

UNITED NATIONS HUMAN RIGHTS COMMITTEE
114th Session of the UN Human Rights Committee
29 June – 24 July 2015

**STATEMENT BY THE INTERNATIONAL COMMISSION OF JURISTS AT THE HALF
A DAY OF GENERAL DISCUSSION ON THE ELABORATION OF A NEW GENERAL
COMMENT ON ARTICLE 6, THE RIGHT TO LIFE, OF THE INTERNATIONAL
COVENANT ON CIVIL AND POLITICAL RIGHTS**

Palais des Nations, Room XIX

14 JULY 2015

Thank you for the opportunity to address the Committee on behalf of the International Commission of Jurists. Article 6 is complex and rich in scope and the ICJ has much to say about it. However, given the timing restrictions, we will confine these comments at this stage to just a few aspects.

First, we consider it important that the Committee reaffirm that certain cross-cutting general principles and obligations are applicable to all aspects of article 6 and that these overarching elements are placed at the beginning of the new General Comment. These include those the Committee already set forth as general obligations under article 2 in its General Comment 31, and particularly the principles of equality before the law, equal protection of the law and non-discrimination, as well as *non-refoulement*.

In addition, as affirmed by the Committee in GC 31, the duty to protect under the Covenant extends to the conduct of private actors, such as private military and security companies, including by “*tak[ing] appropriate measures or [by] exercis[ing] due diligence to prevent, punish, investigate or redress the harm caused by [transgressive] acts by private persons or entities.*” A similar approach has been adopted by other treaty bodies and by the UN Human Rights Council particularly through its adoption of the UN Guiding Principles on Business and Human Rights. The Committee should also highlight those situations where responsibility for private actors is directly imputable to the State Party, particularly those situations contemplated in articles 5 and 8 of the International Law Commission Articles on Responsibility of States for Internationally Wrongful Acts.

The ICJ also calls on the Committee to include “honour” killings and other forms of gender-based violence against women, and violence against individuals based on their real or imputed sexual orientation and/or gender identity or expression among the conduct that States have a duty to criminalize, investigate, prosecute and punish in order to protect and ensure the right to life.

Regarding economic, social and cultural rights, the ICJ notes that their relationship with the right to life goes beyond the right to the highest attainable standard of health and may arise in such contexts as safety at work; housing and food.

Regarding the extraterritorial reach of the Covenant the Committee has emphasized in GC 31 that *"the rights laid down in the Covenant" must be ensured "to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party."* For reasons set out in our written submission, the ICJ calls on the Committee not only to reaffirm this standard, but also to make clear that States Parties' jurisdiction, and State responsibility, is engaged where the State in any matter exercises or engages in conduct pursuant to its authority on the territory of another State, so as to foreseeably bring about effects on the enjoyment of Covenant rights.

Concerning the application of Article 6 during situations of armed conflict, the ICJ recalls the Committee's view that *"[w]hile, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive."* In furtherance of this principle, the ICJ suggests that Committee underscore that

- States must take care to avoid conflating counter-terrorism measures and internal disturbances with genuine armed conflict where IHL rules may be applicable. The meaning of armed conflict under international law must be respected, including the characteristics of intensity of conflict and organization of parties. Where there is no armed conflict, human rights law applies exclusively.
- If there is an armed conflict and it is non-international in character, the applicable legal regime is that governing the use of force in human rights law and law enforcement, and intentional lethal force may only be used when strictly unavoidable to protect life.
- In any armed conflict, where violations of IHL entail denial of right to life, the secondary obligations under the Covenant are engaged, including the obligation to criminalize, investigate and prosecute those with individual responsibility for violations, as well as the obligations to ensure effective remedy and reparation to victims.