

Human Rights Watch Submission to the Human Rights Committee General Comment 36 on Article 6 (Right to Life)

Human Rights Watch thanks the Human Rights Committee (the Committee) for the opportunity to make submissions on the draft general comment on article 6 of the International Covenant on Civil and Political Rights (the Covenant). At this stage, Human Rights Watch limits its observations on the draft comment to six discrete areas, including recommendations for specific textual edits and additions.

1. Right to life and the right of access to abortion

Human Rights Watch has joined with the Center for Reproductive Rights, International Commission of Jurists, Ipas and others in a written submission that more fully addresses states' obligations to respect, protect and fulfil the right to life of women and girls. Rather than repeat those submissions here we limit our comments to the text of paragraph 9 and the obligations of states parties to eliminate preventable maternal mortality by ensuring access to safe and legal abortion.

Specifically, with reference to the text of paragraph 9, Human Rights Watch urges the Committee to:

- Ensure that references to “woman” or “women” also include references to “girl” or “girls,” e.g. “... the right to life of a pregnant woman or girl.”
- Include the term “legal” in the third sentence so it reads “States parties must provide safe and legal access to abortion to protect the life and health of pregnant women and girls.”
- Eliminate the sentence in brackets in paragraph 9 that reads [For example, they should not take measures such as criminalizing pregnancies by unmarried women or applying criminal sanctions against women undergoing abortion or against physicians assisting them in doing so, when taking such measures is expected to significantly increase resort to unsafe abortions]. As this Committee has repeatedly recognized, the imposition of criminal sanctions on a woman or girl who seeks an abortion or on health professionals who assist them, such as those listed, inherently leads many to resort to unsafe abortions.¹ This is a direct contradiction of states parties' duty to ensure women and girls do not have to resort to unsafe abortion, a duty articulated many times by the Committee and set out in the preceding sentence of paragraph 9. A test that requires a significant increase in resort to unsafe abortion, and therefore a significant increase in the risk to the lives of pregnant women and girls, is incompatible with article 6. Moreover it is discriminatory as it is only the lives of women and girls that are being placed at risk by such criminal sanctions. Human Rights Watch urges the Committee to make clear in the general

¹ Human Rights Committee on Chile, U.N. Doc. CCPR/C/CHL/CO/6 (2014), para. 15; Costa Rica, U.N. Doc. CCPR/C/CRI/CO/6 (2016), para. 17 (referring to cases of rape, incest, and fatal fetal impairment); Malawi, U.N. Doc. CCPR/C/MWI/CO/1/Add.1 (2014), para. 9; Sierra Leone, U.N. Doc. CCPR/C/SLE/CO/1 (2014), para. 14; Malta, U.N. Doc. CCPR/C/MLT/CO/2 (2014), para. 13; Sri Lanka, U.N. Doc. CCPR/C/LKA/CO/5 (2014), para. 10; Paraguay, U.N. Doc. [CCPR/C/PRY/CO/3 \(2013\)](#), para. 13; Peru, U.N. Doc. [CCPR/C/PER/CO/5 \(2013\)](#), para. 14; Guatemala, U.N. Doc. [CCPR/C/GTM/CO/3 \(2012\)](#), para. 20; Mexico, U.N. Doc. [CCPR/C/MEX/CO/5 \(2010\)](#), para. 10; El Salvador, U.N. Doc. CCPR/C/SLV/CO/6 (2010), para. 10; Poland, U.N. Doc. CCPR/C/POL/CO/6 (2010), para. 12; Jamaica, U.N. Doc. CCPR/C/JAM/CO/3 (2011), para. 14; Dominican Republic, U.N. Doc. CCPR/C/DOM/CO/5 (2012), para. 15; Nicaragua, U.N. Doc. [CCPR/C/NIC/CO/3 \(2008\)](#), para. 13; and Djibouti, U.N. Doc. CCPR/C/DJI/CO/1 (2013), para. 9. The World Health Organization notes that there are an estimated 22 million unsafe abortions performed each year, which result in 47,000 deaths and another 5 million disabilities. See WHO, *Safe abortion: technical and policy guidance for health systems* (Geneva, 2012). Available from www.who.int/reproductivehealth/publications/unsafe_abortion/9789241548434/en.

comment that criminal sanctions on abortion are incompatible with the right to life of women and girls.

2. Right to life and use and development of particular weapons

The Committee has correctly identified the use and development of certain weapons as a potential threat to the right to life, in particular lethal autonomous weapons systems.² Human Rights Watch has long called for a [preemptive ban](#) on the development, production, and use of fully autonomous weapons.³ Human Rights Watch has documented that fully autonomous weapons would face significant challenges in meeting the criteria articulated by this Committee to meet lawful lethal force (necessary to protect human life, constitute a last resort, and be applied in a manner proportionate to the threat). These weapons could not be programmed in advance to assess every situation because there are infinite possible scenarios and cannot exercise the kind of human judgment that facilitates compliance with the three criteria. A fully autonomous weapon's misinterpretation of the appropriateness of using force could trigger an arbitrary killing in violation of the right to life. Likewise, under international humanitarian law, there is no level of certainty as to whether fully autonomous weapons could ever comply with rules of distinction and proportionality in times of conflict. The humanitarian and security risks of such weapons would outweigh any possible military benefit. Critics dismissing these concerns depend on speculative arguments about the future of technology and the false presumption that technical advances can address the many dangers posed by these future weapons.⁴

Human Rights Watch therefore urges the committee in **paragraph 12** to:

- Include the sentence: “The Committee is therefore of the view that such weapon systems should not be developed nor put into operation, either in times of war or in times of peace.”

3. Right to life and the death penalty

Human Rights Watch welcomes the articulation by the Committee of the strict limitations on the application of the death penalty and reiterates that we oppose capital punishment in all circumstances. Human Rights Watch believes the Committee should strengthen references to the intersection between the application of the death penalty and persons with disabilities, to ensure protection for persons with disabilities from unlawful application of the death penalty on an equal basis with others. The Committee notes (paragraph 45) that violations of the protections of the right to a fair trial in article 14 of the Covenant – as well as other serious procedural flaws not explicitly enumerated (paragraph 46) - could lead to a violation of the right to life. Violations of fair trial protections include an inability to mount an effective defense due to a failure to ensure accessible procedures and procedural accommodation for persons with disabilities, for example, a failure to ensure sign language interpretation for deaf persons.⁵

² These may also be known as fully autonomous weapons or referred to as “killer robots”.

³ Human Rights Watch, “Killer Robots” webpage <https://www.hrw.org/topic/arms/killer-robots>. Human Rights Watch is a founding member and global coordinator for the [Campaign to Stop Killer Robots](#).

⁴ Human Rights Watch, “Making the Case: The Dangers of Killer Robots and the Need for a Preemptive Ban, December 2016, available at <https://www.hrw.org/report/2016/12/09/making-case/dangers-killer-robots-and-need-preemptive-ban#f60fee>.

⁵ With respect to ensuring persons with disabilities have a fair trial, the Committee on the Rights of Persons with Disabilities has expressed concern “at the lack of accessibility to the justice system, including physical access, legal aid and sign language interpreters in courtrooms, and procedural accommodation.” See for example Concluding Observations on Gabon, CRPD/C/GAB/CO/1, paras. 30-31.

Human Rights Watch urges the Committee to:

- Include reference to the failure to provide accommodations for persons with disabilities as a ground that would render a trial unfair. The second sentence of **paragraph 45** would read: “...lack of suitable interpretation; a failure to provide accessible procedures and procedural accommodation for persons with disabilities including, for example, sign language interpretation for deaf persons; excessive and unjustified delays in the trial or the appeal process”.
- Rephrase the first sentence of paragraph 53, to focus on the issue of whether a defendant’s disability impeded their ability to effectively defend themselves rather than their status as a person with a disability. The opening sentence of paragraph 53 would read: “States parties must refrain from imposing the death penalty on individuals who have limited ability to defend themselves on an equal basis with others, such as persons whose psycho-social or intellectual disabilities impeded effective defense, and on persons with or without disability that have reduced moral culpability.”

4. **Right to life and environmental degradation**

Human Rights Watch welcomes the Committee’s focus on the relationship between the right to life and international environmental law and the inclusion in the general comment of states’ obligations to prevent environmental harm and dangerous interference with the climate system as they relate to their obligations to respect, protect and fulfill the right to life. We note that the European Court of Human Rights has also explicitly recognized that states’ positive obligations to protect the right to life extend to environmental matters.⁶

Human Rights Watch notes that the list of “general conditions in society” that threaten the right to life listed in paragraph 30 does not include harms caused by climate change, and submits that it should. This would be consistent with paragraph 65 where climate change is presented as one of the “most pressing and serious threats to the ability of present and future generations to enjoy the right to life.” In addition, international environmental law is built on principles and not just obligations, and we believe the general comment would be strengthened by including a reference to such principles. We also believe that paragraph 65, in particular the final sentence, would benefit from greater inclusion of principles from the Rio Declaration on Environment and Development (Rio Declaration). The list of substantive duties in the final sentence of paragraph 65 selects some principles but not others that have importance for protecting the right to life. For example, principle 10 of the Rio Declaration is key to access rights to information, participation and justice. Similarly, in the Rio Declaration, states are called upon to ensure that the precautionary principle is “widely applied” and not just taken note of. We note that the European Court of Human Rights has explicitly referred to the duty of states to follow the precautionary principle as contained in principle 15 of the Rio Declaration.⁷

Human Rights Watch urges the Committee in **paragraph 30** to:

- Include in the first sentence a reference to climate change, so it would read: “These general conditions may include high levels of criminal and gun violence, pervasive traffic and industrial accidents, pollution of the environment, harms caused by climate change, the prevalence of life threatening diseases, such as AIDS or malaria, extensive substance abuse, widespread hunger and malnutrition and extreme poverty and homelessness.”

⁶ *Budayeva and others v. Russia*, Applications nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, (March 20, 2008), para. 133.

⁷ *Tatar v Romania*, Application no. 67021/01, (January 27, 2009), paras. 109 and 120.

Human Rights Watch urges the Committee in **paragraph 65** to:

- Include a reference to the principles of international environmental law, as well as states' obligations, so that the second sentence reads: "Obligations of States parties under international environmental law and principles of international environmental law should thus inform the contents of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life must reinforce their relevant obligations and commitments under international environmental law."
- Include recognition of the need for governments to ensure environmental protection laws are rights-based and include reference to the rights in the Rio Declaration to information, to participation and to justice.
- Strengthen the reference to the precautionary principle to align it with the Rio Declaration.
- Affirm that governments should not only conduct environmental impact assessments on activities that have may have significant environmental impact, but assess the social impacts of these activities and regularly monitor them.
- The final sentence of **paragraph 65** would therefore read: "In this respect, States parties should adopt rights-based environmental protection laws and measures, protect rights to information, participation and justice in environmental matters, engage in sustainable utilization of natural resources, conduct environmental and social impact assessments for, and regularly monitor, activities likely to have a significant impact on the environment, provide notification to other States of natural disasters and emergencies, and apply the precautionary principle."⁸

In paragraph 57 the Committee recognizes the importance of protecting against threats to the right to life arising from reprisals against individuals striving to promote, protect and realize human rights.

Environmental human rights defenders have been specifically at risk in this context. In 2016 the Special Rapporteur on the situation of human rights defenders called on states to "urgently and publicly adopt a zero-tolerance approach to killings and violent acts against Environmental Human Rights Defenders and immediately implement policies and mechanisms to empower and protect them."⁹

Human Rights Watch urges the Committee in **paragraph 57** to:

- Explicitly include a reference to environmental human rights defenders so the second sentence reads: "States parties must take the necessary measures to respond to death threats and to provide adequate protection to human rights defenders, including environmental human rights defenders, and such measures should reflect the importance of their work.

Right to life and gun violence

In paragraph 25 the Committee notes that "... States parties are obliged to take adequate preventive measures in order to protect individuals against being murdered or killed by criminals States parties should also ... reduce the proliferation of potentially lethal weapons to unauthorized individuals." This is consistent with the Committee's call on states in General Comment No. 35 to protect persons "against the risks posed by excessive availability of firearms". In paragraph 30 the Committee notes that states "should take appropriate measures to address the general conditions in society that may eventually give

⁸ Rio Declaration on Environment and Development, June 14, 1992, principles 1, 2, 15, 17, 18.

⁹ See Situation of human rights defenders, UN Doc. A/71/281 para. 96, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/247/09/PDF/N1624709.pdf?OpenElement>.

rise to direct threats to life” and includes “high levels of criminal and gun violence” among the list of “general conditions in society”.

Human Rights Watch welcomes attention by the Committee to the states parties’ obligations with respect to protection from gun violence and urges it to articulate states’ positive obligations to regulate private ownership and use of firearms and other potentially lethal weapons stemming from the duty to protect life.

Right to life of those in institutions

Under the duty to protect life, the Committee notes (paragraph 29) that states parties have “a heightened obligation to take any necessary measures to protect the lives of individuals deprived of their liberty by the State” and this extends to “individuals quartered in State - run mental health facilities, military camps, refugee camps and camps for internally displaced persons, and orphanages.” As noted above the Committee (paragraph 30) also reminds states that the duty to protect life “implies states parties should take appropriate measures to address general conditions in society that may prevent individuals from enjoying their right to life with dignity”. Human Rights Watch has documented that often – and disproportionately – persons, including children, with disabilities live in institutions or forms of residential care that may be state-run or are private but from which those institutionalized are not free to leave because of operation of state law or policy.¹⁰ Human Rights Watch has documented that persons with disabilities who live in such institutions may face serious neglect and abuse, including beatings and psychological violence, sexual violence, involuntary and inappropriate medical treatment and use of abusive physical restraints, seclusion and sedation, that threaten their right to life and severely impede them from enjoying their right to life with dignity.¹¹

In order to end such abuses, states should move to eliminate laws and policies that lead to institutionalization and invest in community-based services and support, so that persons with disabilities can enjoy their right to life with dignity in their communities instead of behind locked doors. Human Rights Watch urges the Committee to affirm the right of persons with disabilities to enjoy the right to life with dignity outside of institutions, and explicitly recognize states parties’ obligations in situations where persons with disabilities live in institutions.

Human Rights Watch urges the Committee in **paragraph 29** to:

- Rephrase the final sentence to read “A heightened obligation to protect right to life also applies to individuals who reside either in State-run mental health facilities, military camps, refugee camps and camps for internally displaced persons, orphanages, or residential

¹⁰ See Human Rights Watch’s Submission to the CRPD Committee: Draft General Recommendation 5 on Article 19 of the Convention— Right to live independently and be included in the community, available at <https://www.hrw.org/news/2017/07/11/submission-cprd-committee-draft-general-recommendation-5>.

¹¹ See Human Rights Watch work on Disability Rights at <https://www.hrw.org/topic/disability-rights>. Reports include *Children with Disabilities: Deprivation of Liberty in the Name of Care and Treatment* Shantha Rau Barriga, Jane Buchanan, Emina Ćerimović, and Kriti Sharma, published in [Protecting Children Against Torture in Detention: Global Solutions](#) and available at <https://www.hrw.org/news/2017/03/07/children-disabilities-deprivation-liberty-name-care-and-treatment>; *Living in Hell; Abuses Against People with Psychosocial Disabilities in Indonesia*, 2016, <https://www.hrw.org/report/2016/03/20/living-hell/abuses-against-people-psychosocial-disabilities-indonesia>; *It is My Dream To Leave This Place, Children with Disabilities in Serbian Institutions*, 2016, <https://www.hrw.org/report/2016/06/08/it-my-dream-leave-place/children-disabilities-serbian-institutions>.

institutions for persons with disabilities or in similar privately-run facilities as a result of state parties' laws or policies."