



AMNESTY INTERNATIONAL'S OBSERVATIONS ON THE DRAFT GENERAL COMMENT ON ARTICLE 4 OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS (RIGHT TO LIFE)

Introduction

1. Following the invitation of the Working Group on Death Penalty and Extra-Judicial, Summary or Arbitrary Killings in Africa (hereafter: the Working Group) to provide written comments for the expert meeting on 4/5 September 2015 in Geneva, on the preparation of a General Comment on Article 4 (Right to Life) of the African Charter on Human and Peoples' Rights (hereafter: the African Charter), Amnesty International submits the following observations on the Draft General Comment.¹ Amnesty International welcomes and appreciates the opportunity presented to it to provide these comments and participate in the expert meeting.
2. The organization would like to express at the outset its strong support for this initiative. The General Comment provides a key opportunity for the African Commission on Human and Peoples' Rights (the African Commission) to clarify important principles underlying the right to life so as to help to ensure better implementation of this right.
3. The present submission aims to inform the expert meeting by commenting on elements of the Draft General Comment, as well as providing Amnesty International's main observations and recommendations. While Amnesty International does not comment on every issue raised by the Draft General Comment, the selection of issues in, and the structure of, this submission should not be seen as implying prioritisation of the issues commented on. Amnesty International would welcome opportunities to provide supplementary observations, if thought useful by the Working Group.
4. In addition to the African Commission's practice, these observations draw 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 Working Groups' consideration.

The nature of the right to life

5. Amnesty International submits that the right to life is indeed recognized as a rule of customary international law.² In particular, the prohibition of arbitrary deprivation of life presents a norm of customary international law,³ even a peremptory norm of international law (*jus cogens*).⁴

¹ See http://www.achpr.org/files/news/2015/08/d189/eng_post_kigali_meeting.pdf (accessed 31 August 2015).

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

³ 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*, UN document

CCPR/C/21/Rev.1/Add.6, para. 8. See also, Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the*
Index: AFR 01/2341/2015

According to the jurisprudence of another regional human rights body, the right to life is a prerequisite for all other rights which may not be interpreted restrictively, and States must guarantee the right to unimpeded access to conditions for a dignified life.⁵

6. In this light, Amnesty International welcomes in particular the reference in para. 1 of the Draft General Comment to the “protection of dignified life” (see also para. 25 of the Draft General Comment). The link between the right to life and human dignity has previously been made by the African Commission, other regional human rights bodies, and UN bodies.⁶
7. However, Amnesty International suggests that the Working Group clarifies what is meant by “securing the continuation of *biological life*” (emphasis added) in para. 1 of the Draft General Comment. In this context, the organization would like to re-iterate its position, as enshrined in international and regional human rights treaty provisions protecting the right to life, and further made explicit by several official bodies that interpret articles protecting life and other human rights guarantees, that human rights protection, including the right to life, does not apply pre-natally.⁷ The organization therefore recommends that the General Comment makes clear that the right to life protection under the Charter extends only after birth.

Responsibility of States

8. Amnesty International recommends to include in para. 2 of the Draft General Comment the responsibility of States for acts committed by other persons acting in an official capacity, as well as by non-state actors acting at the instigation or with the authorization, support or acquiescence of the State (see also para. 24 of the Draft General Comment).⁸
9. Amnesty International notes that para. 2 emphasises that a State can incur responsibility for acts by non-state actors “if there is a lack of due diligence on the part of the State ... to ensure proper investigation and accountability.” The organization recommends that, in line with this guidance, para. 10 of the Draft General Comment – which currently only provides that States should hold non-state entities accountable – should be strengthened to reflect that States have an obligation

General Assembly, UN document A/67/275, para. 11.

⁴ 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*, UN document CCPR/C/21/Rev.1/Add.6, para. 10.

⁵ Inter-American Court of Human Rights, *Zambrano Vélez and Others v. Ecuador*, Judgment of 4 July 2007, para. 79; Inter-American Court of Human Rights, *Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela*, Judgment of 5 July 2006, para. 66.

⁶ See, among others, African Commission on Human and Peoples' Rights, *Kazeem Aminu v. Nigeria*, Communication No. 205/97, para. 18; 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; Protocol No. 13 to the European Convention of Human Rights, para. 1; EU Charter of Fundamental Rights, Chapter I, Article 2; UN General Assembly Resolution 69/186 (2014), preambular para. 6; UN Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the General Assembly*, UN document A/67/275, paras 11, 12.

⁷ See, among others, Human Rights Committee, *Concluding observations on Ireland*, UN document CCPR/C/IRL/CO/4, para. 9; Human Rights Committee, General Comment 28, *Article 3 (The equality of rights between men and women)*, UN document CCPR/C/21/Rev.1/Add.10, paras 10, 20; Inter-American Commission on Human Rights, *Baby Boy* (case 2141), Resolution 23/81, 6 March 1981, 25/OEA/ser.L./VII.54, Doc. 9 Rev.1. International standards do however support numerous state measures that support the development of pre-natal life through the protection of the pregnant woman or girl's human rights, but not through pre-natal right to life protections. See, for example, UN Committee on Economic, Social and Cultural Rights, General Comment 14, *The right to the highest attainable standard of health*, UN document E/C.12/2000/4, para. 14.

⁸ See Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance; Articles 1 and 16 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, para. 1.

under international human rights law to investigate deaths caused by such actors.⁹

The prohibition of the arbitrary deprivation of life (para. 5 of the Draft General Comment)

10. Amnesty International recommends that the scope of the prohibition of “arbitrary” deprivation of life should be expanded beyond the wording of present para. 5 of the Draft General Comment. It is generally accepted 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”.¹⁰ Put another way, the requirement of non-arbitrariness in the context of the right to life entail procedural aspects, centring on the requirements of legality and fair trial, as well as substantive ones, as spelled out in the African Charter and other relevant international and regional documents, but also the principles of equality and consistency.¹¹
11. Furthermore, Amnesty International submits that the General Comment clarifies that discriminatory practices render the deprivation of the right to life arbitrary.¹² Article 2 of the African Charter applies to all rights and freedoms recognized in the African Charter, including the right to life. It provides for the protection from discrimination on a range of grounds, and in an open-ended manner (“or other status”).¹³ The African Commission has clarified, among other things, the duty of States to protect life in law and in practice against people suffering a violation of their right to life on the basis of the real or imputed sexual orientation or gender identity.¹⁴
12. Amnesty International therefore recommends that the General Comment clarifies that:

“Any deprivation of life in violation of any procedural or substantive safeguards in the African Charter, including on the basis of discriminatory grounds or practices, is arbitrary.”

⁹ African Commission on Human and Peoples' Rights, *Commission Nationale des Droits de l'Homme et des Libertés v. Chad*, Comm. No. 74/92 (1995), para. 22.

¹⁰ Human Rights Committee, General Comment 35, *Article 9 (Liberty and security of person)*, UN document 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.

¹¹ See, Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the UN General Assembly*, UN document 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.

¹² See, among others, Inter-American Commission on Human Rights, *William Andrews v. United States* (11.139), Report 57/96, 6 December 1996, para. 177. See also; Human Rights Committee, General Comment 35, *Article 9 (Liberty and security of person)*, UN document CCPR/C/GC/35, para. 17; Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council*, UN document A/HRC/26/36, para. 74; Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council*, UN document A/HRC/14/24/Add.8, para. 14.

¹³ Article 2 of the African Charter prohibits discrimination of the individual on the basis of “distinctions of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.” (emphasis added). Further, see the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), including for example Article 23 which underlines the right of women living with disabilities to non-discrimination; see also: African Commission on Human and Peoples' Rights, *Egyptian Initiative for Personal Rights and INTERIGHTS v. Egypt*, Comm. No. 323/0 (2011), para. 179.

¹⁴ African Commission Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity, May 2014, <http://www.achpr.org/sessions/55th/resolutions/275> (accessed 31 August 2015).

Violence against women and girls

13. Amnesty International urges the Working Group to ensure that the General Comment recognises the particular circumstances in which women and girls' right to life is likely to be violated. In particular, it would be crucial for the General Comment to underline the obligation of States to protect the right to life of women and girls in law and in practice through measures that identify and eradicate the specific violence that they experience, as well as taking action to criminalise, investigate, prosecute and punish violations of women and girls right to life in the context of gender-based violence.¹⁵ For example, women and girls are likely to have their right to life and their right to life with dignity violated through intimate partner or gender-based violence.
14. Amnesty International recommends that the lived reality of many women and girls who are compelled to live in fear of losing their life or are consistently threatened with death by their intimate partner or ex-partner is reflected in the General Comment. A recognition of threats and fear of losing life in this context would be consistent with the African Commission's finding of a violation of the "right to respect for one's life and the dignity of his person", which Article 4 of the African Charter guarantees when someone lives "in a state of constant fear and/or threats".¹⁶ The other forms of gender-based violence which lead to breaches of women and girls' right to life, and which the Commission may wish to also contemplate in the General Comment include: women killed for suspected witchcraft¹⁷, so called "honour killings", and armed conflict-related killings, amongst others.

Extra-territorial application (para. 6 of the Draft General Comment)

15. Amnesty International welcomes the affirmation that the right to life is applicable "outside of [the State's] territory" (para. 6 of the Draft General Comment). However, para. 6 does not clearly specify when a State has positive extra-territorial obligations as it indicates that a State "*may* also have positive obligations" (emphasis added), depending "on the extent the State has jurisdiction". The organization recommends to phrase the text more clearly by specifying that States *have* extra-territorial obligations *when* they have jurisdiction, authority, or power of control, and therefore suggests the following reformulation of the second and third sentences of para. 6:

*"A State **has** positive obligations to **respect and ensure** the right to life of individuals outside the State's own territory **to the extent that it has jurisdiction or otherwise exercises effective authority, power, or control over the perpetrator or the victim's rights, or exercises effective control over the territory in which the victim's rights are affected.**"*
16. This formulation suggests the use of "respect and ensure" in order to capture both negative and positive obligations. It refers to victim's *rights* rather than the victim him-/herself specifically in order to address situations in which the State has authority over neither the perpetrator nor the victim, but has authority over conduct that can affect the victim's rights, such as the export of weaponry or the incitement of violence. This formulation also suggests referring to control over territory in which "the victim's rights are affected" rather than limiting the text to "killings".
17. The African Commission's previous jurisprudence supports the proposed text in para. 6. The Commission has applied the African Charter to situations in which certain States' military forces were acting within the territory of another country and to situations in which certain States were taking action within their territory, i.e. economic sanctions, that had effects on human rights of people in the territory another country. For example, the Commission has found States guilty of

¹⁵ See in particular Article 4 of the Maputo Protocol, which states in para. (1) that "Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited." Article 4(2) then outlines the state obligations in relation to the same.

¹⁶ African Commission on Human and Peoples' Rights, *Kazeem Aminu v. Nigeria*, Comm. No. 205/97, para. 18.

¹⁷ See for example Amnesty International, Annual Report 2013, entry "Tanzania": <http://www.amnestyusa.org/research/reports/annual-report-tanzania-2013> (accessed 31 August 2015).

violations of human rights carried out in a different State with regard to the period in which the armed forces of the former States, or rebels with the assistance and support of the former States, were in effective control of some territory in the latter State.¹⁸ The Commission has further applied the African Charter to situations in which States have engaged in economic sanctions against other States.¹⁹

18. The reformulated para. 6 would also be consistent with the views taken by UN human rights treaty bodies,²⁰ the International Court of Justice (ICJ)²¹ and other regional human rights bodies²² which have recognised that human rights treaties apply extraterritorially to situations in which a State exercises *physical custody over a person* or *effective control over the territory* on which they are located. However, beyond these situations, UN human rights treaty bodies,²³ the ICJ²⁴ and regional human rights bodies²⁵ have further recognised that human rights treaties also apply to cases in which a State exercises control over the *right of a person* outside of its borders, even without physical control over that person or control over the territory in which they are present.

¹⁸African Commission on Human and Peoples' Rights, *Democratic Republic of Congo v. Burundi, Rwanda and Uganda*, Comm No. 227/1999 (2006), 20th Annual Activity Report, para 72.

¹⁹ *Association Pour la Sauvegarde de la Paix au Burundi v. Tanzania, Kenya, Uganda, Rwanda, Zaire and Zambia*, Comm. No. 157/96 (2003-2004), 17th Annual Activity Report para. 75. In that case, the Commission held that the sanctions concerned were not disproportionate, indiscriminate or excessive.

²⁰ See, among others: Human Rights Committee, *Lopez Burgos v. Uruguay*, Communication No. 52/1979, paras 12.1-13; Committee against Torture, General Comment 2, *Implementation of article 2 by States parties*, UN document CAT/C/GC/2, paras 7, 16.

²¹ 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.

²² See, for example, European Court of Human Rights, *Al-Skeini and others v. The United Kingdom* (2011) Application 55721/07 paras 133-7.

²³ See, among others, CERD Committee: 'Concluding Observations: United States of America' (2008), UN document CERD/C/USA/CO/6 para. 30; CEDAW Committee: 'General Recommendation 28 on the Core Obligations of States Parties under Article 2' (2010), UN document CEDAW/C/GC/28: 'States parties are responsible for all their actions affecting human rights, regardless of whether the affected persons are in their territory', para. 12. Human Rights Committee, Concluding Observations on the United States of America (2014), UN document CCPR/C/USA/CO/4, para. 9 (targeted killings in extraterritorial counter-terrorism operations using unmanned aerial vehicles in another country over which that State did not exercise effective control). The Committee also applied the Covenant to the country's surveillance of communications "both within and outside the United States", para. 22.; Human Rights Committee, 'Concluding Observations on Iran' (1993), UN document CCPR/C/79/Add.25, para. 9 (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 its territory); Human Rights Committee, 'Concluding Observations on Germany' (2012), UN document CCPR/C/DEU/CO/6, para. 16 (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); Human Rights Committee, *Munaf v. Romania* (2009) UN document CCPR/C/96/D/1539/2006, para. 14.2 (a State party may be responsible for extraterritorial violations if it is a link in the causal chain that would make possible foreseeable violations in another jurisdiction).

²⁴ International Court of Justice, *Armed Activities in the territory of the Congo (Democratic Republic of Congo v. Uganda)* [2005] I.C.J. Rep 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 [2008] I.C.J. Rep 353, para. 109.

²⁵ See, for example, Inter-American Commission on Human Rights, *Armando Alejandro Jr. and Others v. Cuba* ('Brothers to the Rescue'), Report No. 86/99, Case No. 11589, 29 September 1999, para. 23; 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* (2007) Application 60167/00, paras 53-55; *Droz and Janousek v. France and Spain* (1992) Application 12747/87, para. 91; *Solomou and others v. Turkey* (2008) Application no. 36832/97, paras 50-51.

Accountability (paras 7-12 of the Draft General Comment)

19. Amnesty International welcomes the inclusion of guidance to States Parties to fulfil their obligations to ensure accountability for violations of the right to life. The organization recommends that the following aspects could be strengthened to ensure that States Parties fully meet their obligations in accordance with the African Charter, as well as other international human rights law and standards.
20. In this light, Amnesty International recommends that the concept of accountability should be more clearly defined in the General Comment. “Accountability” is often used in relation to efforts to address impunity. However, it is a broad term that is not defined in international human rights law and is open to misinterpretation. It is therefore important that, if it is used, it is defined clearly to reflect States’ obligations under international human rights law to ensure: (1) *justice* – the prompt, thorough and effective investigation of violations through independent and impartial bodies and, where sufficient admissible evidence exists, the prosecution of those suspected of crimes under international or domestic law²⁶; (2) the establishment of the *truth* for victims, their families and society as a whole²⁷; and (3) full and effective *reparation* to address the harm suffered by victims, including the implementation of guarantees of non-repetition.²⁸
21. The use of the term “accountability” in para. 9 of the Draft General Comment currently does not fully reflect these requirements. The statement that accountability “will normally involve” criminal prosecution could be interpreted as allowing States not to fulfil their obligations in some cases. The references to truth commissions and reparation are welcome; however, wording such as “accountability *can* also encompass measures such as reparation ... making the truth known...” (emphasis added) could be interpreted as truth and reparations being optional, as opposed to rights arising from the obligation to provide an effective remedy. Amnesty International therefore urges the Working Group to review and strengthen the definition in accordance with international human rights law.
22. Amnesty International welcomes that the Draft General Comment highlights the need for effective systems of police investigation and accountability through legal processes in para. 8, as well as on the need for transparency of laws, policies and investigations in para. 12. The organisation encourages the Working Group to consider expanding its guidance in this regard to ensure that investigations and prosecutions relating to suspected violations of the right to life comply fully with States Parties’ human rights obligations, as set out in the African Commission’s jurisprudence and international standards, as well as taking into account the jurisprudence of human rights bodies and regional courts. In particular, Amnesty International recommends that the General Comment set out:

²⁶ See among others: African Commission on Human and Peoples’ Rights, *Amnesty International, Comité Loosli Bachelard, Lawyers’ Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v. Sudan*, Comm. Nos. 48/90, 50/91, 52/91, 89/93 (1999), para. 51; UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, United Nations Economic and Social Council, Resolution 1989/65 of 24 May 1989, UN document E/1989/89, Principles 9 and 18; Human Rights Committee, General Comment 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN document CCPR/C/21/Rev.1/Add.13, paras 15 and 18.

²⁷ See among others, Article 24(2) of the International Convention for the Protection of All Persons from Enforced Disappearance; Committee against Torture, General Comment 3, para. 16; Working Group on Enforced or Involuntary Disappearances, *General Comment on the Right to the Truth in Relation to Enforced Disappearances*, UN document A/HRC/16/48. See also, European Court of Human Rights, *Cyprus v. Turkey* (Application no. [25781/94](#)) (Judgment), 10 May 2001, para. 136; Inter-American Court of Human Rights, *Barrios Altos v. Peru*, Judgment, (ser. C) No. 75, 14 March 2001, paras 45-49.

²⁸ 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).

- the need for those conducting the investigation to be independent from those who are implicated in the death;²⁹
- for investigations to be adequately resourced;³⁰
- 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 adequate autopsy;³¹
- that investigations must be carried out within a reasonable timeframe, and must reach a definitive conclusion;³²
- that the findings of investigations should be made public;³³
- States' obligations to ensure that victims and witnesses are effectively protected;³⁴
- the applicable rights of family members of those killed to have access to all information relevant to the investigation; to present evidence; to be involved in the procedure to the extent necessary to safeguard their interests;³⁵ and to be kept informed of the proceedings and the outcome;³⁶
- specific measures that must be taken in relation to cases of enforced disappearances (see paras 46-48 below in this submission), in particular that the authorities investigating enforced disappearances must give the families a timely opportunity to contribute their

²⁹ African Commission on Human and Peoples' Rights, *Amnesty International, Comité Loosli Bachelard, Lawyers' Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v. Sudan*, Comm. Nos. 48/90, 50/91, 52/91, 89/93 (1999), paras 47–52.

³⁰ African Commission on Human and Peoples' Rights, *Amnesty International, Comité Loosli Bachelard, Lawyers' Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v. Sudan*, Comm. Nos. 48/90, 50/91, 52/91, 89/93 (1999), para. 51.

³¹ See, among others, Human Rights Committee, Concluding observations on Israel, UN document 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, European Court of Human Rights, *Slimani v. France*, App. No 57671/00, 27 July 2004, para. 32; Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Principles 9-17; UN Special Rapporteur on Extrajudicial 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 31 August 2015).

³² Human Rights Committee, *Olmedo v. Paraguay*, Communication No. 1828/2008, para. 7.5.

³³ African Commission on Human and Peoples' Rights, *Amnesty International, Comité Loosli Bachelard, Lawyers' Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v. Sudan*, Comm. No. 48/90, 50/91, 52/91, 89/93 (1999), para. 51.

³⁴ 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 United Nations General Assembly on 29 November 1985, Principle 6(d); Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions, UN document A/63/313, 20 August 2008, paras 12-47.

³⁵ Human Rights Committee, *Eshonov v. Uzbekistan*, Communication No. 1225/2003, para. 9.6; European Court of Human Rights, *Slimani v. France*, (App. no. 57671/00), 27 July 2004, para.47.

³⁶ 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).

knowledge to the investigation and that information regarding the progress of the investigation must be made promptly accessible to the families;³⁷

- trials for alleged human rights violations and crimes under international law, including enforced disappearances, must take place before ordinary civilian courts.³⁸

Application to non-state entities

23. Amnesty International welcomes the explicit statement of the responsibility of non-state entities, including corporations, under the right to life (para. 10 of the Draft General Comments). However, the organization recommends that the text of para. 10 is amended to read:

*“Non-State entities such as private individuals and corporations, including private military and security companies, that are responsible for **causing or contributing to** arbitrary deprivation of life should also be held accountable.”*

24. The phrase “cause or contribute” is most commonly used in key international standards on business and human rights (such as the UN Guiding Principles on Business and Human Rights³⁹) as well as international discourse to encapsulate the ways in which companies become involved in human rights abuses. Furthermore, it is important to refer to “contribution” explicitly, as the responsibility of companies often arises from their complicity (in contrast to direct causation) with other state or non-state entities in abuses of human rights, and the right to life in particular.

25. Amnesty International further recommends to rephrase para. 26, including by mentioning corporations specifically and expanding on their respective role and responsibility.

*“The State also has an obligation to protect individuals from violations at the hands of other private individuals **or entities, including corporations**. The State should make sure that all individuals are able to exercise their rights and freedoms, for example, by promoting tolerance and raising awareness. Moreover, the State has a responsibility for those deaths where authorities knew or ought to have known of an immediate threat, but also for **deaths at the hands of private individuals or entities, including corporations**, which are not adequately **prevented**, investigated and prosecuted by the authorities. These responsibilities are heightened when an observable pattern has been overlooked or ignored.”*

26. The State 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.⁴⁰ Widely accepted standards of corporate behaviour with regard to human rights are included, among other documents, in the UN Guiding

³⁷ 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, *Krasovsky v. Belarus*, Communication No. 1820/2008, para. 8.3.

³⁸ Committee on Enforced Disappearances, *Report on its eighth session*, http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/1_Global/INT_CED_SED_8_23242_E.pdf (accessed 31 August 2015), Annex VI, paras 5, 10.

³⁹ *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, UN document A/HRC/17/31.

⁴⁰ See for example, Amnesty International, [Bulldozed: How a mining company buried the truth about forced evictions in the Democratic Republic of the Congo](#) (Index: AFR 62/003/2014); Amnesty International, [The dark side of migration: Spotlight on Qatar’s construction sector ahead of the World Cup](#) (Index: MDE 22/010/2013).

Abolition of the death penalty (paras 13-16 of the Draft General Comment)

27. 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, and is the ultimate cruel, inhuman and degrading punishment. The death penalty is an affront to human dignity.⁴¹
28. While the International Covenant on Civil and Political Rights (ICCPR) provides for the limited use of the death penalty for the most serious crimes in countries that are yet to abolish the death penalty, the African Charter does not provide for the death penalty at all (as recognized in para. 13 of the Draft General Comment). However, the Draft General Comment only acknowledges that several African Commission resolutions called on States to abolish the death penalty, but it does not go further in expressing the uniqueness of the African Charter among the major human rights treaties in not providing for the death penalty. Amnesty International recommends that the General Comment should authoritatively declare that the fact that the African Charter does not provide for the death penalty, even in limited circumstances, is a strong argument against the death penalty and in favour of abolition.
29. The Draft General Comment in para. 15 emphasises that the death penalty shall only be used for the most serious crimes; and goes further to state that its application be guided by international standards concerning the protection of vulnerable groups. One of those vulnerable groups are juvenile offenders who continue to be sentenced to death and executed by some States in Africa in contravention of international, regional and domestic laws. The General Comment should address this by acknowledging this problem and emphasizing that, pending full abolition, “[the] death sentence shall not be pronounced for crimes committed by children.”⁴²
30. Para. 15 should further include that the criminal justice system of a State must also meet all relevant criteria *post-conviction*, and especially at the time of a prospective *execution*, as the right to appeal is an essential element of a fair trial.
31. Amnesty International further recommends that in para. 16 of the Draft General Comment it is clarified that, pending full abolition, the State’s duty to act transparently and to give notice pertains to the public at large, but also to the family members and lawyers of persons under sentence of death in the individual case; in particular, States still maintaining the death penalty must provide reasonable advance notice of date and time of an upcoming execution to condemned inmates and their families.

The use of force in law enforcement (paras 17-19 of the Draft General Comment)

32. Amnesty International fully supports the clear confirmation in the current Draft General Comment that in law enforcement, the intentional lethal use of force is only permitted if it is strictly unavoidable in order to protect another life (para. 17).⁴³ This may only be the case in absolute emergency situations of a threat that is already under way at that very moment, and there is no other means to stop it.⁴⁴ Even in such situations, the overall law enforcement purpose must be to

⁴¹ 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*, UN document A/69/265, para. 62..

⁴² Article 5(3) of the African Charter on the Rights of the Child.

⁴³ We note, however, that the present para. 17 of the Draft General Comment employs the wording of “intentional *use of lethal force*”, while Principle 9 BPUFF, last sentence, refers to “*intentional lethal use of firearms*” (emphasis added).

⁴⁴ UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (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.” The

stop the threat – the killing of a person can never in itself be a legitimate law enforcement purpose. Any intentional lethal use of force in situations that does 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.⁴⁵

33. In view of the fact that firearms are weapons designed to kill, and of their high potential to cause death,⁴⁶ 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 injury, or to prevent a crime involving a grave threat to life.⁴⁷ In particular, the use of firearms must not be allowed for the purpose of protecting property;⁴⁸ 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.⁴⁹ Neither may firearms be used as a means of public order management, e.g. for the dispersal of assemblies.⁵⁰ 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.⁵¹
34. When resorting to lethal force, e.g. by way of firearms, the targeted person must be given a chance of survival. This means also that certain type of firearms, such as automatic weapons or military assault rifles, that do not give a chance of survival to the targeted person and that present high risks to third persons, have no place in day-to-day law enforcement, and run counter to the concept of non-militarization of law enforcement called for in para. 18 of the Draft General Comment.
35. Furthermore, the loss of other lives than of the person presenting the concrete threat is an unacceptable outcome of a law enforcement action, and all law enforcement operations must be

Principles were adopted at the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba (27 August to 7 September 1990) and welcomed by the UN General Assembly in its resolution 45/121 of 14 December 1990. See also, Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Commission on Human Rights*, UN document 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 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*, Communication No. 45/79, paras 13.2-13.3.

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

⁴⁶ Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council*, UN document A/26/36, para. 70: “All uses of firearms against people should be treated as lethal or potentially lethal.”

⁴⁷ See UN BPUFF, Principle No. 9.

⁴⁸ Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the General Assembly*, UN document A/66/330, para. 88. See also, Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council*, UN document A/HRC/17/28, 23 May 2011, para. 61.

⁴⁹ See Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council*, UN document 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*, UN document A/HRC/RES/25/38, para. 10; Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council*, UN document A/HRC/17/28, 23 May 2011, para. 60.

⁵⁰ Human Rights Council, *Resolution on the promotion and protection of human rights in the context of peaceful protests*, UN document A/HRC/RES/25/38, paras 10, 11. See also UN BPUFF Basic Principle No. 14.

⁵¹ Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council*, UN document A/HRC/17/28, paras 60, 61.

planned in a way as to prevent the killing of other persons. The legislative framework called for in para. 17 should make clear 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) is not applicable in law enforcement, and that hence in planning and conducting a law enforcement operation such incidental harm may not be accepted from the outset.

36. In addition, Amnesty International recommends that the General Comment explicitly clarifies that any use of force that carries a high likelihood of lethal consequences, in particular any use of firearms, may only be used for protecting against a threat of death or serious injury, and that the use of firearms for other purposes, e.g. the protection of property or general public order, is disproportionate under international human rights law and, if resulting in death, presents an arbitrary deprivation of life.
37. With regard to less-lethal weapons (para. 18 of the Draft General Comment), Amnesty International recommends that the General Comment specifies that such equipment has no legitimate law enforcement purpose and should therefore be prohibited if it is inherently more injurious than others, is intrinsically cruel, or has no other purpose than torture or other ill-treatment;⁵² such equipment that *has* a legitimate role in law enforcement must be used in compliance with international policing and human rights standards, including the strict regulation over the transfer and deployment of such less-lethal weapons.⁵³ In the organization’s view, respective training is a requirement, and not only an option (“*Where required, special training ... should be provided.*” - emphasis added). Generally, 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.
38. State authorities are obliged to provide medical assistance to those injured by the use of force and firearms by law enforcement officials.⁵⁴ 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.⁵⁵
39. Amnesty International further recommends that the General Comment affirms the importance of the UN Basic Principles for the Use of Force and Firearms by Law Enforcement Officials for the due respect of human rights in law enforcement and calls upon the States Parties to the African Charter to implement the UN Basic Principles in their entirety.

The use of force in armed conflict (paras 20-23 Draft General Comment)

40. Amnesty International submits that it would be useful to begin this section by explicitly stating that the right to life (including its procedural aspects) applies in situations of armed conflict⁵⁶,

⁵² Examples include equipment such as spiked batons, electric shock batons/shields and weighted leg cuffs.

⁵³ Amnesty International, [The human rights impact of less lethal weapons and other law enforcement equipment](#) (Index: ACT 30/1305/2015).

⁵⁴ Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report to the Human Rights Council*, UN document A/26/36, para. 77. See also UN BPUFF Basic Principle No. 5 (c); Article 6 of the Code of Conduct for Law Enforcement Officials.

⁵⁵ See, for example, European Court of Human Rights, *Finogenov and others v. Russia*, Applications Nos. [18299/03](#) and [27311/03](#), para. 266.

⁵⁶ On the general application of human rights law, including the right to life, in armed conflict see International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 25. On application of procedural aspects, including the duty to effectively investigate violations of the right to life in situations of armed conflict see, among others: African Commission on Human and Peoples’ Rights, *Commission Nationale des Droits de l’Homme et des Libertés v. Chad*, Comm. No. 74/92, Decision of 11 October 1995; and European Court of Human Rights, *Isayeva, Yusupova and Bazayeva v. Russia*, Application nos. 57947/00, 57948/00 and 57949/00, Judgment of 24 February 2005, paras 209-213; and.

before explaining the role of international humanitarian law in determining what constitutes arbitrary deprivation of life during the conduct of hostilities.

41. As a second general observation, and given the extremely serious implications that co-application of international humanitarian law (IHL) (alongside international human rights law) has for the protection of the right to life, the organization considers it crucial that an accurate determination is made as to whether and where a situation of “armed conflict” exists. For this reason, it would be important to explain in this section, possibly in para. 21 of the Draft General Comment, the definitions of armed conflict (international⁵⁷ and non-international⁵⁸), and to emphasise that IHL 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”.⁵⁹ Similarly, it would be important to be explicit about the requirement of a nexus of the deprivation of life to an actual armed conflict. In other words, the mere fact that a targeted killing⁶⁰ is carried out during an existing armed conflict does not satisfy the requirement for application of IHL to that particular act. For IHL to apply, the State carrying out the attack must be a party to the armed conflict, and the act resulting in deprivation of life must have been carried out as part of that armed conflict.
42. Regarding the use of new weapons technologies (para. 22), the General Comment should make clear the reference there is to their use in hostilities, as opposed to law enforcement (which appears to fall under para. 19). Furthermore, the General Comment should underscore that – in addition to being “measured against the standard whether they increase protection of the right to life” – the use of such weapons also must comply with IHL. There are “new weapons technologies” that are permissible in law enforcement but are prohibited in hostilities, including chemical irritants such as tear gas and expanding bullets. All weapons must be able to be used in a way that respects the general rules of IHL, including the prohibition of weapons which are by nature indiscriminate and of those which cause superfluous injury or unnecessary suffering.⁶¹ States must adopt a procedure to ensure that new weapons technology complies with international humanitarian law.⁶²
43. This paragraph would also be strengthened by underscoring the requirement that all States be transparent about the intentional use of lethal force in general, and the use of new weapons, in particular, in order to ensure accountability for violations of the right to life.⁶³ For example, targeted killings using “drone” strikes have been carried out by the US military forces in Somalia,

⁵⁷ Common Article 2, Four Geneva Conventions of 1949.

⁵⁸ See, among others, International Committee of the Red Cross, *How is the Term “Armed Conflict” 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.

⁵⁹ 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.

⁶⁰ For present purposes, “targeted killings” are defined as the extra-territorial use of intentional lethal force against specified individuals.

⁶¹ International Committee of the Red Cross, *Customary International Humanitarian Law*, volume I: Rules, Rules 70 and 71.

⁶² Protocol I Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977, Article 36.

⁶³ For example, for many years the USA refused to even acknowledge its use of armed drones to carry out targeted killings, impeding assessment of basic facts, including the applicable legal framework, and preventing accountability and access to justice and remedies for victims and their families. 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*, UN document A/HRC/29/37, para. 45.

among other places.⁶⁴

44. Equally, the General Comment should make explicit that para. 23 (as also suggested for para. 22) refers to conduct-of-hostilities situations – not to those areas where the state exercises full control and its forces carry out law enforcement functions.
45. Amnesty International submits that a paragraph should be added in this section explaining that the arbitrary deprivation of life committed in armed conflict constitutes a war crime; that States have a duty to investigate war crimes and prosecute suspects; and that States have the right to vest universal jurisdiction in their national courts over war crimes.⁶⁵ In addition, States Parties to the Geneva Conventions and Additional Protocol I must provide for universal jurisdiction for those war crimes which constitute grave breaches of the Conventions and the Protocol.⁶⁶

Enforced disappearances

46. Amnesty International submits that the General Comment should contain a specific mention of the rules applicable to the issue of enforced disappearances, beyond the limited “allegations of disappearances” in para. 24 of the Draft General Comment. Enforced disappearance is a crime under international law that comprises a multiple violation of rights, including of the right to life. Even if it does not always consummate an extrajudicial execution, the very nature of the crime where victims are in an increased situation of vulnerability entails a direct risk to life. Several other rights enshrined in the African Charter might also be violated through an enforced disappearance, 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 recognition of legal status.⁶⁷
47. 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.⁶⁸ In certain circumstances, 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.⁶⁹ The concept of victim of an enforced disappearance includes not only the disappeared person but any individual who has suffered harm as the direct result of an

⁶⁴ See, among others, Amnesty International, [United States of America: 'Targeted killing' policies violate the right to life](#) (Index AMR 51/047/2012), p. 3.

⁶⁵ International Committee of the Red Cross, *Customary International Humanitarian Law*, volume I: Rules, Rules 156-158. War crimes involving arbitrary deprivation of life include, among others: Murder; Wilful killing; Intentionally launching a direct attack on civilians not directly participating in hostilities; Making civilian objects the object of attack; Launching an indiscriminate attack resulting in death or injury to civilians; and launching an attack in the knowledge that it will cause excessive incidental civilian loss, injury or damage.

⁶⁶ First Geneva Convention, Article 49; Second Geneva Convention, Article 50; Third Geneva Convention, Article 129; Fourth Geneva Convention, Article 146; Additional Protocol I, Article 85(1).

⁶⁷ See, among others, African Commission on Human and Peoples' Rights, *Mouvement Burkinabe des Droits de l'Homme et des Peuples v. Burkina Faso*, Comm. No. 204/97, paras 42-44; Human Rights Committee, *Fatma Zohra Bouchef v. Algeria*, Communication No. 1196/2003, para. 9.2. See also, Inter-American Court of Human Rights, *Velasquez Rodriguez v. Honduras*, Judgment of 29 July 1988 (merits), paras 157 and 188.

⁶⁸ Article 8(1)(b) of the International Convention for the Protection of All Persons from Enforced Disappearance; see also, UN Working Group on Enforced or Involuntary Disappearances, *General Comment on Enforced Disappearance as a Continuous Crime*, UN document A/HRC/16/48, para. 39.

⁶⁹ See, among others, Article 7(1)(i) of the Rome Statute; Article 5 of the International Convention for the Protection of All Persons from Enforced Disappearance. See also, UN Working Group on Enforced or Involuntary Disappearances, *General Comment on enforced disappearance as a crime against humanity*, UN document A/HRC/13/31.

enforced disappearance.⁷⁰ Effective safeguards to prevent enforced disappearance must be considered as being applicable and necessary to prevent violations to the right to life.⁷¹ States need to take measures to end this practice, including measures to prevent, investigate, and punish such crimes, and provide full reparation for victims.

48. Amnesty International recommends that in the General Comment the second part of para. 24 should be deleted,⁷² and instead the inclusion of a separate paragraph addressing this practice should be considered, such as:

“The right to life is among the rights enshrined in the African Charter that are violated by enforced disappearances, which are a crime under international law. An enforced disappearance is any form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty, placing such a person outside the protection of the law. States must take all appropriate measures to end the practice of enforced disappearances, including measures to prevent, investigate, and punish such crimes, and provide full reparation for victims. An enforced disappearance shall be deemed continuous or permanent as long as the fate or whereabouts of the person or the remains has not been determined.”

Custodial deaths (para. 25 of the Draft General Comment)

49. Amnesty International recommends that the General Comment clarifies that the principles for the use of force and firearms apply to law enforcement officials (see paras 17-19 of the Draft General Comment) in all situations in which they exercise police powers, including custodial situations.⁷³
50. Furthermore, the General Comment should explicitly state the obligation to protect detained persons pertains to the general conditions of detention, violence by other inmates, but also to violence by custodial officers or other persons exercising heightened control over detainees on behalf of the State.

Non-refoulement

51. Amnesty International welcomes the references to the States’ duty to prevent potential human rights abuses through extradition, deportation and similar means (para. 27 of the Draft General Comment; see also para 14 in the context of the death penalty, and the last sentence of para. 6). However, the organization would like to recommend that the broader concept of *non-refoulement* is made explicit in the General Comment.
52. The principle of *non-refoulement* is a key concept arising in the context of Article 4 of the African Charter and other systems in international human rights law, essential to prevent violations of fundamental rights and guarantees.⁷⁴ This principle prohibits the transfer of individuals to another

⁷⁰ Article 24 of the International Convention for the Protection of All Persons from Enforced Disappearance.

⁷¹ See 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.

⁷² “... and should also take appropriate action concerning allegations of disappearances, which can often be a prelude to an extrajudicial execution.”

⁷³ See 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.

⁷⁴ 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*

country or jurisdiction where they would face a real risk of serious human rights violations or abuses. Migrants and refugees benefit from this prohibition. Initially articulated in the Refugee Convention,⁷⁵ it is the cornerstone of international refugee protection,⁷⁶ but now goes beyond this area. 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.⁷⁷

53. The UN Human Rights Committee has applied the prohibition of extraditing, deporting, expelling or otherwise removing a person from a State's territory, "where there are substantial grounds for believing that there is a real risk of irreparable harm ... either in the country to which removal is to be effected or in any country to which the person may subsequently be removed".⁷⁸ Amnesty International submits that 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,⁷⁹ irrespective of all other considerations, States are not absolved of responsibility "for all and any foreseeable consequences" suffered by an individual following removal from their jurisdiction.⁸⁰

54. Amnesty International recommends that the General Comment expresses, possibly through an additional sentence in para. 27 of the present Draft, 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 4 of the African Charter."

v. UK, Application No. 22414/93, para. 79.

⁷⁵ UN Convention Relating to the Status of Refugees, Article 33(1).

⁷⁶ 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.

⁷⁷ Human Rights Committee, General Comment 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN document 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.

⁷⁸ Human Rights Committee, General Comment 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN document 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)*, UN document CCPR/C/79/Add.77, 5 May 1997, para. 5. See also, Committee against Torture, *Concluding observations on Belgium*, UN document 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*, UN document 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.

⁷⁹ See, among others, Human Rights Committee, General Comment 35, *Article 9 (Liberty and security of person)*, UN document 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. 14038/88, para. 113.

⁸⁰ 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.

Economic, social and cultural rights

55. Amnesty International welcomes the recognition given by the Working Group, in para. 27 of the Draft General Comment, to the need for States to not interpret the right to life narrowly. This is consistent with the African Commission's past practice, where it has noted that infringements of the right to life should not be limited to actual deprivations of it.⁸¹
56. Para. 27, read in conjunction with paras 2 and 29 of the Draft General Comment, go some way in recognising the indivisibility of human rights, and the emerging understanding of the interdependency between the right to life and economic, social and cultural rights. However, this General Comment affords the African Commission an opportunity to further underline States' obligations to take effective measures to prevent violations of economic, social and cultural rights that threaten the right to life. The link between health, environment, housing, food and the right to life has been made in the jurisprudence of the African Commission, and this could be reaffirmed and expanded on in the present General Comment.⁸²
57. The nexus between the right to health and the right to life has been recognised by the African Commission in its "General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14. 2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa" (General Comment 2) in the context of contraception and family planning⁸³ Given the high rates of maternal deaths, including deaths from unsafe and clandestine abortions, Amnesty International recommends a reaffirmation of the indivisibility of the right to life and health in this context, amongst others.
58. In addition, links have been made by both international bodies and national courts between the right to life and a range of socio-economic rights including work⁸⁴ and working conditions, housing, livelihood, food, water and sanitation, social security and education.⁸⁵ 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.⁸⁶
59. The UN Human Rights Committee has recognized the threat that poverty and deprivation may pose for the right to life,⁸⁷ as does environmental pollution.⁸⁸ In particular, the Committee has explicitly confirmed that protection of the right to life encompasses a range of issues that relate to the right to health.⁸⁹ In this vein, the Human Rights Committee has required States to take

⁸¹ African Commission on Human and Peoples' Rights, *Kazeem Aminu v. Nigeria*, Comm. No. 205/97, para. 18.

⁸² African Commission on Human and Peoples' Rights, *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, Comm. No. 155/96 (2001).

⁸³ See African Commission General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14. 2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, para. 27, in which the African Commission requires that States address: "Administrative laws, policies, procedures and practices, as well as socio-cultural attitudes and standards that impede access to contraception/family planning *violate the woman's right to life*, non-discrimination and health ..." (emphasis added).

⁸⁴ 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)*, UN document E/C.12/GC/18, paras 1, 31.

⁸⁵ See M. Langford, ed., *Social Rights Jurisprudence: Emerging Trends in International Law*, Cambridge University Press, 2008.

⁸⁶ 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.

⁸⁷ See Human Rights Committee, General Comment 28, *Article 3 (The equality of rights between men and women)*, UN document CCPR/C/21/Rev.1/Add.10, para. 10.

⁸⁸ Human Rights Committee, *EHP v. Canada*, Communication No. 87/1980, para. 8; Human Rights Committee, *Concluding observations on Kosovo*, UN document CCPR/C/UNK/CO/1, para. 14; Human Rights Committee, *Concluding observations on Israel*, UN document CCPR/C/ISR/CO/3, para. 18.

⁸⁹ Human Rights Committee, General Comment 6, *Article 6 (Right to life)*, para. 5. Issues identified are reducing infant

positive measures under the right to life to protect vulnerable individuals from risks to their lives and health, such as the homeless,⁹⁰ women and girls at risk of pregnancy- and child-related deaths,⁹¹ and prisoners requiring health care and medical treatment.⁹²

mortality, increasing life expectancy and adopting measures to eliminate malnutrition and epidemics.

⁹⁰ Human Rights Committee, *Concluding observations on Canada*, UN document CCPR/C/79/Add.105, para. 12.

⁹¹ See Human Rights Committee, General Comment 28, *Article 3 (The equality of rights between men and women)*, UN document CCPR/C/21/Rev.1/Add.10, paras 10, 20.

⁹² 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, UN document 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*, UN document CCPR/CO/75/MDA, para. 9.