations on Cyprus*, CCPR/C/79/Add.39, para. 18; Human Rights Committee, *Concluding observations on the United States*, CCPR/C/79/Add.50, para. 32; Human Rights Committee, *Concluding observations on Portugal*, CCPR/CO/78/PRT, para. 9; Human Rights Committee, *Concluding observations on Germany*, CCPR/CO/80/DEU, para. 15(b); Human Rights Committee, *Concluding observations on Liechtenstein*, CCPR/CO/81/LIE para. 10; Human Rights Committee, *Concluding observations on Australia*, CCPR/C/AUS/CO/5, para. 21; Human Rights Committee, *Concluding observations on the USA*, CCPR/C/USA/CO/4, para. 11. See also, European Court of Human Rights, *Nachova and others v. Bulgaria*, Applications Nos. 43577/98 and 43579/98, para. 96; Inter-American Court on Human Rights, *Nadege Dorzema et al. v. Dominican Republic*, Judgment of 24 October 2012, paras 80-81.

B. EXTRAJUDICIAL, SUMMARY AND ARBITRARY EXECUTIONS

General Comment No. 6 states that States Parties should prevent arbitrary killings by their own security forces.¹⁵⁰ Since its adoption, the UN General Assembly, the Commission on Human Rights and the Human Rights Council have gone further, repeatedly stating that “[a]ll States must ensure that the practice of extrajudicial, summary or arbitrary executions is brought to an end and that they take effective action to prevent, combat and eliminate the phenomenon in all its forms and manifestations.”¹⁵¹ The Committee has stated on numerous occasions that States Parties have obligations to ensure effective remedies for violations of the right to life, which include extrajudicial, summary and arbitrary executions. States Parties must conduct prompt, thorough and effective investigations through independent and impartial bodies; bring to justice those responsible for crimes under domestic and international law; provide full reparation to victims; and prevent similar violations in the future.¹⁵² The Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, state “[g]overnments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws...”¹⁵³ They list in detail measures that should be taken to prevent, investigate and prosecute such occurrences.¹⁵⁴

Amnesty International recommends that the General Comment reaffirms the prohibition of extrajudicial, summary and arbitrary executions, and sets out guidelines for States to prevent them, including through recognition as offences under their criminal laws, and to provide effective remedies when they occur.¹⁵⁵

¹⁵⁰ Human Rights Committee, General Comment 6, *Article 6 (Right to life)*, para. 3.

¹⁵¹ See, for example: General Assembly Resolution 69/182, *Extrajudicial, summary or arbitrary executions*, 18 December 2014, para. 2; Commission on Human Rights Resolution 34 (2005), *Extrajudicial, summary or arbitrary executions*, E/CN.4/RES/2005/34, para. 3; Human Rights Council Resolution 26/12, *Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, A/HRC/26/L.23, para. 3.

¹⁵² See also Sections II C and D.

¹⁵³ UN Economic and Social Council Resolution 1989/65 of 24 May 1989, Principle 1.

¹⁵⁴ See also, UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E/ST/CSDHA/12 (1991); Amnesty International, *14 Point Program for the Prevention of Extrajudicial Executions* (1993), <https://www.amnesty.org/download/Documents/192000/pol350021993en.pdf> (accessed 10 June 2015); Amnesty International, *14 Point Program for the Prevention of Extrajudicial Executions: Sources in international instruments* (Index: POL 35/03/93), <https://www.amnesty.org/download/Documents/192000/pol350031993en.pdf> (accessed 10 June 2015).

¹⁵⁵ See Section II D.

C. ENFORCED DISAPPEARANCES

The Committee has recognized the crime of enforced disappearance as a multiple violation of rights enshrined in the Covenant, including of the right to life.¹⁵⁶ Even if it does not always constitute a consummated violation of the right to life, the very nature of the crime where the victims are in an increased situation of vulnerability entails a direct risk to life.¹⁵⁷ Enforced disappearance is an autonomous crime with multiple and interconnected elements that might also constitute violations to other several rights, including the right to liberty and security, the right not to be subjected to torture or other ill-treatment, the right of all persons deprived from liberty to be treated with humanity and respect for the inherent dignity of the human person, and the right to legal personality.¹⁵⁸ Therefore, the analysis of a possible enforced disappearance should not be approached in an isolated, divided and fragmented manner.¹⁵⁹ An enforced disappearance shall be deemed continuous or permanent, i.e., it continues to be committed, as long as the fate or whereabouts of the person or the remains has not been determined.¹⁶⁰

¹⁵⁶ See, among others, Human Rights Committee, General Comment 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, para. 18; Human Rights Committee, *Fatma Zohra Boucherf v. Algeria*, Communication No. 1196/2003, para. 9.2; Human Rights Committee, *Sarma v. Sri Lanka*, Communication No. 950/2000, para. 9.3; Human Rights Committee, *Chihoub v. Algeria*, Communication No. 1811/2008, para. 8.11; Human Rights Committee *Aboufaied v. Libya*, Communication No. 1782/2008, para. 7.3; Human Rights Committee, *El Abani v. Libya*, Communication No. 1640/2007, para. 7.3.

¹⁵⁷ The Inter-American Court of Human Rights has established that “forced disappearance has frequently included the execution of those detained, in secret and without any type of trial, followed by the concealment of the corpse in order to erase any material trace of the crime and to ensure the impunity of those who committed it, which signifies a violation of the right to life.” See, among others, Inter-American Court of Human Rights, *Garcia and family members v. Guatemala*, Judgment of 29 November 2012, para. 107; Inter-American Court of Human Rights, *Velasquez Rodriguez v. Honduras*, Judgment of 29 July 1988 (merits), para. 157.

¹⁵⁸ See, among others, Human Rights Committee, *Fatma Zohra Boucherf v. Algeria*, Communication No. 1196/2003, para. 9.2; Human Rights Committee, *Sarma v. Sri Lanka*, Communication No. 950/2000, para. 9.3; Human Rights Committee, *Chihoub v. Algeria*, Communication No. 1811/2008, para. 8.11; Human Rights Committee *Aboufaied v. Libya*, Communication No. 1782/2008, para. 7.3; Human Rights Committee, *El Abani v. Libya*, Communication No. 1640/2007, para. 7.3. See also, Inter-American Court of Human Rights, *Velasquez Rodriguez v. Honduras*, Judgment of 29 July 1988 (merits), paras 157 and 188; Inter-American Court of Human Rights, *Godínez-Cruz v. Honduras*, Judgment of 20 January 1989, paras 165 and 198; Inter-American Court of Human Rights, *Radilla Pacheco v. Mexico*, Judgment of 23 November 2009, para. 158; Inter-American Court of Human Rights, *Ticona Estrada v. Bolivia*, Judgment of 27 November 2008, para. 59; African Commission on Human and Peoples' Rights, *Mouvement Burkinabe des Droits de l'Homme et des Peuples v. Burkina Faso*, Communication No. 204/97, paras 42-44.

¹⁵⁹ Inter-American Court of Human Rights, *Ticona Estrada v. Bolivia*, Judgment of 27 November 2008, para. 56; Inter-American Court of Human Rights, *Garcia and family members v. Guatemala*, Judgment of 29 November 2012, para. 99. See also, Amnesty International, [New General Comment on the Right to Liberty and Security of Person: Amnesty International's Preliminary Observations](#) (Index: IOR 40/021/2012), pp. 9-14.

¹⁶⁰ Article 8(1)(b) of the International Convention for the Protection of All Persons from Enforced Disappearance; Article III of the Inter-American Convention on Forced Disappearance of Persons. See also, Working Group on Enforced or Involuntary Disappearances, *General Comment on Enforced Disappearance as a Continuous Crime*, A/HRC/16/48, para. 39; Inter-American Court of Human Rights, *Velasquez Rodriguez v. Honduras*, Judgment of 29 July 1988 (merits), para. 155; Inter-American Court

In certain circumstances, as established in Article 7(1)(i) of the Rome Statute, when enforced disappearance is committed as part of a widespread or systematic attack directed against any civilian population, the crime amounts to a crime against humanity.¹⁶¹ Given the particular relevance and the nature of the rights violated, the Inter-American Court of Human Rights has considered that the prohibition of enforced disappearance, and the corresponding obligation to investigate and punish those responsible, has attained the status of a peremptory norm of international law (*jus cogens*).¹⁶²

In the event that a statute of limitations still applies under national law to the crime of enforced disappearance, Article 8 of the International Convention for the Protection of All Persons from Enforced Disappearance (CPED) requires its duration to be proportionate to the extreme seriousness of this offence, and it may only commence from the moment when the enforced disappearance ceases (i.e., until the fate or whereabouts of the person has been determined).¹⁶³ When enforced disappearance amounts to a crime against humanity, statutes of limitations are prohibited.¹⁶⁴ Amnesty International believes no statute of limitations

of Human Rights, *Ticona Estrada v. Bolivia*, Judgment of 27 November 2008, para. 56; Inter-American Court of Human Rights, *García and family members v. Guatemala*, Judgment of 29 November 2012, para. 95; Inter-American Court of Human Rights, *Heliodoro Portugal v. Panama*, Judgment of 12 August 2008, para. 112; Committee on Enforced Disappearances, *Concluding Observations on Uruguay*, CED/C/URY/CO/1, para. 14; Committee on Enforced Disappearances, *Concluding Observations on Paraguay*, CED/C/PRY/CO/1, para. 29; Committee against Torture, *Concluding Observations on El Salvador*, CAT/C/SLV/CO/2, para. 14.

¹⁶¹ Both the International Convention for the Protection of All Persons from Enforced Disappearance, and the Inter-American Convention on Forced Disappearance of Persons, recognize that enforced disappearances may constitute crimes against humanity. The Inter-American Court of Human Rights has also emphasised that when the disappearance forms part of a systematic pattern or practice applied or tolerated by the State, it constitutes a crime against humanity; see, for example, Inter-American Court of Human Rights, *Goiburú and others v. Paraguay*, Judgment of 22 September 2006, para. 82; Inter-American Court of Human Rights, *Tiu Tojín v. Guatemala*, Judgment of 26 November 2008, para. 91. See also, Working Group on Enforced or Involuntary Disappearances, *General Comment on enforced disappearance as a crime against humanity*, A/HRC/13/31.

¹⁶² Inter-American Court of Human Rights, *Goiburú and others v. Paraguay*, Judgment of 22 September 2006, para. 84; Inter-American Court of Human Rights, *García and family members v. Guatemala*, Judgment of 29 November 2012, para. 96; Inter-American Court of Human Rights, *Tiu Tojín v. Guatemala*, Judgment of 26 November 2008, para. 91; Inter-American Court of Human Rights, *Anzualdo Castro v. Peru*, Judgment of 22 September 2009, para. 59.

¹⁶³ Human Rights Committee, *Concluding Observations on El Salvador*, CCPR/C/SLV/CO/6, para. 6; Committee on Enforced Disappearances, *Concluding Observations on Spain*, CED/C/ESP/CO/1, para. 12; Committee on Enforced Disappearances, *Concluding Observations on Uruguay*, CED/C/URY/CO/1, para. 14; Committee on Enforced Disappearances, *Concluding Observations on France*, CED/C/FRA/CO/1, para. 21; Committee on Enforced Disappearances, *Concluding Observations on Belgium*, CED/C/BEL/CO/1, para. 20. See also, Working Group on Enforced or Involuntary Disappearances, *General Comment on article 18 of the Declaration*, E/CN.4/2006/56, para. 3(c).

¹⁶⁴ Rome Statute of the International Criminal Court, Article 29; Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, UNGA resolution 2391 (XXIII), annex, 23 UN GAOR Supp. (No. 18) at 40, A/7218, entered into force 11 November 1970. See also, Working Group on Enforced or Involuntary Disappearances, *General Comment on article 18 of the Declaration*, para. 3(d); Human Rights Committee, *Concluding Observations on Uruguay*, CCPR/C/URY/CO/5, para. 19.

should apply in any case of enforced disappearance.¹⁶⁵

In addition, the concept of victim of an enforced disappearance includes not only the disappeared person but, as established in Article 24 of the CPED, any individual who has suffered harm as the direct result of an enforced disappearance.¹⁶⁶ The families of disappeared persons must have a right to fully contribute in the investigations, and their rights must be fully respected in any decisions on remedies.¹⁶⁷ Furthermore, the denial of the right to know the truth about the whereabouts of a victim of enforced disappearance results in turn in a form of cruel and inhuman treatment for the immediate family.¹⁶⁸ Effective safeguards to prevent enforced disappearance must be considered as being applicable and necessary to prevent violations to the right to life.¹⁶⁹

The Committee has stated that, in accordance with international law, trials in military or special courts of members of the security forces or other officials suspected of criminal responsibility for enforced disappearances are prohibited in all cases.¹⁷⁰ Trials for alleged human rights violations and crimes under international law, including enforced disappearance, must take place before ordinary civilian courts.¹⁷¹

¹⁶⁵ Amnesty International, [No impunity for enforced disappearances: Checklist for effective implementation of the International Convention for the Protection of All Persons from Enforced Disappearance](#) (Index: IOR 51/006/2011).

¹⁶⁶ International Convention for the Protection of All Persons from Enforced Disappearance, Article 24. See also, Inter-American Court of Human Rights, *Contreras et. al. v. El Salvador*, Judgment of 31 August 2011, para. 123; European Court of Human Rights, *Bazorkina v. Russia*, Application No. 69481/01, para. 139.

¹⁶⁷ See Section II D.

¹⁶⁸ Human Rights Committee, *Edriss El Hassy v. The Libyan Arab Jamahiriya*, Communication No. 1422/2005, para. 6.11; Human Rights Committee, *Sarma v. Sri Lanka*, Communication No. 950/2000, para. 9.5; Inter-American Court of Human Rights, *Contreras et. al. v. El Salvador*, Judgment of 31 August 2011, para. 123; Inter-American Court of Human Rights, *Gelman v. Uruguay*, Judgment of 24 February 2011, para. 133; Inter-American Court of Human Rights, *Radilla Pacheco v. Mexico*, Judgment of 23 November 2009, para. 166. See also, Working Group on Enforced or Involuntary Disappearances, *General Comment on the Right to the Truth in Relation to Enforced Disappearances*, A/HRC/16/48, para. 4.

¹⁶⁹ Inter-American Court of Human Rights, *Anzualdo Castro v. Peru*, Judgment of 22 September 2009, para. 63. See also, Amnesty International, [New General Comment on the Right to Liberty and Security of Person: Amnesty International's Preliminary Observations](#) (Index: IOR 40/021/2012), pp. 9-14.

¹⁷⁰ Human Rights Committee, *Kholdova v. Russian Federation*, Communication No. 1548/2007, para. 10.5. See also, UN Declaration on the Protection of All Persons from Enforced Disappearance, A/RES/47/133, para. 16(2); International Convention for the Protection of All Persons from Enforced Disappearance, Article 11(3); Inter-American Convention on Forced Disappearance of Persons, Article IX; Inter-American Court of Human Rights, *Radilla Pacheco v. Mexico*, Judgment of 23 November 2009, para. 273.

¹⁷¹ [Human Rights Committee: Concluding Observations on Colombia](#), CCPR/C/COL/CO/6, para. 14; [Concluding Observations on Bolivia](#), CCPR/C/BOL/CO/3, para. 13; [Concluding Observations on Mexico](#), CCPR/C/MEX/CO/5, para. 18; [Concluding Observations on Guatemala](#), CCPR/CO/72/GTM, para. 20; [Concluding Observations on Tajikistan](#), CCPR/C/TJK/CO/2, para. 19. See also, [Committee against Torture: Concluding Observations on Mexico](#), CAT/C/MEX/CO/5-6, para. 18; [Concluding Observations on Bolivia](#), CAT/C/BOL/CO/2, para. 12; [Committee on Enforced Disappearances, Report on its eighth session](#),

Amnesty International recommends that the General Comment reaffirms the autonomous character of enforced disappearance as a multiple and continuous violation of several rights enshrined in the Covenant, including the right to life, and that States Parties need to take measures to end this practice, including measures to prevent, investigate, and punish such crimes, and provide full reparation.

The General Comment should further recognize that victims of enforced disappearances include any individual who has suffered harm as the direct result of the crime, and that family members have the right to appropriate remedies, including a right to the truth; that no statute of limitations should apply; and that trials of members of the security forces or other officials suspected of criminal responsibility for enforced disappearances may not take place before military or special courts.

D. RELEVANCE OF INTERNATIONAL HUMANITARIAN LAW

Human rights law applies in times of armed conflict as well as in peace time,¹⁷² including to States' actions outside their own territory.¹⁷³ The right to life, in its entirety, is a non-derogable right under international law.¹⁷⁴ However, this does not mean that the manner of the application of the right to life is precisely the same in the conduct of hostilities and in law enforcement. International law allows a wider latitude for the use of lethal force in the exceptional circumstances of an armed conflict. During armed conflict, the question of whether a death occurring in hostilities constitutes an arbitrary deprivation of life will be determined by the relevant rules of international humanitarian law as *lex specialis*, particularly those governing the conduct of hostilities.¹⁷⁵

Given the extremely serious implications that co-application of international humanitarian law (alongside international human rights law) has for the protection of the right to life, it is crucial that an accurate determination is made as to whether and where a situation of armed conflict exists. *International armed conflicts* occur when one or more states have recourse to armed force against another State, regardless of the reasons or the intensity of this confrontation.¹⁷⁶ Far more common today are *non-international armed conflicts*. According to the International Committee of the Red Cross (ICRC), a non-international armed conflict is a "protracted armed confrontation occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a State [party to the Geneva Conventions]. The armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum of organisation".¹⁷⁷

http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/1_Global/INT_CED_SED_8_23242_E.pdf (accessed 11 June 2015), Annex VI, paras 5, 10.

¹⁷² International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 25.

¹⁷³ See Section II E.

¹⁷⁴ See Section II H.

¹⁷⁵ International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 25.

¹⁷⁶ Common Article 2, Four Geneva Conventions of 1949.

¹⁷⁷ See, among others, International Committee of the Red Cross, *How is the Term "Armed Conflict"*

However, international humanitarian law does not apply to “situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature”.¹⁷⁸

1. INTERNATIONAL HUMANITARIAN LAW RULES ON CONDUCT OF HOSTILITIES AND THE RIGHT TO LIFE

Violations of the right to life can arise from failure of a State Party to a conflict to respect rules of international humanitarian law (IHL). In this regard, one of the cornerstones of IHL is the *principle of distinction*. This requires parties to an armed conflict to distinguish between civilians and combatants (and others directly participating in hostilities) and to direct attacks only at the latter.¹⁷⁹ In case of doubt, the person must be presumed to be protected against direct attack.¹⁸⁰ Intentionally launching a direct attack on civilians constitutes a war crime, and, when it results in loss of civilian life, violates the prohibition of arbitrary deprivation of the right to life. In addition to distinguishing between civilians and combatants, an attack must “distinguish between civilian objects and military objectives”.¹⁸¹ Civilian objects are protected against attack, unless and for such time as they are part of military objectives.¹⁸² Making civilian objects the object of attack is a war crime,¹⁸³ and, when it results in loss of life, violates the prohibition of arbitrary deprivation of the right to life.

Flowing from the principle of distinction is the *prohibition of indiscriminate attacks*,¹⁸⁴ that is, attacks that do not distinguish between military objectives and civilians or civilian property.¹⁸⁵ In addition, attacks must not be disproportionate. An attack would be disproportionate if it “may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated”.¹⁸⁶ Launching an

Defined in international humanitarian law?, Opinion Paper, March 2008, p. 5. See also, Article 3 Common to the Geneva Conventions of 1949 (Common Article 3) and Protocol II Additional to the Geneva Conventions and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977.

¹⁷⁸ Article 1(2) of Protocol Additional to the Geneva Conventions of 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977.

¹⁷⁹ See, among others, International Committee of the Red Cross, *Customary international humanitarian law*, Volume I: Rules, Rules 1, 3, 5, 6; International Committee of the Red Cross, *Interpretative Guidance on the Notion of Direct Participation in Hostilities under international humanitarian law*, Recommendation V.

¹⁸⁰ International Committee of the Red Cross, *Interpretative Guidance on the Notion of Direct Participation in Hostilities under international humanitarian law*, Recommendation VIII.

¹⁸¹ International Committee of the Red Cross, *Customary international humanitarian law*, Volume I: Rules, Rule 7.

¹⁸² International Committee of the Red Cross, *Customary international humanitarian law*, Volume I: Rules, Rules 8 and 10.

¹⁸³ International Committee of the Red Cross, *Customary international humanitarian law*, Volume I: Rules, Rule 156.

¹⁸⁴ International Committee of the Red Cross, *Customary international humanitarian law*, Volume I: Rules, Rule 11.

¹⁸⁵ International Committee of the Red Cross, *Customary international humanitarian law*, Volume I: Rules, Rule 12.

indiscriminate attack resulting in death or injury to civilians, or an attack in the knowledge that it will cause excessive incidental civilian loss, injury or damage, is a war crime.¹⁸⁷

The protection of the civilian population and civilian objects is further underpinned by the requirement that all parties to a conflict take *precautions* in attack, and in defence.¹⁸⁸ Everything feasible must be done to verify that targets are military objectives, to assess the proportionality of attacks, and to halt attacks if it becomes apparent they are wrongly-directed or disproportionate.¹⁸⁹ Where circumstances permit, parties must give effective advance warning of attacks which may affect the civilian population.¹⁹⁰ IHL also protects the right to life of wounded, surrendered, or captured combatants who are *hors de combat* and must not be targeted.¹⁹¹ The reported practice of follow-up drone strikes targeting the injured as well as rescue workers would violate IHL and could constitute a war crime.¹⁹²

Amnesty International recommends that the General Comment clarifies that a deprivation of life in contravention of applicable rules of international humanitarian law is arbitrary.

2. AUTONOMOUS WEAPONS SYSTEMS, DRONES, AND TARGETED KILLINGS IN ARMED CONFLICT¹⁹³

Challenges for the protection of the right to life are posed by new technologies, enabling killings at great geographical distances. Technological developments, most notably the increasingly common use of armed drones,¹⁹⁴ have made extra-territorial use of intentional lethal force (so called targeted killing) against specified individuals (or those who appear to match a particular profile) easier and more common. For example, targeted killings have been carried out by the USA in Pakistan, Afghanistan, Yemen, and Somalia, and more recently in Syria and Iraq.¹⁹⁵ Israel has also used drones for targeted killings in Gaza. A disturbing

¹⁸⁶ International Committee of the Red Cross, *Customary international humanitarian law*, Volume I: Rules, Rule 14.

¹⁸⁷ International Committee of the Red Cross, *Customary international humanitarian law*, Volume I: Rules, Rule 156.

¹⁸⁸ International Committee of the Red Cross, *Customary international humanitarian law*, Volume I: Rules, Rule 15: "In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects."

¹⁸⁹ International Committee of the Red Cross, *Customary international humanitarian law*, Volume I: Rules, Rules 16-19.

¹⁹⁰ International Committee of the Red Cross, *Customary international humanitarian law*, Volume I: Rules, Rule 20.

¹⁹¹ International Committee of the Red Cross, *Customary international humanitarian law*, Volume I: Rules, Rules 87, 89.

¹⁹² Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the General Assembly*, A/68/382, para. 73.

¹⁹³ On the use of drones in the context of law enforcement, see Section III A.

¹⁹⁴ Various terms are used for these aircraft, including "remotely piloted aircraft" (RPAs), "unmanned aerial vehicles" (UAVs) and, more colloquially, "drones". See Amnesty International, [Autonomous weapons systems: Five key human rights issues for consideration](#) (Index ACT 30/1401/2015).

¹⁹⁵ See, among others, Amnesty International, [United States of America: 'Targeted killing' policies violate the right to life](#) (Index AMR 51/047/2012); Amnesty International, ["Will I be next?" US drone](#)

feature of the use of armed drones has been the lack of transparency that has impeded assessment of basic facts, including the applicable legal framework, and has prevented accountability and access to justice and remedies for victims and their families.¹⁹⁶

While many of these drone strikes have taken place as part of actual armed conflicts, US authorities continue to assert the right to carry out targeted killings against members of certain groups wherever they are, as part of a “global war” doctrine.¹⁹⁷ However, Amnesty International does not accept the USA's view that international law allows it to engage in a global and pervasive armed conflict against a diffuse network of non-state actors, or that it is lawful to kill individuals anywhere in the world at any time, whenever the USA deems appropriate.¹⁹⁸ The ICRC rejects that the totality of violence between a State and various non-state actors (across various countries, and even continents) can constitute a single global, non-international armed conflict.¹⁹⁹

Potentially more worrying than drones is the development of *fully* autonomous lethal and less-lethal weapons systems, which can select and attack targets without effective or meaningful human involvement and raise grave concerns about the protection of the right to life in armed conflict.²⁰⁰ These systems cannot be programmed to comply with the rules of international

[strikes in Pakistan](#) (Index: ASA 33/013/2013).

¹⁹⁶ For example, for many years the USA refused to even acknowledge its use of armed drones to carry out targeted killings. While the present US administration has been more forthcoming over the last couple of years, the steps taken remain minimal, selective and inadequate to address concerns that drone strikes have been carried out that violate the right to life, whether in armed conflict or outside of armed conflict. See also, Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council, A/HRC/29/37*, para. 45.

¹⁹⁷ See Department of State, *United States Written Responses to Questions From the United Nations Human Rights Committee Concerning the Fourth Periodic Report*, 3 July 2013, <http://www.state.gov/j/drl/rls/212393.htm> (accessed 10 June 2015); the US administration told the Committee that “the United States is in an armed conflict with al-Qaida, the Taliban, and associated forces, and may also use force consistent with our inherent right to self-defense... These strikes are conducted in a manner that is consistent with all applicable domestic and international law.” The USA further told the Committee that “a time of war does not suspend the operation of the [ICCPR] to matters within its scope of application”. But it implied that the USA does not necessarily accept that human rights law applies to “a State's actions in the actual conduct of an armed conflict”. In effect, the USA continues to claim that its drone program and other counter-terrorism practices are part of “the actual conduct of an armed conflict” domestically and worldwide against al-Qa’ida and allied groups, and to which human rights obligations do not apply.

¹⁹⁸ See, for example, Amnesty International, [United States of America: 'Targeted killing' policies violate the right to life](#) (Index: AMR 51/047/2012), pp. 7-11, Amnesty International, [“Will I be next?” US drone strikes in Pakistan](#) (Index: ASA 33/013/2013), pp. 48-48.

¹⁹⁹ “[M]uch of the ongoing violence taking place in other parts of the world that is usually described as ‘terrorist’ is perpetrated by loosely organized groups (networks), or individuals that, at best, share a common ideology. On the basis of currently available factual evidence it is doubtful whether these groups and networks can be characterised as party to any type of armed conflict, including ‘transnational’”; ICRC, *International humanitarian law and terrorism: questions and answers*, 1 January 2011, <https://www.icrc.org/eng/resources/documents/faq/terrorism-faq-050504.htm#Dosomeaspectsofthefightagainstterrorismamounttoatransnationalarmedconflict> (accessed 10 June 2015). See also, Amnesty International, [“Will I be next?” US drone strikes in Pakistan](#) (Index: ASA 33/013/2013), pp. 48-49.

²⁰⁰ For a fuller discussion of autonomous weapons and the right to life, including in armed conflict, see

humanitarian law, particularly those related to distinction and proportionality, and would also create a legal accountability gap, as it would be unclear who would bear criminal responsibility for war crimes, including the arbitrary deprivation of life brought about by autonomous systems.²⁰¹

Amnesty International recommends that the General Comment provides guidance to State Parties specifying that their obligation to uphold the right to life includes, in situations of armed conflict, to ensure military operations comply with relevant international law, including international humanitarian law and international human rights law; and that this includes complying with the rule that, in cases of doubt, persons and objects shall be presumed to be civilian.

Amnesty International further recommends that the General Comment states a duty to be transparent about the intentional lethal use of force, including so-called targeted killing operations and the use of armed drones. This includes publicly disclosing the legal basis for the use of drones, operational responsibility, criteria for targeting, casualties, procedures for avoiding unintentional deaths, and information about investigations. The Committee should further affirm that the general rules on effective remedies for violations of the right to life apply in these cases.²⁰²

Amnesty International further recommends that the General Comment states that fully autonomous weapons systems should be prohibited as they are incapable of complying with the rules for protecting the right to life and on effective remedies for violations of the right to life.

E. RELEVANCE OF INTERNATIONAL REFUGEE LAW AND INTERNATIONAL LAW APPLICABLE TO SEARCH AND RESCUE OPERATIONS AT SEA

Under the Covenant, States Parties are obliged to respect, protect and ensure the inherent right to life of non-nationals, including refugees and migrants, who must “receive the benefit of the general requirement of non-discrimination.”²⁰³ States Parties owe this obligation to all those who are subject to their jurisdiction, regardless of where the person is located,²⁰⁴ and irrespective of the person’s nationality, statelessness, or immigration status.²⁰⁵

Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council, A/HRC/23/47*.

²⁰¹ See, among others, Human Rights Watch, *Losing Humanity: The Case Against Killer Robots* (November 2012), pp. 30-36; Human Rights Watch, *Mind the Gap: The Lack of Accountability for Killer Robots* (April 2015).

²⁰² See Section II D.

²⁰³ Human Rights Committee, General Comment 15, *The position of aliens under the Covenant*, paras 2, 7.

²⁰⁴ Human Rights Committee, General Comment 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, para. 12; Human Rights Committee, *Sergio Euben López Burgos v. Uruguay*, Communication No. R.12/52, para. 12.3.

²⁰⁵ Human Rights Committee, General Comment 31, *The Nature of the General Legal Obligation*

1. NON-REFOULEMENT

A key principle that arises in the context of Article 6 is *non-refoulement*. This principle prohibits the transfer of individuals to another country or jurisdiction where they would face a real risk of serious human rights violations or abuses. Migrants and refugees benefit from this prohibition. The principle of *non-refoulement* – initially articulated in the Refugee Convention²⁰⁶ – is the cornerstone of international refugee protection²⁰⁷ and a key concept in international human rights law, essential to prevent violations of fundamental rights and guarantees.²⁰⁸ The Committee has affirmed that States Parties to the ICCPR are prohibited from extraditing, deporting, expelling or otherwise removing a person from their territory, “where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed.”²⁰⁹ The principle applies generally when States know or ought to know that the persons’ removal would expose them to a real risk of serious human rights violations or abuses.²¹⁰ The prohibition of *refoulement* dictates that, irrespective of all other

Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, para. 10.

²⁰⁶ UN Convention Relating to the Status of Refugees, Article 33(1).

²⁰⁷ UN High Commissioner for Refugees, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 2007, para. 5.

²⁰⁸ See, among others, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3(1); International Convention for the Protection of All Persons from Enforced Disappearance, Article 16(1); EU Charter of Fundamental Rights, Article 19; American Convention on Human Rights, Article 22(8); Fourth Geneva Convention, Article 45(4); UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Principle 5. Unlike its equivalent in international refugee law, the prohibition of *refoulement* in human rights law is absolute; see for example, European Court, *Soering v. UK*, Application No. 14038/88, para. 88; *Ireland v. UK*, Application No. 5310/71, para. 163; *Chahal v. UK*, Application No. 22414/93, para. 79.

²⁰⁹ Human Rights Committee, General Comment 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, para. 12; Human Rights Committee, General Comment 20, *Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment)*, para. 9; Human Rights Committee, *Choudhary v. Canada*, Communication No. 1898/2009, para. 9.8; Human Rights Committee, *B.L. v. Australia*, Communication No. 2053/2011, para. 7.3; Human Rights Committee, *Judge v. Canada*, Communication No. 829/1998, para. 10.6; Human Rights Committee, *Chitat Ng v. Canada*, Communication No. 469/1991, para. 14.2; Human Rights Committee, *Kindler v. Canada*, Communication No. 470/1991, para. 13.1, 13.2; Human Rights Committee, *Concluding observations on Portugal (Macau)*, CCPR/C/79/Add.77, 5 May 1997, para. 5. See also, Committee against Torture, *Concluding observations on Belgium*, CAT/C/BEL/CO/2, para. 10; Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the General Assembly*, A/67/275, paras. 71-78; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Interim report*, A/67/279, para. 81; European Court of Human Rights, *Al-Saadoon and Mufdhi v. United Kingdom*, Application No. 61498/08, para. 143; European Court of Human Rights, *D. v. United Kingdom*, Application No. 146/1996/767/964, 2 May 1997, para. 47; European Court of Human Rights, *Soering v. the United Kingdom*, Application No. 14038/88, paras 85-91; Article 19(2) of the EU Charter of Fundamental Rights.

²¹⁰ See, among others, Human Rights Committee, General Comment 35, *Article 9 (Liberty and security of person)*, CCPR/C/GC/35, para. 57. With regard to the prohibition of removing a person to another state where there is a real risk that fundamental requirements of fair trial would be violated, see, among others, European Court of Human Rights, *Omar Othman v. United Kingdom*, Application No. 8139/09, paras 258-285; European Court of Human Rights, *Bader and Kanbor v. Sweden*, Application No. 13284/04, paras 42 and 47; European Court of Human Rights, *Soering v. UK*, Application No.

considerations, States are not absolved of responsibility “for all and any foreseeable consequences” suffered by an individual following removal from their jurisdiction.²¹¹ Furthermore, the Committee has explicitly affirmed that all those subject to a State’s power or effective control benefit from the principle of *non-refoulement*, irrespective of their nationality, statelessness, or immigration status, and regardless of their location.²¹² Similarly, other international human rights bodies have consistently found that once a State Party exercises effective jurisdiction, its *non-refoulement* obligations are engaged, even outside of the State’s territory.²¹³

Amnesty International recommends that the General Comment reaffirms that to return an individual to a country or jurisdiction where they would face a real risk of a violation of the right to life amounts to a breach of Article 6 of the Covenant.

2. THE PROTECTION OF THE RIGHT TO LIFE AT BORDERS AND AT SEA

One area where non-nationals’ Article 6 rights are of particular relevance is at a country’s land and sea borders. Although States have sovereign control over who enters and remains on their territory, their actions are always constrained by their international obligations. In all border control measures, States Parties to the Covenant must respect, protect and fulfil the right to life.

First, the Committee has determined that killings at the border can violate a State Party’s Article 6 obligations.²¹⁴ In Amnesty International’s view, border guards and coastguards must receive adequate training and be subject to appropriate oversight, to ensure that their conduct fulfils the state’s obligations under Article 6 – including *non-refoulement* – as well other related norms such as the right to seek asylum.²¹⁵ In addition, border guards and coastguards should follow the same internationally recognized norms on the use of force as

14038/88, para. 113.

²¹¹ See European Court, *Soering v. UK*, Application No. 14038/88, paras 85, 86; *Hirsi Jaama and Others v. Italy* (Grand Chamber), Application No. 27765/09, para. 115; *Saadi v. Italy* (Grand Chamber), Application No. 37201/06, para. 126.

²¹² Human Rights Committee, General Comment 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, para. 12; Human Rights Committee, *Sergio Euben López Burgos v. Uruguay*, Communication No. R.12/52, para. 12.3.

²¹³ See Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report to the General Assembly, A/59/324*, para. 27. See also, UN High Commissioner for Refugees, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, <http://www.refworld.org/docid/45f17a1a4.html> (accessed 10 June 2015), para. 43; European Court of Human Rights, *Al-Saadoon and Mufdhi v. United Kingdom*, Application No. 61498/08, paras 123-125, 137-143.

²¹⁴ Human Rights Committee, *Klaus Dieter Baumgarten v. Germany*, Communication No. 960/2000, para. 9.5.

²¹⁵ Universal Declaration of Human Rights, Article 14. See also UN High Commissioner for Refugees, *Conclusion on Protection Safeguards in Interception Measures*, 10 October 2003, No. 97 (LIV) – 2003, <http://www.refworld.org/docid/3f93b2894.html> (accessed 10 June 2015).

required of other law enforcement officials.²¹⁶

Second, as part of the general obligation to take positive measures to fulfil the right to life, States must render life-saving assistance such as by rescuing people at sea. The duty to render assistance to those in distress at sea – regardless of their nationality, status or the circumstances in which they are found – is accepted as customary international law²¹⁷ and has been codified in the international law of the sea, including the International Convention for the Safety of Life At Sea,²¹⁸ the International Convention on Maritime Search and Rescue,²¹⁹ and the UN Convention on the Law of the Sea (UNCLOS).²²⁰ Of the UN Convention on the Law of the Sea, the UN High Commissioner for Refugees has said that “[a]lthough [the search and rescue] provision is located in the Part of UNCLOS concerning the high seas, it is generally accepted that the duty in question applies in all maritime zones.”²²¹

Amnesty International submits that in the context of search and rescue operations at sea, international maritime law provides clarification on what is expected from States in relation to the protection of the right to life.²²² Thus, a particular loss of life is to be considered an arbitrary deprivation of life contrary to Article 6 of the Covenant, if it was caused by a violation of relevant provisions of international maritime law governing search and rescue at sea.

Amnesty International recommends that the General Comment affirms that the deprivation of life due to the unlawful use of force at the border, or in violation of relevant provisions governing search and rescue at sea, is arbitrary and a violation of Article 6.

²¹⁶ See Section III A.

²¹⁷ J. Coppens, E. Somers, "Towards New Rules on Disembarkation of Persons Rescued at Sea?", *The International Journal of Marine and Coastal Law* (2010), vol. 25, pp. 377–403, p. 377, citing: UN Commission on International Law, *Commentary on Draft Article 12 of the United Nations Convention on the High Seas*, A/3179 (1956).

²¹⁸ International Convention for the Safety of Life At Sea, Chapter V, regulation 10(a).

²¹⁹ International Convention on Maritime Search and Rescue, Chapter 2, 2.1.1: “Parties shall ensure that necessary arrangements are made for the provision of adequate search and rescue services for persons in distress at sea round their coasts.”

²²⁰ UN Convention on the Law of the Sea, Article 98.

²²¹ UN High Commissioner for Refugees, *Background Paper: “Mapping Disembarkation Options: Towards Strengthening Cooperation in Managing Irregular Movements by Sea,”* 4 March 2014, <http://www.refworld.org/docid/5346438f4.html> (accessed 10 June 2015), p. 5.

²²² The International Court of Justice has determined that, in relation to the right to life during armed conflict, human rights law is *lex generalis* and humanitarian law is *lex specialis*; International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 25. See Section III D 1.

F. DEATH PENALTY

Amnesty International opposes the death penalty absolutely, in all cases without exception, regardless of the nature or circumstances of the crime; guilt, innocence or other characteristics of the individual; or the method used by the state to carry out the execution. The organisation has long held the view that the death penalty violates the right to life, as provided for in the Universal Declaration of Human Rights (UDHR), and is the ultimate cruel, inhuman and degrading punishment. The death penalty is an affront to human dignity.²²³

It is correct that the wording of Article 6 of the Covenant, in particular Article 6(2), defines the death penalty as a legally accepted exception to the right to life, albeit to be applied under strictly limited circumstances.²²⁴ However, recent developments indicate that this understanding is changing. The UN Human Rights Council adopted in 2014 a resolution “[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”.²²⁵ In 2012, the Special Rapporteur on Torture expressed his opinion “that there is an evolving standard whereby States and judiciaries consider the death penalty to be a violation per se of the prohibition of torture or cruel, inhuman or degrading treatment.”²²⁶ Individual members of the Committee have expressed similar opinions.²²⁷ On the regional level, treaty language comparable to that of Article 6(2) of the Covenant has been judged, despite its wording, as having been amended so as to now prohibit the death penalty in all circumstances.²²⁸

The Committee has held that Article 6(2) is an exception to the right to life, and therefore must be interpreted narrowly.²²⁹ Article 6(2) read together with Article 6(6) of the Covenant encourages progressive restriction²³⁰ and eventual abolition, thereby setting the goal of full

²²³ See, most recently, UN General Assembly Resolution 69/186 (2014), preambular para. 6. See also, Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, preambular para. 1; Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the UN General Assembly, A/69/265*, para. 62; Protocol No. 13 to the European Convention of Human Rights, para. 1; EU Charter of Fundamental Rights, Chapter I, Article 2.

²²⁴ See also, Article 4 of the American Convention on Human Rights, and Articles 6 and 7 of the Arab Charter on Human Rights.

²²⁵ Human Right Council resolution 26/2, *The question of the death penalty, A/HRC/RES/26/2*, preambular paragraph 13.

²²⁶ Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Interim report, A/67/279*, para. 72. See also, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report to the Human Rights Council, A/HRC/10/44*, paras 34-38.

²²⁷ See, for example, Human Rights Committee, *Chitat Ng v. Canada*, Communication No. 469/1991, dissenting opinions Pocar and Aguilar Urbina (para. 11).

²²⁸ European Court of Human Rights, *Al-Saadoon and Mufdhi v. United Kingdom*, Application No. 61498/08, paras 115-117, 120. See also, Protocols 6 and 13 to the European Convention; Article 2(2) of the EU Charter of Fundamental Rights, which prohibits death sentences and executions absolutely.

²²⁹ Human Rights Committee, *Judge v. Canada*, Communication No. 829/1998, para. 10.5. See also, Report, Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the General Assembly, A/67/275*, para. 39-42, 66.

²³⁰ Report, Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the General Assembly, A/67/275*, paras 42, 66.

protection of the right to life as recognized in the UDHR. Article 6(6) of the Covenant states that “[n]othing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.” This language indicates that there was already an aspiration for the eventual abolition of the death penalty, with an undertaking by States to gradually develop domestic criminal law toward that goal.²³¹ This was also recognized by the Committee in General Comment No. 6, in which it stated that Article 6 “refers generally to abolition in terms which strongly suggest [...] 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 [...] and should be reported to the Committee”; the Committee further noted then that “a number of States have already abolished the death penalty or suspended its application”, but that “progress made towards abolishing or limiting the application of the death penalty is quite inadequate.”²³²

The Committee has frequently expressed concern about the continuing use of the death penalty, and has recommended to States to consider establishing a moratorium on the death penalty,²³³ or to consider abolishing the death penalty and acceding to the Second Optional Protocol.²³⁴ However, in contravention of the goal of ultimate abolition, many States that have been parties to the Covenant for decades still maintain the death penalty in their law, have death sentences imposed by courts, and in some instances still implement these sentences.

Amnesty International recommends that the General Comment states that inherent in Article 6 of the Covenant is the objective of abolition of the death penalty as the ultimate end-goal. The General Comment should further reaffirm that the duty of States to progressively restrict the death penalty requires the taking of concrete measures towards the goal of abolition, and clarify the duty of States to report on what measures have been taken towards that goal, and the prospective timeline. In particular with regard to those States Parties which have

²³¹ W. Schabas, *The Abolition of the Death Penalty in International Law*, Cambridge University Press, 3rd. ed., 2002, p. 70.

²³² Human Rights Committee, General Comment 6, *Article 6 (Right to life)*, para. 6.

²³³ Human Rights Committee, *Concluding observations on the USA*, CCPR/C/USA/CO/4, para. 8; Human Rights Committee, *Concluding observations on the initial report of Indonesia*, CCPR/C/IDN/CO/1, para. 10.

²³⁴ Human Rights Committee: Human Rights Committee, *Concluding observations on the initial report of Indonesia*, CCPR/C/IDN/CO/1, para. 10; *Concluding observations on Malawi*, CCPR/C/MWI/CO/1/Add.1, para. 11; *Concluding observations on Sierra Leone*, CCPR/C/SLE/CO/1, para. 18; *Concluding observations on Mauritania*, CCPR/C/MRT/CO/1, paras 8, 12; *Concluding observations on Yemen*, CCPR/C/YEM/CO/5, paras 13 and 14; *Concluding observations on Guatemala*, CCPR/C/GTM/CO/3, para. 13; *Concluding observations on Maldives*, CCPR/C/MDV/CO/1, para. 13; *Concluding observations on Kenya*, CCPR/C/KEN/CO/3, para. 10; *Concluding Observations on Mongolia*, CCPR/C/MNG/CO/5, para. 6; *Concluding observation on Kazakhstan*, CCPR/C/KAZ/CO/1, para. 12; *Concluding observations on Kuwait*, para. 6 and 14; *Concluding observation on Ethiopia*, CCPR/C/ETH/CO/1, para. 19; *Concluding observations on Chad*, CCPR/C/TCD/CO/1, para. 19; *Concluding observations on Cameroon*, CCPR/C/CMR/CO/4, para. 14; *Concluding observations on Russia*, CCPR/C/RUS/CO/6, para. 12; *Concluding observations on Central African Republic*, CCPR/C/CAF/CO/2, para. 13. See also, Committee against Torture: *Concluding observations on Japan*, CAT/C/JPN/CO/2, para. 15; *Concluding observations on Bolivia*, CAT/C/BOL/CO/2, para. 25; *Concluding observations on Kenya*, CAT/C/KEN/CO/2, para. 33; *Concluding observations on the USA*, CAT/C/USA/CO/3-5, para. 25.

suspended its application, the General Comment should clarify the expectation that such practical steps should be followed up by abolition in law.²³⁵

In particular, the Committee has stated that the *extension* of the number of crimes for which the death penalty could be imposed is not compatible with Article 6 of the ICCPR.²³⁶ In addition, individual members of the Committee have stated their opinion that *reintroduction* of the death penalty after it has been legally abolished is also a violation of Article 6 of the Covenant.²³⁷ Article 6(2) of the Covenant sets out the minimum requirements under which death sentences may be imposed in “countries which have not abolished the death penalty”. This means that in countries that *have* abolished the death penalty, death sentences may not be imposed anymore – thereby foreclosing any legal re-introduction in the future.

The Committee has further regretted the resumption of executions.²³⁸ States Parties to the Covenant that have already abolished the death penalty, or those that have signed or ratified the Second Optional Protocol, are outright barred from resuming executions by their treaty obligations. With regard to States that still maintain the death penalty, the Special Rapporteur on extrajudicial, summary, or arbitrary executions has declared that such resumptions after prolonged periods without, run counter to the international trend towards restriction and eventual abolition of the death penalty, and raised concerns as to their

²³⁵ See also, Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the UN General Assembly, A/69/265*, para. 107.

²³⁶ Human Rights Committee, *Concluding Observations on Lebanon*, CCPR/C/79/Add.78, para. 20; see also, Human Rights Committee, *Concluding Observations on Peru*, CCPR/C/79/Add.67, para. 15; Human Rights Committee, *Concluding observations on Central African Republic*, CCPR/C/CAF/CO/2, para. 13. See also, UN Commission on Human Rights resolution 2005/59, para. 5(b); Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the General Assembly, A/67/275*, para. 43; Special Rapporteur on extrajudicial, summary or arbitrary executions: USA, E/CN.4/1998/68/Add.3, para. 19; Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Commission on Human Rights, E/CN.4/1996/4*, para. 544; Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Commission on Human Rights, E/CN.4/1994/7*, paras 676, 677; Inter-American Court of Human Rights, *Restrictions to the death penalty*, [Advisory Opinion OC-3/83](#), paras 67-76. Article 4(2) of the American Convention on Human Rights states that the application of the death penalty "shall not be extended to crimes to which it does not presently apply".

²³⁷ Human Rights Committee, *Kindler v. Canada*, Communication No. 470/1991, dissenting opinion Pocar; Human Rights Committee, *Judge v. Canada*, Communication No. 829/1998, dissenting opinions Wennergren and Pocar; Human Rights Committee, *Rolando v. Philippines*, Communication No. 1110/2002, dissenting opinions Scheinin, Lallah and Chanet. See also, UNGA Resolution 69/186, *Moratorium on the use of the death penalty*, A/RES/69/186, para. 6; Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the General Assembly, A/67/275*, para. 76; Special Rapporteur on extrajudicial, summary or arbitrary executions: USA, E/CN.4/1998/68/Add.3, para. 19; Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Commission on Human Rights, E/CN.4/1996/4*, para. 544; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report to the Human Rights Council, A/HRC/10/44*, para. 30. Article 4(3) of the American Convention on Human Rights states: "The death penalty shall not be reestablished in states that have abolished it."

²³⁸ Human Rights Committee, *Concluding observations on the initial report of Indonesia*, CCPR/C/IDN/CO/1, para. 10; Human Rights Committee, *Concluding Observations on Syrian Arab Republic*, CCPR/CO/84/SYR, para. 7. See also, UN Commission on Human Rights resolution 2005/59, para. 9.

compatibility with human rights, especially their potential arbitrariness.²³⁹

Amnesty International recommends that the General Comment states that the extension of crimes carrying the death penalty, and the reintroduction of the death penalty after its legal abolition, are incompatible with Article 6 of the Covenant; that the resumption of executions cannot be considered as a measure in “progress in the enjoyment of the right to life”, and can amount to an arbitrary deprivation of life;²⁴⁰ and that States Parties should be encouraged to affirm any abolitionist steps through legal means.

Amnesty International submits that almost 50 years after the adoption of the Covenant, the relation between retentionist and abolitionist countries is reversed; States that still maintain the death penalty as part of their domestic justice systems are now in the minority, while more than half of the countries in the world have abolished the death penalty completely in law. This gap becomes larger when comparing the number of countries that still carry out executions²⁴¹ with the total number of abolitionist countries: As of May 2015, 101 countries have abolished the death penalty for all crimes; Amnesty International considers a further 33 to be abolitionist in practice, and six to be abolitionist for ordinary crimes.²⁴² This means that 140 countries, more than two thirds of all States worldwide, have effectively abolished the death penalty in law or practice on the global level.²⁴³

In fact this dichotomy is even more pronounced among the group of States Parties to the present Covenant. Moreover, almost half of the States Parties to the Covenant have ratified the Second Optional Protocol, aiming at the abolition of the death penalty.²⁴⁴ Amnesty

²³⁹ Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the UN General Assembly, A/69/265*, paras. 98-112.

²⁴⁰ Human Rights Committee, General Comment 6, *Article 6 (Right to life)*, para. 6. See also, Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the UN General Assembly, A/69/265*, para. 99.

²⁴¹ Amnesty International recorded executions in only 22 countries for both 2013 and 2014, just over 10% of the world's states; that number was almost double (41) two decades ago in 1995. Only eleven countries in the world – or 5% of all states – have consistently executed in years 2010-2014. Death sentences were recorded for 57 and 55 countries in 2013 and 2014, respectively.

²⁴² Amnesty International distinguishes between countries that are “abolitionist for all crimes” (whose laws do not provide for the death penalty for any crime); countries that have “abolished the death penalty for ordinary crimes”, but have retained it for exceptional crimes such as crimes under military law; and countries “abolitionist in practice”, namely those which retain the death penalty for ordinary crimes but have not executed anyone during the past 10 years *and* are believed to have a policy or established practice of not carrying out executions.

²⁴³ See Amnesty International, *Death Sentences and Executions 2014* (Index: ACT 50/001/2015). In addition, in December 2014 the National Assembly of Madagascar adopted a bill to abolish the death penalty, which was promulgated on 9 January 2015. On 13 February 2015 Fiji removed the death penalty from the military code, thereby abolishing the death penalty for all crimes. In Suriname the National Assembly adopted amendments to the Criminal Code abolishing the death penalty for all crimes on 3 March 2015; this legislation entered into effect on 13 April 2015. In 2014, similar bills remained pending before legislative bodies in, among others, Benin, Chad, and Mongolia.

²⁴⁴ Adopted by the UN General Assembly Resolution 44/128 of 15 December 1989. The Second Optional Protocol presently has 81 States Parties, with nine new States Parties ratifying or acceding, and two further signing, this treaty in the past three years alone.

International submits that the circumstances against which the treaty language of Article 6 of the Covenant had been adopted has fundamentally changed over the past five decades.

Various UN bodies, regional inter-governmental organizations, national and international courts, and human rights bodies and experts encourage abolition of the death penalty, and have called on States that have not yet abolished it to establish a moratorium on executions as a first step.²⁴⁵ In December 2014 a record number of states – 117 – voted in favour of the fifth UN General Assembly resolution calling for the establishment of a moratorium on executions with a view to abolishing the death penalty.²⁴⁶ The 123 States Parties to the Rome Statute of the International Criminal Court have rejected the death penalty for the crimes under its jurisdiction, namely the most serious crimes of concern to the international community as a whole, such as war crimes, crimes against humanity and genocide.²⁴⁷

Amnesty International recommends that the General Comment clarifies that, in light of the Covenant's evolution and States Parties' subsequent practice since the Covenant came into force, the wording of Article 6(2) may not be construed as a permanent bar to a finding that the death penalty as such is a violation of the rights under the Covenant.

²⁴⁵ UN General Assembly Resolution [32/61](#), para. 1; UN General Assembly Resolution 69/186, para. 5(f); Commission on Human Rights Resolution, *The Question of the Death Penalty*, E/CN.4/RES/2005/59, para. 5(a); Report, Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the General Assembly, A/67/275*, para. 118; Parliamentary Assembly of the OSCE, *Vilnius Declaration* (2009), para. 9; African Commission on Human and Peoples' Rights, Resolution [136\(XXXVIII\).08](#) (2008), para. 2, and [Study on the question of the death penalty in Africa](#), 10 April 2012; Inter-American Court of Human Rights, *Restrictions to the death penalty, Advisory Opinion OC-3/83*, para. 57; Inter-American Commission on Human Rights, [Report](#), OEA/Ser.L/V/II. Doc. 68 (2011).

²⁴⁶ UNGA Resolution 69/186, *Moratorium on the use of the death penalty*, 18 December 2014 A/RES/69/186; 38 States voted against and 34 abstained.

²⁴⁷ In fact, none of the international criminal tribunals established by the international community may impose the death penalty, even though these courts have jurisdiction over the most heinous crimes, including genocide, crimes against humanity and war crimes. See also, Human Rights Committee, *Concluding observations on Central African Republic*, CCPR/C/CAF/CO/2, para. 13.

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