Human Rights Committee Draft General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life

Comments of the Government of the United Kingdom of Great Britain and Northern Ireland

1. The Government of the United Kingdom takes this opportunity to thank the Human Rights Committee for its draft general comment No. 36 on the right to life. The UK welcomes this opportunity to provide comments on the draft and looks forward to a continuing discussion on this important topic as the draft progresses.

2. The UK first of all makes some general observations and then specific drafting comments in relation to each paragraph, as appropriate.

General observations

3. We welcome the detailed work that has clearly gone into this draft General Comment. As a general observation we note that in some places the draft is drafted in too general or too broad terms, which does not reflect international law. We do not consider this to be helpful and therefore many of our drafting comments are aimed at making the drafting more precise and accurate.

4. We also consider that it is not the Committee's place to develop international law by connecting all possible human rights violations to the right to life. Whereas we can understand why most, if not all, human rights violations will impact on the quality of life for one or more individuals, this does not mean that any human rights violation automatically results in a violation of the right to life. We think that in some places, this draft goes too far in this direction and therefore have made drafting suggestions accordingly.

Specific observations

Section I

5. The UK is strongly of the view that there is not a hierarchy of rights in the way that paragraph 2 currently suggests. That being the case the UK takes the view that the second sentence of paragraph 2 should start "No derogation is permitted".

6. Paragraph 3 appears to be overly broadly drafted at present and lacks a link to State responsibility. Therefore the UK proposes that the second sentence is amended to read: "to be free from acts and omissions *by the State reasonably* intended or expected to cause....".

7. In a similar vein, paragraph 7 appears to be overly broadly drafted at present, referring to “all threats” in the third sentence whereas we consider that it would be more accurate to refer to “extends to *reasonably foreseeable* threats”.

8. With respect to paragraph 8, as a general proposition we do not consider that a Human Rights Committee general comment on Article 6 of the ICCPR is the most appropriate place to go into detailed comment about enforced disappearances, which is the subject matter of a separate Convention. We furthermore consider the term “full reparation” to be unclear.

9. The UK is generally supportive of paragraph 9, but considers that the third sentence should end after “substantial pain or suffering”; at present the following phrase is both too detailed and also risks restricting the more general text of “substantial pain or suffering”. We further note that in using the term “pregnant woman” the Committee may be inadvertently restricting the application of this paragraph to exclude transgender people who have given birth; this has happened in two recent cases in the UK.

10. We appreciate the sensitivity of the topic addressed in paragraph 10; and support the first two sentences as currently drafted. However our preference is to delete the final two sentences of this paragraph which go beyond our understanding of international law in this area at present. If the Committee is determined to retain the final two sentences of this paragraph then it would be imperative to keep the “may allow” formulation and remove the final phrase “and wish to die with dignity”, which currently suggests that assisted suicide is the only way in which to “die with dignity”, which we consider to be an over-simplification of this sensitive topic. We also consider that “intractable” pain might be a more appropriate term than “severe” pain. In general we prefer the term “take their own life” to “commit suicide”.

11. We consider that paragraph 11 is not quite accurate enough in terms of the acts of private prisons. We propose to remedy this by deleting the “directly” before “responsible” in the first sentence as the nature of the allegation and the circumstances of the death will determine who is directly responsible for the death.

12. In relation to paragraph 12, the UK position is that Lethal Autonomous Weapons Systems (LAWS) do not exist and may never do so. If they were to be developed, each system would need to pass an Article 36 review (a legal requirement for any state party to Additional Protocol I (1977) of the Geneva Conventions (1949)) to assess if it can be used legally, especially in the critical areas of proportionality and discrimination. Definitions of what might constitute 'lethal autonomous robotics' vary, however the UK firmly believes that existing international humanitarian law is sufficient to assess whether any potential future LAWS would be capable of lawful use. IHL has primacy as an existing body of law specifically regulating the use and development of weapons and it is unnecessary and unhelpful to seek to impose concurrent similar or different obligations under article 6. It is also

impractical to attempt to ban something which does not yet exist and for which there is no generally agreed definition. Consequently, a specific treaty to ban LAWS would be impractical, may undermine existing international law and also affect research and development in autonomous technology for wider benefit. For these reasons, the UK cannot support the additional text proposals from the Committee in brackets and strongly urges its deletion.

13. In relation to paragraph 13, the UK does not support the comment that "the [threat] or use of nuclear weapons are incompatible with respect for the right to life and may amount to a crime under international law". In its Advisory Opinion on the legality of threat or use of nuclear weapons, published on 8 July 1996, the International Court of Justice confirmed that the use, or threat of use, of nuclear weapons is subject to the law of armed conflict. The Court did not conclude that such use would necessarily be unlawful. We remain confident that the United Kingdom's nuclear deterrent is entirely consistent with international law. The UK is committed to the long term goal of a world without nuclear weapons, in line with the Nuclear Non-Proliferation Treaty (NPT). We remain determined to continue to work with partners across the international community to prevent proliferation and to make progress on multilateral nuclear disarmament. One way to remedy the current drafting would be to say, consistently with International Humanitarian Law, that "the *indiscriminate* use of nuclear weapons is incompatible with *Article 6 of the Covenant*". In relation to the last sentence of this paragraph being considered by the Committee, the UK will only pay reparation to those affected by the testing or use of nuclear weapons if it has a legal liability to do so, and where causation and proof of loss have been demonstrated.

14. In paragraph 14, we do not agree that the use of less-lethal weapons can be or must be restricted only to law-enforcement agents because members of the armed forces may need to use such weapons in support of the civil authorities in a law enforcement context. We recommend that this scenario is taken into account in the drafting process.

Section II

15. The UK considers that the word "inappropriateness" in paragraph 18 is too vague and therefore too wide a term for the circumstances and should be deleted.

16. In paragraph 21 we are concerned that the first sentence is drafted too broadly without due consideration to when these circumstances might arise in practice. We propose that the first sentence is amended to read "other than article 6 *may be* arbitrary in nature" which is consistent with paragraph 45.

Section III

17. The UK considers that the second sentence of paragraph 22 is drafted in a manner which is too broad which can be rectified by amending it to read "all *reasonably* foreseeable threats".

18. In paragraph 23 the meaning of "full reparation" is unclear and may limit the type of compensation (e.g. compensation orders, damages, redress) which is available to victims; therefore we suggest deleting the word "full".

19. We have a similar concerns that paragraph 25 is currently drafted in a manner which is too broad and therefore suggest that the second sentence is amended as follows: "in response to *reasonably* foreseeable threats". Assuming that the third sentence follows on from the second sentence we suggest starting with "Hence, *where relevant threats are present*, State parties...".

20. In paragraph 26 we consider that the word "direct", currently within square brackets, should be included in this paragraph.

21. In paragraph 29 we are concerned with the use of the term "heightened" both in the first and second sentences ("heightened obligation") and in the forth sentence ("heightened duty"). A duty is a duty and our position is that the State does not have more of a duty to protect individuals detained in a mental health facility [and other facilities listed in the final sentence] over its duty to protect any other detained individual (set out in the previous sentence of paragraph 29). In the third sentence we prefer to delete the word "regularly" before "monitoring health" as we consider this to be sufficient to reflect the obligation. We understand that the use of the term "orphanage" means children's home.

22. We are concerned that paragraph 30 is an example where the draft is simply too general and wide-ranging without good reason; it is also unwieldy as it conflates too many issues into one paragraph. We suggest that this paragraph could be split into (i) basic standards of life, (ii) exceptional natural events and (iii) violence, and State responsibilities in respect of each of those as far as those have been established, without any over-statement. We think that the last sentence currently in square brackets is best omitted.

23. We consider that the first two sentences "the duty to protect life also... extreme poverty and homelessness" is one example of this paragraph being too broad. This mixes up the idea of taking appropriate steps to protect people by creating and enforcing criminal offences (criminal and gun violence, substance misuse and accidents in the sense that we criminalise certain dangerous behaviour); and ensuring a certain quality of life (pollution; hunger etc). It also mixes up having necessary systems in place to protect life (a functioning ambulance service and hospitals etc); with ensuring a certain quality of life (access to goods and services). We are also not convinced that there is a sufficient link in the forth sentence with "detailed plans to promote education to non-violence and de-radicalization programs; and campaigns for

raising awareness against domestic violence" and the right to life for these to be included.

24. In the first sentence we are strongly of the view that "may eventually" should be omitted. The reference to traffic accidents is not borne out by the case cited at footnote 96 (the ECtHR case of Oneryildiz v Turkey, 30 November 2004), which concerns dangerous industrial activities, in this particular case the management of a waste collection site, and so the reference to traffic should be deleted. It would be more accurate to characterise this case as an environmental example with an explosion at a landfill. In the absence of any source indicating how the right to life is infringed by pervasive traffic accidents, a reference to such accidents is disproportionate.

25. Our view is that environmental protection is a regulatory matter so a reference to pollution of the environment is too wide. Examples given should only concern incidents that directly impinge on article 6 issues such as the case cited in footnote 96 where failure to regulate an environmental side led to loss of life.

26. In paragraph 32 we have the same concerns with the term "full reparation" as in paragraph 23 and therefore request the deletion of "full". We agree with the second last sentence (concerning investigations) when the State is involved but we fail to see how this can work when the State does not know about the death because it was caused by a third party and the issue is a threat not known by the State.

27. We strongly contest the proposition currently in the first sentence of paragraph 33 and therefore request its deletion; we agree that there has to be an investigation – but not that there has been a breach of the right to life unless the investigation says otherwise.

28. Our reading of paragraph 34 is that it appears to take a number of individual communications and tries to create general principles from individualised findings. We do agree that it would be contrary to article 6 to extradite an individual from a country that abolished the death penalty to a country in which he or she is at real risk of facing the death penalty. However, although we accept that in the individual cases cited, the Committee found a breach of article 6 when an individual was deported to a country in which a fatwa had been issued against him by local religious authorities, without verifying that the fatwa is not likely to be followed; and when an individual was deported to an extremely violent country in which he has never lived, has no social or family contacts and cannot speak the local language, we do not consider that the description given in all cases would breach article 6, or create a presumption that there would be a breach of article 6.

Section IV

29. The UK generally supports this section of the draft general comment. However in paragraph 50 we think that the final sentence needs to be clearly

linked to the death penalty. This can be best be dealt with by simply adding "such interim measure *in relation to the death penalty* is incompatible".

Section V

30. The UK welcomes the focus on reprisals in paragraph 57.

31. In paragraph 61 we think it is necessary to amend the second sentence to keep the necessary link to the right to life as follows: "as well as the right to life *if the person dies or comes near to death*".

32. As above, we are not convinced in paragraph 65 on the benefit of making compliance with international environmental law a human rights issue. As far as we are concerned, these agreements concern environmental regulation. International agreements are put in place to address global environmental issues and not individual rights and therefore we propose deletion of the second sentence. Where environmental conditions are relevant to human rights, in most cases, in our view, the impact will relate to in most cases matters decided at the domestic or local level. We propose to add at the end of the third sentence "*including international environmental obligations*".

33. In paragraph 67 we are very concerned that the draft mis-states the relevance of International Humanitarian Law (IHL) in situations of armed conflict. IHL is more than relevant to armed conflict, it is the *lex specialis.* We do not think that IHL imposes a requirement to consider whether there are non-lethal alternatives to accomplishing the same military objective, at least not in a binary way. While we accept the requirement to investigate breaches of IHL in accordance with relevant international standards, we do not accept an obligation to investigate allegations of article 6 breaches in situations of armed conflict. We therefore suggestion deleting the second sentence in its entirety.

34. We are rather surprised at the inclusion of paragraphs 70 and 71; these appear to be better suited to an aspirational document rather than a General Comment. We do not consider that the content is helpful, nor that it is within the Committee's mandate. The obvious place to end this General Comment is after current paragraph 69.

6 October 2017