

Submission to the Human Rights Committee

**Draft General Comment on Article 6- Right to Life
International Covenant on Civil and Political Rights**

**Special Rapporteur on adequate housing as a component of the right to an adequate
standard of living and on the right to non-discrimination in this regard**

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Contents

I. Introduction	1
II. Background	2
III. Specific comments and proposed amendments to particular paragraphs	6
IV. Relationship of economic, social and cultural rights with the right to life	11
V. Access to justice and effective remedies	12

I. Introduction

1. This submission is made by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this regard. Pursuant to Human Rights Council resolutions 15/08 and 34/09, the Special Rapporteur is mandated to work in close cooperation with relevant United Nations treaty bodies in the promotion of the full realization of the right to adequate housing.
2. The Special Rapporteur notes that the most recent draft has addressed some previously identified concerns and has made some advances toward a more inclusive understanding of the right to life, particularly in relation to the connection between the right to life and environmental rights. However, the Special Rapporteur is still troubled by the lack of a deeper engagement with the lived experiences of millions of victims of systemic violations of the right to life in deplorable circumstances of poverty and grossly inadequate housing conditions. General comments such as this one are a unique opportunity to ensure that human rights law is responsive to existing and emerging human rights challenges and trends. In this regard, this comment must grapple - in a meaningful way - with the need for more effective human rights responses to the widespread violations of the right to life that have emerged in a number of contexts, be it as a result of natural disasters related to climate change, global economic changes which have created greater socio-economic inequalities, unprecedented migration, rapid urbanization and the growth of informal

settlements whose residents often lack the necessities for life. It has taken courts and human rights bodies some time to be responsive to these issues, but they have. They have recognized that the right to life must be interpreted and applied so as to engage directly with egregious violations experienced by those who are marginalized and impoverished. While the revised draft of the general comment refers to these types of violations in a few places, it fails to fully embrace progress made at the domestic and regional level or adequately recognize that addressing these systemic violations of the right to life is a central obligation of States, requiring access to justice and enhanced State accountability. The Special Rapporteur is therefore proposing a number of revisions to the draft which she thinks would strengthen it, make it more responsive to the lived realities of millions who are denied a life of dignity and support the progress being made in domestic and regional jurisprudence.

3. This submission commences with an outline of the Rapporteur's views on why it is essential to further clarify that the right to life of those who are enduring homelessness and grossly inadequate housing conditions must be subject to the full and equal protection of human rights law, and ensured access to justice and effective remedies. The submission also provides specific suggestions for amendments to the current draft for the Committee's consideration.

II. Background

4. The Special Rapporteur is grateful to the Human Rights Committee for having provided an opportunity to meet with Mr. Uval Shany, and other Committee members, on July 11, 2016, to discuss the important connections between the right to housing and the right to life in article 6 of the International Covenant on Civil and Political Rights. At that time, the Special Rapporteur also provided written submissions to the Committee (dated 8 July 2016), outlining her views on article 6, as well as some of the contents she intended to include in her report to the General Assembly on the right to life and the right to adequate housing (A/71/310).¹ In the report, and in the earlier submissions to the Committee, the Special Rapporteur outlined her concern about the continued effect of outdated and false divisions between civil and political rights contained in the International Covenant on Civil and Political Rights and economic, social and cultural rights contained in the International Covenant on Economic, Social and Cultural Rights. She expressed particular concern that these divisions have led, in her view, to interpretations of the right to life which have deprived those living in poverty and homelessness of the full and equal protection of this fundamental human right.

¹ Available at: <http://www.ohchr.org/EN/Issues/Housing/Pages/AnnualReports.aspx>

5. In her report, the Special Rapporteur considers the right to life through the lived experience of those who are homeless or living in dire circumstances. She concludes that the divided architecture of international human rights has led to unequal protections and consideration of the dignity and rights of the most disadvantaged and marginalized communities. She urges that the UN human rights system move beyond the two categories of rights to retrieve a more unified understanding of human rights, so as to ensure access to justice and remedies for widespread and egregious violations of the right to life resulting from States' failures to take reasonable measures to address poverty, homelessness and grossly inadequate housing.
6. As detailed in the report, the link between inadequate housing and the right to life is obvious and deeply disturbing. An estimated one third of deaths worldwide are linked to poverty and inadequate housing. The death rate among homeless people ranges from two to ten times higher than for those who are not homeless. 100 million children are living in the streets, facing daily threats to life and security. Lack of clean water and sanitation leads to illnesses that kill over 840,000 each year. 26.4 million people lose their homes through natural disasters every year - 60 per cent higher than it was four decades ago, with inadequate housing dramatically increasing risks to life.²
7. On official missions and working visits, the Special Rapporteur has met people of all ages who are homeless or living in container settlements, institutions, relocation sites or informal settlements, forced to live without safe drinking water, or electricity, amidst excrement and garbage, without adequate protection from inclement weather, no place to wash or defecate; threatened by violence, insecurity, and stigmatization and, worst of all, forced to watch children suffer and frequently die from the health risks associated with inadequate housing, water and sanitation, hanging by the thinnest thread, clinging to life, dignity and humanity.
8. She has learned that human rights claims of those living in these circumstances are rarely advanced as demands solely for housing as a built structure with services. Those living in these circumstances experience being forgotten and neglected by governments as a sustained and systematic devaluing of their lives. At the core of their human rights claim is equal recognition of their right to live in dignity and security. The question raised in the report to the General Assembly is: how have we gotten to a point where such serious and widespread violations of the right to life are not identified and addressed as such?
9. It is noted in the Rapporteur's report that the right to life is central to both civil and political and to economic, social and cultural rights. Yet because it was placed in the Covenant on Civil and Political Rights, the right to life has too often been interpreted

² For sources of these figures, see A/71/310.

narrowly as a negative right – as the right not to be deprived of life as a result of State action. While it is obvious that human life requires a secure place in which to live and to have access to food, water, sanitation and a social existence, these dimensions of the right to life have been ignored because the obligations placed on governments to protect the right to life in these contexts overlap with obligations to ensure economic, social and cultural rights.

10. The predominance of a negative rights framework has produced illogical results in both the adjudication of human rights claims and the political responses to the circumstances in which people are forced to live. The Special Rapporteur noted in her report that in the context of individual petitions under the Optional Protocol to the International Covenant on Civil and Political Rights, homeless has only been addressed as a human rights violation when it has resulted from state action such as deportation or eviction. State neglect and inaction in response to widespread violations of the right to life in context of homelessness or grossly inadequate housing has not been addressed as an equally serious violation of human rights.
11. This is not, unfortunately, simply a question of how human rights violations are to be categorized or named within the international human rights system, or assigned to one treaty monitoring body rather than another. When the right to life of members of disadvantaged and marginalized groups living in poverty or homelessness is not accorded equal attention or concern and denied access to justice and effective remedies, this leads to greater complacency, inaction and neglect by States. Denials of access to justice are invariably accompanied by inadequate political and policy responses. It is therefore critical that the international human rights system fully recognize the claims to the right to life of those living in poverty, hunger and homelessness and insist that domestic courts and human rights institutions ensure access to justice for such claimants.
12. In her reports, communications to States, visits, and in her various activities and initiatives, the Special Rapporteur underlines that there is a solid basis in international human rights law to recognize and protect the right to life of those denied adequate housing. Thirty-years ago, in 1982, the Committee's general comment No. 6 recognized that the right to life should not be interpreted narrowly, noting that it places not only negative obligations on States but also positive obligations to ensure access to what is necessary to sustain life. Since that time, the competence of courts, tribunals and regional and domestic human rights bodies to consider and adjudicate human rights claims related to failures of States to take necessary positive measures to ensure access to housing and other necessities of life has been widely recognized, with increasing numbers of courts and recognizing such claims as justiciable – often as claims to the right to life.

13. Further, the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in 2008 was not simply a recognition of the justiciability of economic, social and cultural rights but also an acknowledgement that all violations of the right to life, including those resulting from failures to take reasonable measures to address and remedy socio-economic deprivation, should be considered justiciable and must be ensured access to justice and effective remedies. The then High Commissioner of Human Rights, Louise Arbour, described this advance as “human rights made whole”, a concept which, in the Special Rapporteur’s view, also applies to the proper approach to access to justice for violations of the right to life. In the context of periodic reviews, the Committee has recognized the effects of homelessness on health and on life and has stated that the right to life requires the adoption of positive measures to address homelessness.³ The Special Rapporteur believes that general comment 36 should clarify that a violation of the right to life resulting from a State’s failure to adopt such positive measures requires access to justice and effective remedies under domestic law and may constitute the subject matter of a petition alleging a violation of article 6.
14. Domestic courts in Colombia, India, Kenya, and many other countries have recognized that the right to life may be violated by denials of access to adequate housing and have on this basis ordered governments to implement both individual and systemic remedies.⁴ Similarly, the Inter-American Court of Human Rights has developed the concept of “*vida digna*” to describe the content of the right to life, explaining in the famous Street Children’s case that “the fundamental right to life includes, not only the right of every human being not to be deprived of his life arbitrarily, but also the right that [s]he will not be prevented from having access to the conditions that guarantee a dignified existence.”⁵
15. In summary, during her mandate, the Special Rapporteur has urged that these critical advances in domestic and regional human rights law toward a more inclusive understanding of the right to life be embraced and affirmed by international human rights bodies. In her view, a new general comment on the right to life provides a unique opportunity to take stock of jurisprudential developments at the domestic and regional levels, to reinstate the unity of human rights and to reaffirm a commitment to a more inclusive understanding of the right to life that will recognize the equal rights of those who are homeless or living in dire circumstances.

³ See CCPR/C/79/Add.105.

⁴ See, for example, the decisions described in the report (A71-310) at paras 62-66.

⁵ Inter-American Court of Human Rights, Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala, judgment of 19 November 1999, para. 144.

III. Specific comments and proposed amendments to particular paragraphs

In the following section, the Special Rapporteur offers comments to specific paragraphs of the draft general comment, including in some cases suggested text for inclusion. In some cases, for ease of reference, the original draft comment text has been provided.

Paragraph 3. *The right to life is a right which should not be interpreted narrowly. It concerns the entitlement of individuals to be free from acts and omissions intended or expected to cause their unnatural or premature death, as well as to enjoy a life with dignity. Article 6 guarantees this right for all human beings, without distinction of any kind, including for persons suspected or convicted of even the most serious crimes.*

16. **Comment to Paragraph 3:** The reference to “a life with dignity” in paragraph 3 and the affirmation that the right to life should not be interpreted narrowly are welcomed. However, the description of the entitlement of the individual affirms a very narrow interpretation of the right to life as freedom from a defined category of acts or omissions “intended or expected to cause their unnatural or premature death.” This kind of narrow definition of the right would likely be used by courts to dismiss claims to the right to life addressing systemic factors linked to homelessness or socio-economic deprivation. The paragraph does not make clear, as did the Committee’s previous general comment no. 6 on the right to life, that rejecting a narrow or restrictive approach means accepting that “the protection of this right requires that States adopt positive measures.” That critical component of general comment no. 6 should be elaborated and clarified in the new general comment, and should certainly not be omitted from the description of what rejecting a narrow interpretation entails.
17. The Special Rapporteur is also concerned about identifying a particular type of distinction, (persons suspected or convicted of the most serious crimes) in the context of a general statement about the scope of the right. There are many categories of groups whose right to life is at risk of not being fully protected, including those who are homeless or living in dangerous living situations. The Special Rapporteur suggests omitting any reference to a particular distinction, but if the reference to accused or convicted criminals remains, she would urge the addition of a reference to those living in poverty, homelessness and grossly inadequate housing. The Special Rapporteur therefore suggests the following revisions to paragraph 3:

Suggested text: *The right to life is a right which should not be interpreted narrowly. It concerns the entitlement of individuals to enjoy a life with dignity, to freedom from acts and omissions intended or **expected to cause deprivation of this right as well as***

to positive measures to ensure this right. Article 6 guarantees this right for all human beings, without distinction of any kind.

Paragraph 4: *Paragraph 1 of article 6 of the Covenant provides that no one shall be arbitrarily deprived of his life and that the right shall be protected by law. It lays the foundation for the obligation of States parties to respect and to ensure the right to life, to give effect to it through legislative and other measures, and to provide effective remedies and reparation to all victims of violations of the right to life.*

18. **Comment to Paragraph 4:** This paragraph emphasizes the negative right not to be deprived of life while making no reference to the positive component of the inherent right to life emphasized in general comment no. 6, para 5. *“The expression “inherent right to life” cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures [emphasis added]. In this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”*
19. Omitting a reference to the positive component of the inherent right to life in this paragraph might be taken to suggest a retreat from this aspect of general comment No. 6. It would represent a failure to embrace the enhanced understanding of the positive obligations of the right to life that has emerged in the thirty-five years since general comment No. 6 was adopted. It is recommended, therefore that the Committee revise paragraph 4 along the following lines:

Suggested text: *Paragraph 1 of article 6 of the Covenant provides that the right to life is inherent in all human beings, that the right shall be protected by law and that no one shall be arbitrarily deprived of life. It lays the foundation for the obligation of States parties both to respect the right to life by refraining from actions resulting in deprivations of the right and to ensure the right to life by adopting positive measures necessary for a dignified life. Positive measures may be required to ensure, for example, access to adequate food, safe drinking water, sanitation, housing, healthcare and a safe environment. Paragraph 1 also affirms that the right to life must be given effect through legislative measures, so as ensure access to justice and provide effective remedies and reparation to all victims of violations of the right to life.*

Paragraph 6: *Deprivation of life involves a deliberate or otherwise foreseeable and preventable life-terminating harm or injury, caused by an act or omission. It goes beyond*

injury to bodily or mental integrity or threat thereto, which are prohibited by article 9, paragraph 1.4

- 20. Comment to Paragraph 6:** In the Special Rapporteur’s view, this paragraph affirms an extremely narrow and retrogressive understanding of a deprivation of the right to life that is inconsistent with the recognition in paragraph 3 that the right to life guarantees the enjoyment of a dignified life. This narrow definition would discourage domestic courts and human rights bodies from recognizing the link, for example, between failures to address homelessness and deprivations of the right to life which have been critical to advances made in relation to access to justice and effective remedies in many countries. **The Special Rapporteur urges the Committee to delete this paragraph.**

Paragraph 11: *When private individuals or entities are empowered or authorized by a State party to employ force with potentially lethal consequences, the State party is under an obligation to ensure their actual compliance with article 6 and remains directly responsible for any failure to comply with the provisions of article 6. Among other things, it must rigorously limit the powers afforded to private actors, and provide strict and effective measures of monitoring and control in order to ensure, inter alia, that the powers granted are not misused, and do not lead to arbitrary deprivations of life. For example, States parties should ensure that persons involved in serious human rights violations are excluded from private security forces employing force.²⁴ They must also ensure that victims of arbitrary deprivation of life by private actors empowered or authorized by the State are granted the same remedies as would be applicable for violation committed by public officials.*

- 21. Comment to Paragraph 11:** Paragraph 11 of the current draft is of concern because it only addresses the application of article 6 in relation to the use of force in circumstances in which the use of force has “potentially lethal consequences.” In the Special Rapporteur’s view, that limiting phrase should be removed, so that wherever force is used, including in situations of forced evictions or demolitions of homes, authorities are required to comply with the right to life. Similar rewording is recommended for paragraph 19, which also focuses on the use of “lethal force” and might be interpreted as suggesting that article 6 does not impose important restrictions on the use of force to evict from home or land.

Paragraph 15: *Article 6 of the Covenant imposes on States parties wide-ranging obligations to respect and to ensure the right to life. Individuals claiming to be victims of a violation of the Covenant [for the purposes of article 1 of Optional Protocols] must show, however, that their rights were directly violated by acts or omissions attributable to the States parties [to the Optional Protocol], or are under a real and personalized risk of being violated.*

22. **Comment to Paragraph 15:** The intent of this paragraph is unclear but it appears to suggest that some failures of States to comply with “wide ranging obligations to respect and ensure the right to life” may not be subject to justiciable individual rights claims. For example, it is unclear whether, according to the requirements suggested in this paragraph, a State’s failures to address systemic homelessness or to regulate private investors in housing would be seen to have “directly” violated the right to life of an individual who died or was at risk of death because of the resulting systemic homelessness. In the Special Rapporteur’s view, the general comment should not be suggesting ways in which access to justice may be restricted and instead should emphasize that States must be held accountable for any failure to comply with their obligation to respect and ensure the right to life, including by way of individual petitions or rights claims before courts and tribunals. **The Special Rapporteur strongly recommends, therefore that this paragraph be deleted.**
23. **Comment to Paragraph 25:** In paragraph 25, the draft general comment refers to States’ “due diligence obligation to undertake reasonable positive measures, which do not impose on them impossible or disproportionate burdens”, citing the *Sawhoyamaxa Indigenous Community v. Paraguay*, Judgment of the /A CHR of 29 March 2006. The examples provided in the paragraph, however, only refer to direct threats to life originating from private persons and entities. The Special Rapporteur suggests that it be explained that the obligation to take reasonable positive measures also applies, as in the *Sawhoyamaxa* case cited, to “inadequate conditions that endanger the right to life.” In that case, such conditions were “characterized by unemployment, illiteracy, morbidity rates caused by evitable illnesses, malnutrition, precarious conditions in their dwelling places and environment, limitations to access and use health services and drinking water, as well as marginalization due to economic, geographic and cultural causes.”⁶
24. **Comment to Paragraph 27:** In paragraph 27 the Special Rapporteur suggests that in the list of vulnerable groups, homeless persons and residents of informal settlements be included alongside street children.
25. **Comment to Paragraph 28:** In paragraph 28, it is suggested that in addition to access of persons with disabilities to essential goods and service, access to housing, with support services could also be mentioned, citing articles 19 and 28 of the Convention of the Rights of Persons with Disabilities.⁷

⁶ Inter-American Court of Human Rights, Case of the *Sawhoyamaxa Indigenous Community v. Paraguay*, judgment of 29 March 2006 para 168.

⁷ See the Special Rapporteur’s recent report to the General Assembly on the right to housing of persons with disabilities A/72/128.

26. **Comment to Paragraph 30:** Paragraph 30 recognizes the obligations of States to address conditions in society that prevent individuals from enjoying their right to life with dignity or may give rise to direct threats to the right to life. The Special Rapporteur welcomes the reference to homelessness in this context, but suggests that the list of such conditions that must be addressed be revised to include inadequate housing.

Suggested text: *These general conditions may include high levels of criminal and gun violence, pervasive traffic and industrial accidents, pollution of the environment, the prevalence of life threatening diseases, such as AIDS or malaria, extensive substance abuse, widespread hunger and malnutrition, poverty, inadequate housing and homelessness.*

27. The Special Rapporteur is also concerned that the examples of long term measures in paragraph 30 (emergency health and response services) are not instructive examples of the types of longer term strategies and programs necessary to address the conditions in society that prevent the enjoyment of the right to life. Having noted that the provision of shelter for those who are homeless is a required short-term measure, the paragraph should proceed to identify longer term measures which may be required to ensure adequate and safe housing necessary for the protection and enjoyment of the right to life, such as putting in place social housing programs and facilitating *in situ* upgrading and regularizing of informal settlements. Similar examples of long-term measures to address hunger and malnutrition and extreme poverty should also be included.

Suggested text: *The measures called for addressing adequate conditions for protecting the right to life include short-term measures designed to ensure access to essential goods and services such as food, water, shelter, health-care, electricity and sanitation, and long-term measures designed to promote and facilitate adequate general conditions, such as food security strategies and programs, water and sanitation infrastructure, social housing programs and in situ upgrading of informal settlements, enhanced public health care programs and expanded access to utilities.*

28. The Special Rapporteur also recommends revision of the statement currently in square brackets, in para. 30 which states that “some of the obligations relating to the general conditions necessary for full enjoyment of the right to life can only be realized progressively”. Progressive realization should not be described as a limiting concept (“can only be”) but rather as an obligation to adopt reasonable measures over time to which States can and must be held accountable. The Special Rapporteur therefore recommends that the sentence be revised to read:

Suggested text: *Long term measures to ensure general conditions necessary for full enjoyment of the right to life must be implemented within a reasonable period of time,*

to the maximum of available resources, by all appropriate means, including particularly the adoption of legislative measures.

29. **Comment to Paragraph 65:** Paragraph 65, recognising State obligations to address threats posed by environmental degradation, climate change and non-sustainable development is a welcome addition in this draft general comment. The inclusion of this paragraph helps to make it clear that article 6 imposes positive obligations on States not simply to refrain from discrete actions or omissions that may deprive an individual of life, but also to address broader societal and environmental issues that constitute equally or more serious threats to life by depriving people of a safe and secure place to live. In both the 2030 Agenda for Sustainable Development and the New Urban Agenda, the link between sustainable human settlements and access to safe, adequate and affordable housing is recognized. The Special Rapporteur hopes that this connection might also be referenced in further revisions to the general comment.

IV. Relationship of economic, social and cultural rights with the right to life

30. The Special Rapporteur is surprised that in the final section of the draft general comment entitled “Relationship of article 6 with other articles of the Covenant and other legal regimes” no mention is made of the close relationship between the right to life and economic, social and cultural rights, including the right to adequate housing. Nor is there mention of the need for States to act to implement their international commitments to address poverty, homelessness and other systemic violations of the right to life which are similar in nature to those that are identified in relation to environmental degradation. She recommends that the final section be revised to include a description of the relationship of the right to life with economic social and cultural rights similar to the description of the relationship with international environmental law and international commitments of States to address environmental issues.
31. The Special Rapporteur believes that in this section it would also be appropriate to reference the 2030 Agenda for Sustainable Development as significantly overlapping with obligations to protect and ensure the right to life. The ability of individuals to enjoy the right to life will rely on States meeting commitments in Agenda 2030 not only to ensure a sustainable environment but also to end poverty and hunger, reduce inequalities, achieve food security, ensure access to water and sanitation and safe, affordable and adequate housing for all and to ensure healthy lives.
32. The Special Rapporteur urges the Committee to clarify in this section that States’ failures to address widespread poverty and homelessness must be recognized as more than just

“policy failures”, and rather as violations of both the right to life and of economic, social and cultural rights, and on that account, should be subject to a heightened obligation to ensure prompt and effective remedies.

***Suggested text:** Obligations to ensure the right to life frequently overlap with obligations to ensure economic, social and cultural rights. Violations of rights to housing, food, water, sanitation, and health, for example, may also constitute violations of the right to life. Access to justice in these cases frequently relies on courts or international human rights bodies recognizing States’ failures to address these circumstances as violations of the right to life. The fact that violations span different categories of rights should never result in denials of access to justice and effective remedies. Obligations of States parties under international law to respect, protect and fulfill economic, social and cultural rights should thus inform the contents of article 6 of the Covenant. Similarly, the obligation of States parties to respect and ensure the right to life should reinforce obligations under international human rights law to implement economic, social and cultural rights.*

V. Access to justice and effective remedies

33. While the draft general comment makes some reference to the obligation to ensure access to justice and effective remedies to violations of the right to life, it would be helpful if this dimension of States’ obligations was better explained and emphasized. It is recommended **that a paragraph be added, perhaps to replace the current paragraph 15**, to highlight the obligation to ensure access to justice and effective remedies, particularly with respect to systemic and widespread violations affecting the most marginalized and vulnerable groups in societies.

***Suggested text:** Access to justice must be ensured for victims of any violation of the right to life – whether the violation is caused by State action or failure to act, whether it is related to a discrete act or omission, or to a broader failure to address societal or environmental conditions leading to systemic deprivations of the right to life. Assessing whether States have violated the right to life does not only mean considering whether actions of States caused a deprivation of life but also, and more fundamentally, whether there are measures, including laws, policies and programs, which States could reasonably be expected to have adopted, to prevent violations and to ensure the enjoyment of the right to live in dignity and security. Some violations of the right to life must be subject to immediate remedy; others require longer-term solutions, through the implementation of effective, rights based strategies, with participation of rights-*

holders, reasonable goals and timelines, accountability and appropriate allocation of resources. Regardless of the type of remedy required, however, access to justice and effective remedies must be ensured.

ENDS