



# International Covenant on Civil and Political Rights

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## Human Rights Committee 115th session

### Summary record (partial)\* of the 3218th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 28 October 2015, at 3 p.m.

*Chairperson:* Mr. Salvioli

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Organizational and other matters, including the adoption of the report of the working group on individual communications (*continued*)

*Draft general comment No. 36 on article 6 of the Covenant (Right to life)*  
(continued)

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\* No summary record was prepared for the rest of the meeting.

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*The discussion covered in the summary record began at 4.05 p.m.*

**Organizational and other matters, including the adoption of the report of the working group on individual communications** (*continued*)

*Draft general comment No. 36 on article 6 of the Covenant (Right to life)*  
(continued) (CCPR/C/GC/R.36/Rev.2)

1. **The Chairperson** invited the rapporteurs for the draft general comment to continue their introduction to the draft text.

*Paragraph 2* (continued)

2. **Mr. Shany** (Rapporteur for the draft general comment) said that several new draft paragraphs, based on the Committee's comments and suggestions, had been circulated. In the new draft paragraph 2, the word "individuals" had been replaced with the words "human beings" and the notion of derogation had been expanded by the addition of a reference to "war and other public emergencies". Mention was also made of the inherent and fundamental nature of the right to life. The proposals made by Mr. Bouzid and Ms. Cleveland had been placed in square brackets; he suggested that they should be included in paragraph 3.

3. **Sir Nigel Rodley** (Rapporteur for the draft general comment) said that paragraphs 2 and 3 could be merged.

4. **Mr. de Frouville** said that, while he supported most of the amendments, the description of the right to life as "fundamental" required further explanation. There was no hierarchy of human rights, and paragraph 2 should address the indivisibility and interdependence of rights under the Covenant and other international instruments by referring to their contribution to the full enjoyment of the right to life.

5. **Mr. Fathalla** said that he would welcome clarification of how the text in square brackets would be incorporated into paragraph 3. The issues raised by Mr. de Frouville regarding the interdependence of rights could be resolved with the merger of paragraphs 2 and 3.

6. **Mr. Ben Achour** said he believed that a hierarchy of rights existed; some rights, including the right to life, made all other rights possible. He asked when the French translation of the new draft paragraphs would be available.

7. **The Chairperson** said that it was not possible to provide official translations of the new draft paragraphs.

8. **Mr. Politi** said that, in order to address the matter of interdependence, the fourth sentence could be amended to read "but it also constitutes a fundamental right whose effective protection is a prerequisite for the enjoyment of all other human rights". Interdependence could not be addressed satisfactorily in paragraph 3.

9. **Mr. Seetulsingh** said that the final part of the fourth sentence could be amended to read "without which all other human rights cannot be enjoyed".

10. **Mr. Fathalla** said that the broadest terms possible should be used in the fourth sentence. The notion of the right to life being a "supreme right" was already reflected in the text and should be retained.

11. **Mr. de Frouville** said that the wording proposed by Mr. Seetulsingh was preferable to wording that used the word "guarantee".

12. **The Chairperson**, speaking as a member of the Committee, said that he supported a reference to the interdependence and indivisibility of human rights and the

fact that the right to life was a prerequisite for other rights. However, any reference to a hierarchy of rights should be avoided.

13. **Mr. Shany** said that he believed that a hierarchy of rights existed, although he did not oppose the addition of a reference to the interdependence of rights. The draft general comment contained a chapter addressing the relationship between article 6 and other provisions of the Covenant and underscoring the notion of the indivisibility of rights. The scope of the chapter could be broadened to include the provisions of other international instruments.

14. **Sir Nigel Rodley** said that he supported Mr. Politi's version of the final part of the fourth sentence. Care should be taken to avoid contradicting the Committee's existing view that the right to life was supreme by the inclusion of references to the interdependence and indivisibility of rights.

15. **The Chairperson** said that, if Committee members agreed with the underlying ideas of the proposed amendments, they should refrain from commenting on their exact wording so as to expedite the adoption of each paragraph.

*Paragraph 3 (continued)*

16. **Mr. Shany** proposed using the sentence in square brackets at the end of the new draft paragraph 2 as the first sentence of paragraph 3, so that it read "The right to life is a right which should not be interpreted narrowly. It concerns ...". Mr. Bouzid's suggestion regarding paragraph 2 could be inserted into the second sentence of paragraph 3, which would read "Article 6 guarantees this right for all individuals, without discrimination on any ground". The final part of that sentence — "including persons suspected or convicted of serious crimes, such as terrorist crimes" — could be removed if the Committee so wished.

17. **Mr. de Frouville** said that it was inadvisable to use the French word "*personne*" for the English "individual" or "human being" in every instance, as "*personne*" did not always denote a human being. The first sentence of the French version of the paragraph struck him as too long. It should be split into two sentences, one on the right to life and the other on the notion of what was referred to as a dignified existence. He also proposed removing the word "*escompté*" from the first sentence and using the phrase "*vie dans la dignité*" (life with dignity) rather than "*vie digne*" (dignified life).

18. **The Chairperson** said that those who wished to learn more about the concept of a dignified existence could consult the judgement of the Inter-American Court of Human Rights in *Villagrán Morales et al. v. Guatemala*.

19. **Mr. Fathalla** said that it was important to note in the first sentence of the paragraph that the right to life should be protected by law. The phrase "such as terrorist crimes", at the end of the paragraph, should be deleted.

20. **Mr. Seetulsingh** said that he agreed with Mr. Fathalla's proposal regarding the deletion of the phrase "such as terrorist crimes" from the last sentence of the paragraph. Although ending the sentence at the phrase "without distinction of any kind" struck him as preferable, a broader formulation referring simply to "the most serious crimes", as in article 6 of the Covenant, would also be acceptable. As for the notion of a "dignified existence", he believed that it was meaningful, but it could be introduced in a later paragraph — paragraph 28, for example.

21. **Mr. Iwasawa** said that, although he was aware it was not the term used by the Inter-American Court of Human Rights, he preferred the phrase "life with dignity". It was not necessary to expound on the right to life or life with dignity in paragraph 3, as there would be ample opportunity to do so in paragraph 28.

22. **Mr. Bouzid** said that terms such as “dignified existence” and “dignified life” struck him as too general. More specific language would be preferable. For example, the general comment could refer to States parties’ duty to provide the basic requirements for life, such as health care and food.

23. **Ms. Cleveland** said that references to the protection by law of the right to life and to the provision stating that no one shall be arbitrarily deprived of his life could be added to paragraph 4, which outlined the contents of article 6 of the Covenant, rather than to paragraph 3. Regarding the first sentence of the paragraph, she wondered whether there was not perhaps too much of a gap between acts and omissions intended to cause death and those expected to cause death. What about acts and omissions that could be reasonably foreseen to cause death?

24. As a number of States parties had taken the position that persons suspected of terrorist crimes were not entitled to the rights protection provided for in the Covenant, she had some sympathy with the view, expressed by some Committee members, that the reference to such crimes should remain. The suggestion to refer simply to “the most serious crimes”, which would implicitly include terrorist crimes, ultimately struck her as preferable, however.

25. She welcomed the fact that the notion of a dignified existence or a dignified life, taken from the judgement of the Inter-American Court of Human Rights, was not to be incorporated without modification into the general comment. Under the Covenant, the right to life was a non-derogable right, so the incorporation of a notion that could lend itself to excessively broad interpretations was inadvisable, inasmuch as it was sometimes necessary for rights to be derogable.

26. **Mr. Fathalla**, addressing Ms. Cleveland’s suggestion that the reference to the protection by law of the right to life could be added to paragraph 4, said that he would prefer it to be included in paragraph 3, as it was a general notion, whereas the safeguards referred to in paragraph 4 were highly specific.

27. **Ms. Cleveland** said that the paragraph that addressed the concept of the protection by law of the right to life should also mention that no person should be arbitrarily deprived of his life.

28. **Ms. Seibert-Fohr** said that the first sentence of the paragraph would be more effective if it were split into two, with each new sentence stressing one of the pillars of article 6 of the Covenant. She proposed adding a third sentence to the effect that the right to life was the foundation of the inherent dignity of each human being. She had understood that the Committee had decided to use the term “human being” rather than “individual”. In any event, she would be in favour of doing so. She agreed with the proposal to remove the specific reference to terrorist crimes.

29. **Mr. Vardzelashvili** said that, although terrorist crimes could be referred to later in the general comment, it would be preferable to make no specific mention of them in its opening paragraphs. He agreed with Mr. Fathalla’s suggestion that protection by law of the right to life should be mentioned.

30. **Mr. Ben Achour** said that, because some States parties were reintroducing the death penalty for convicted terrorists, he would prefer not to remove the reference to terrorist crimes.

31. **Mr. Politi** said that he agreed with Mr. Fathalla’s proposal that mention should be made of the protection by law of the right to life. He had initially been among those in favour of referring specifically to terrorist crimes but was willing to countenance a more general formulation.

32. It was not entirely clear to him why the right to life was described as it was: namely, as something that people were entitled to and as something that they could legitimately expect. In reality, however, many people could not expect to lead a dignified life. That did not mean that they could be denied the right to life.

33. **Mr. de Frouville** said that he agreed with Mr. Politi that the juxtaposition of “entitlement” and “legitimate expectation” was odd. He also said that he preferred the term “*vie*” (life) to the word “*existence*” (existence). More generally, he stressed that the non-derogability of the right to life did not change the basic nature of States parties’ obligations under the Covenant.

34. **Mr. Shany** said that he agreed with the suggestion that the issue of protection by law should be referred to in one of the opening paragraphs. His inclination was to adopt Ms. Cleveland’s suggestion that it should be included in paragraph 4. He understood that Ms. Seibert-Fohr had asked the rapporteurs to replace the term “individuals” with “human beings” throughout the draft. He was unsure of the advisability of doing so but would defer to Sir Nigel on that point. In any event, general comment No. 35 used the term “individuals” extensively.

35. In his view, the use of the word “expected” in the first sentence conveyed precisely the idea of an act or omission that could be reasonably foreseen, even if it had not been deliberate. He would therefore prefer to leave that sentence unchanged. He could agree with the proposals to replace the words “legitimate expectation” with the word “entitlement” and the words “dignified existence” with the words “a life of dignity” in the second sentence.

36. Regarding the third sentence, there seemed to be a consensus building around the proposal to retain the reference to persons suspected or convicted of serious crimes but to add the word “most” before “serious crimes”, which would mean that the reference to “terrorist crimes” would have to be deleted. In his view, the issue of protection by law should be dealt with in paragraph 4 rather than paragraph 3. The Committee might also wish to refer to the issue of interdependence in paragraph 2, which could thus be adopted only provisionally until the Committee had also dealt with that aspect.

37. **Sir Nigel Rodley** said that he largely agreed with Mr. Shany, though he was less certain that consensus had been achieved on the proposed wording. He did not believe that further ideological discussions would be productive, nor did he believe that the right to life was an umbrella for all the other rights in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Any reference made to interdependence must be consistent with what the Committee had already agreed, namely that the right to life was the supreme human right.

38. He did not see a problem with including references both to the need to avoid the arbitrary deprivation of life and to the obligation to protect life, even if it meant repeating the language used in article 6, paragraph 1, of the Covenant in a separate paragraph to be included between paragraphs 3 and 4 of the draft general comment.

39. **Mr. Shany** said that Sir Nigel’s proposal that a new paragraph should be added reasserting article 6, paragraph 1, of the Covenant would address the concerns raised by Mr. Fathalla and Mr. Bouzid.

40. **Sir Nigel Rodley** said that the draft general comment must be read as a whole and that it included a detailed section on protection beginning at paragraph 23. Thus the section currently under discussion should contain only general language on protection. He was in favour of making a separate reference to article 6, paragraph 1, of the Covenant rather than addressing it jointly with the other paragraphs of the article.

41. **The Chairperson** urged members to view the draft general comment as a whole rather than attempting to address all issues in every paragraph. He took it that the Committee wished to entrust the rapporteurs with the task of redrafting paragraphs 2 and 3 on the basis of the input provided.

42. *It was so decided.*

*Paragraph 4*

43. **Mr. Shany** said that paragraph 4 served as a table of contents explaining what was set out in the various paragraphs of article 6. It was meant to be descriptive rather than prescriptive.

44. **Sir Nigel Rodley** proposed replacing the words “are found in” with the words “contained in” in the second sentence, since article 6, paragraph 1, did not explicitly refer to the death penalty at all.

45. **Mr. de Frouville** said that he supported the proposal to add a separate paragraph addressing the specific nature of article 6, paragraph 1, of the Covenant, since it related to protection by law from arbitrary deprivation of the right to life. Special mention should also be made of paragraph 3 of the article, inasmuch as it related to genocide.

46. It should be pointed out that abolition of the death penalty was the ultimate objective of the Covenant and that the attempt to establish a strict framework for the application of the death penalty in countries where it had not yet been abolished did not in any way legitimize its use. He therefore proposed replacing the phrase “where national or international legal instruments do not totally prohibit the death penalty” with the phrase “in countries where the death penalty has not yet been abolished” in the first sentence. That sentence could be followed by one pointing out that article 6, paragraph 6, of the Covenant established the transitional nature of the framework governing the death penalty.

47. **Mr. Seetulsingh** proposed replacing the second sentence of the paragraph with one that would read: “States parties shall not apply the death penalty in an arbitrary manner, as provided for in article 6, paragraph 1”.

48. **Mr. Politi** suggested including the wording “most serious crimes” and “subject to a number of strict conditions” in the first sentence.

49. **Mr. Fathalla** proposed deleting the second sentence of the paragraph, as it would be made superfluous by the drafting of a new paragraph on article 6, paragraph 1. He supported the proposals made by Mr. de Frouville and Mr. Seetulsingh.

50. **Mr. Rodríguez-Rescia** noted that massacres were not covered by the Convention on the Prevention and Punishment of the Crime of Genocide and that the Committee would have either to turn a blind eye to that fact or to include a separate reference to massacres.

51. **Mr. Iwasawa**, referring to the first sentence, proposed using the wording of article 6, paragraph 2, of the Covenant, which stated that, in countries which had not abolished the death penalty, sentence of death could be imposed only for the most serious crimes. While that paragraph did not make any reference to “strictest limits”, he did not oppose the inclusion of that phrase. The word “exercised” was awkward and should not be used in relation to the death penalty.

52. **The Chairperson**, speaking as a member of the Committee, said that he agreed that reference should be made to the application rather than the exercise of the death penalty.

53. **Sir Nigel Rodley** said that he and Mr. Shany had tried to avoid merely repeating the language of the Covenant in the draft but that, as a consequence, the draft did not always faithfully reflect their own reading of the Covenant, which was clearly an abolitionist reading as it related to the death penalty. He supported the idea of clarifying the Committee's stance that the death penalty was a legal embarrassment that would hopefully not survive much longer.

54. **Mr. Shany** said that the "strictest limits" mentioned in the first sentence referred to those set out in paragraphs 2, 4 and 5 of article 6. He was inclined to retain the second sentence so as to refute the possible argument that the provisions in question were *lex specialis* provisions.

55. **Sir Nigel Rodley** said that the second sentence was rather opaque and should not be retained in its current form. He would work with Mr. Shany to find a better way of addressing the issue of *lex specialis*.

56. **The Chairperson** said that the Committee would continue its consideration of the draft general comment at its 3222nd meeting and he hoped that it would be able to adopt some paragraphs of the draft at that meeting. He wished to draw attention to the fact that the United Nations had recently celebrated its seventieth anniversary. The world would be much worse off were it not for the existence of the United Nations and the Committee's work formed part of the efforts to pursue the Organization's objectives, including that of international cooperation to promote and protect human rights.

*The meeting rose at 6 p.m.*