

The jurisprudence of the African Commission on Human and Peoples' Rights has widely recognised the right to life as a foundational right. Without the right to life, other rights cannot be implemented. The Commission adopted General Comment No.3 on the African Charter on Human and Peoples' Rights on the right to life (Article 4) during its 57th Ordinary Session, held in Banjul, The Gambia, in November 2015. It is designed to guide the interpretation and application of the right to life under the Charter and to ensure its coherent application to a range of situations, including its implementation at the domestic level. The General Comment does not put in place new standards or highlight best practices but rather sets out the Commission's perspective on dimensions of this universally recognised right.

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African Commission on Human and Peoples' Rights



**GENERAL COMMENT NO. 3
ON THE AFRICAN CHARTER
ON HUMAN AND PEOPLES' RIGHTS:
THE RIGHT TO LIFE (ARTICLE 4)**

**General Comment No. 3 on the African
Charter on Human and Peoples' Rights:
The Right to Life (Article 4)**

**Adopted during the 57th Ordinary Session of
the African Commission on
Human and Peoples' Rights
held from 4 to 18 November 2015 in
Banjul, The Gambia**

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Preface

The jurisprudence of the African Commission on Human and Peoples' Rights (the Commission) has widely recognized the right to life as a foundational right. Without the right to life, other rights cannot be implemented.

General Comment No. 3 on the African Charter on Human and Peoples' Rights on the right to life, protected by article 4 of the Charter, is founded on this fundamental character of the right to life and the necessity to focus on this right.

The Commission is hence pleased to present **General Comment No. 3 on the African Charter on Human and Peoples' Rights on the right to life (Article 4)**, drafted by the Working Group on the Death Penalty and Extrajudicial, Summary or Arbitrary Killings in Africa (the Working Group).

The Working Group decided, in July 2014, to work on a General Comment on the right to life as recognised in Article 4 of the African Charter in light of the Declaration of the Continental Conference on the Abolition of the Death Penalty in Africa (the Cotonou Declaration), noted in the report of the African Union Executive Council (Doc. Ex.CL/921(XXVII)).

The Working Group has been a focal point for the African Commission over many years on the question of the death penalty, but as more and more African States move progressively away from that barbaric and ineffective form of criminal justice, it is important for the Working Group also to underline the many other threats posed to the right to life, as reflected in the present general comment.

The African Commission hopes that this General Comment provides States, National Human Rights Institutions and civil society a useful guide to the range of application of Article 4 of the African Charter, and assures them full collaboration as we work for the better protection of the right to life in Africa.

The African Commission is very grateful for the valuable contributions from members of the Working Group and experts to the text,

in particular from Professor Christof Heyns, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions.

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Hon. Commissioner and Chairperson of the Working Group on the Death Penalty and Extrajudicial, Summary or Arbitrary Killings in Africa

Introduction

- (1) The African Commission on Human and Peoples' Rights (the Commission) has described the right to life as the fulcrum of all other rights. It is non-derogable, and applies to all persons at all times. In General Comment No. 3, the Commission clarifies the nature of the right to life as recognised in Article 4 of the African Charter on Human and Peoples' Rights (the Charter) and the extent of the obligation it imposes upon States Parties. It is designed to guide the interpretation and application of the right to life under the Charter and to ensure its coherent application to a range of situations, including its implementation at the domestic level. The General Comment does not put in place new standards or highlight best practices but rather sets out the Commission's perspective on dimensions of this universally recognised right.
- (2) The Charter imposes on States a responsibility to prevent arbitrary deprivations of life caused by its own agents, and to protect individuals and groups from such deprivations at the hands of others. It also imposes a responsibility to investigate any killings that take place, and to hold the perpetrators accountable. This intersects with the general duty, recognised in the Charter, of all individuals to exercise their rights and freedoms with due regard to the rights of others. Organised crime and terrorism can pose significant threats to the enjoyment of the right to life and require a robust State response, but one that at all times takes into account the requirements of international human rights law.
- (3) The General Comment proceeds from an understanding that the Charter envisages the protection not only of life in a narrow sense, but of dignified life. This requires a broad interpretation of States' responsibilities to protect life. Such actions extend to preventive steps to preserve and protect the natural environment and humanitarian responses to natural disasters, famines, outbreaks of infectious diseases, or other emergencies. The State also has a responsibility to address more chronic yet pervasive threats to life, for example with respect to preventable maternal mortality, by establishing functioning health systems. Such an

approach reflects the Charter's ambition to ensure a better life for all the people and peoples of Africa through its recognition of a wide range of rights, including the right to dignity, economic, social and cultural rights, and peoples' rights such as the right to existence and the right to peace. It is also rooted in widely shared communal values of the continent, according to which the value of one person's life is tied to the value of the lives of others.

- (4) Article 4 of the Charter enshrines the right to life as follows: 'Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.' Other African legal instruments protecting the right to life include: Article 4 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; and Articles 5 and 30 of the African Charter on the Rights and Welfare of the Child.

A. The nature of the right and of the obligations of the State in respect of the right to life

- (5) The right to life is universally recognised as a foundational human right. It is guaranteed by Article 4 of the African Charter and all of the other main global and regional human rights instruments. The right not to be arbitrarily deprived of one's life is recognised as part of customary international law and the general principles of law, and is also recognised as a *jus cogens* norm, universally binding at all times. The right to life is contained in the constitutions and other legal provisions of the vast majority of African and other States. All national legal systems criminalise murder, and arbitrary killings committed or tolerated by the State are a matter of the utmost gravity.
- (6) The right to life should not be interpreted narrowly. In order to secure a dignified life for all, the right to life requires the realisation of all human rights recognised in the Charter, including civil, political, economic, social and cultural rights and peoples' rights, particularly the right to peace.
- (7) States have a responsibility under the Charter to develop and implement a legal and practical framework to respect, protect,

promote and fulfil the right to life. States must take steps both to prevent arbitrary deprivations of life and to conduct prompt, impartial, thorough and transparent investigations into any such deprivations that may have occurred, holding those responsible to account and providing for an effective remedy and reparation for the victim or victims, including, where appropriate, their immediate family and dependents. States are responsible for violations of this right by all their organs (executive, legislative and judicial), and other public or governmental authorities, at all levels (national, regional or local). Derogation from the right to life is not permissible in a time of emergency, including a situation of armed conflict, or in response to threats such as terrorism.

- (8) Where a State or its agent has attempted unlawfully to kill a person, but that person survives, where it has unlawfully threatened the life of a person, or where it has forcibly caused a person to disappear and that person's fate remains unknown, in addition to the violation of other rights, a violation of the right to life has occurred.
- (9) A State can be held responsible for killings by non-State actors if it approves, supports or acquiesces in those acts or if it fails to exercise due diligence to prevent such killings or to ensure proper investigation and accountability.
- (10) Building blocks of a proper State system for the protection of the right to life will include the enactment of appropriate domestic laws that protect the right to life and define any limitations on the right in accordance with international standards, a law enforcement system with the necessary equipment and training, and a competent, independent and impartial judiciary and legal profession based on the rule of law. States should continuously update their laws and practices to comply with international standards. States should take steps to raise awareness of the human rights implications of the applicable legal framework through professional training and other measures.
- (11) As part of their broader duty to secure the conditions for dignified life, States have a particular responsibility to protect the human rights, including the right to life, of individuals or groups who are frequently targeted or particularly at risk,

including on the grounds listed in Article 2 of the Charter and those highlighted in resolutions of the Commission.

B. The scope of the prohibition on the ‘arbitrary’ deprivation of life

- (12) A deprivation of life is arbitrary if it is impermissible under international law, or under more protective domestic law provisions. Arbitrariness should be interpreted with reference to considerations such as appropriateness, justice, predictability, reasonableness, necessity and proportionality. Any deprivation of life resulting from a violation of the procedural or substantive safeguards in the African Charter, including on the basis of discriminatory grounds or practices, is arbitrary and as a result unlawful.
- (13) The right to life continues to apply during armed conflict. During the conduct of hostilities, the right to life needs to be interpreted with reference to the rules of international humanitarian law. In all other situations the intentional deprivation of life is prohibited unless strictly unavoidable to protect another life or other lives.
- (14) A State shall respect the right to life of individuals outside its territory. A State also has certain obligations to protect the right to life of such individuals. The nature of these obligations depends for instance on the extent that the State has jurisdiction or otherwise exercises effective authority, power, or control over either the perpetrator or the victim (or the victim’s rights), or exercises effective control over the territory on which the victim’s rights are affected, or whether the State engages in conduct which could reasonably be foreseen to result in an unlawful deprivation of life. In any event, customary international law prohibits, without territorial limitation, arbitrary deprivation of life.

C. The requirement of accountability

- (15) The failure of the State transparently to take all necessary measures to investigate suspicious deaths and all killings by

State agents and to identify and hold accountable individuals or groups responsible for violations of the right to life constitutes in itself a violation by the State of that right. This is even more the case where there is tolerance of a culture of impunity. All investigations must be prompt, impartial, thorough and transparent.

- (16) Effective systems and legal processes of police investigation (including capacity to collect and analyse forensic evidence) and accountability (including independent oversight mechanisms) should be established where they are not in place.
- (17) Accountability, in this sense, requires investigation and, where appropriate criminal prosecution. In certain circumstances, independent, impartial and properly constituted commissions of inquiry or truth commissions can play a role, as long as they do not grant or result in impunity for international crimes. Accountability also encompasses measures such as reparation, ensuring non-repetition, disciplinary action, making the truth known, institutional review and, where applicable, reform. States must ensure that victims have access to effective remedies for such violations. States should cooperate with international mechanisms so as to ensure accountability.
- (18) States must hold to account private individuals and corporations, including private military and security companies, that are responsible for causing or contributing to arbitrary deprivations of life in the State's territory or jurisdiction. Home States also should ensure accountability for any extraterritorial violations of the right to life, including those committed or contributed to by their nationals or by businesses domiciled in their territory or jurisdiction.
- (19) Reparation should be proportional to the gravity of the violations and the harm suffered. Victims should be treated with respect and appropriate measures should be taken to ensure their safety. Those who have suffered violence or trauma should benefit from consideration to avoid re-traumatisation. Full and effective reparation to address the harm suffered by victims, including by their family and dependents, should include the implementation of guarantees of non-repetition.

- (20) Although States may face particular practical challenges in achieving accountability in situations of armed conflict, they must undertake all feasible measures of accountability to ensure respect for the right to life. Appeals to national security or State secrecy can never be a valid basis for failing to meet the obligation to hold those responsible for arbitrary deprivations of life to account, including during armed conflict or counter-terrorism operations.
- (21) Transparency is a necessary part of accountability. Transparency about laws, policies, practices and the circumstances of any limitations of the right to life as well as about the process and outcomes of investigations is a necessary element in fulfilling the right to life.

D. The abolition of the death penalty

- (22) The African Charter does not include any provision recognising the death penalty, even in limited circumstances, and the Commission has on several occasions passed resolutions calling on States to abolish the death penalty, or to establish a moratorium in line with the continental and global trend. The vast majority of African States have now abolished the death penalty in law or in practice. International law requires those States that have not yet abolished the death penalty to take steps towards its abolition in order to secure the rights to life and to dignity, in addition to other rights such as the right to be free from torture, and cruel, inhuman or degrading treatment.
- (23) Those States which have abolished the death penalty in law shall not reintroduce it, nor facilitate executions in retentionist States through *refoulement*, extradition, deportation, or other means including the provision of support or assistance that could lead to a death sentence. Those States with moratoria on the death penalty must take steps to formalise abolition in law, allowing no further executions. Beyond the cessation of executions, a comprehensive moratorium on the death penalty would also encompass sentencing, whereby prosecutors would refrain from seeking the death penalty or judges would choose not to impose it.

- (24) In those States which have not yet abolished the death penalty it is vital that it is used for only the most serious crimes – understood to be crimes involving intentional killing. If, for any reason, the criminal justice system of a State does not, at the time of trial or conviction, meet the criteria of Article 7 of the African Charter or if the particular proceedings in which the penalty is imposed have not stringently met the highest standards of fairness, then the subsequent application of the death penalty will be considered a violation of the right to life. Those sentenced to death have the right to seek clemency, pardon or commutation through a transparent process with due process of law. Mass trials resulting in the death penalty without due consideration to fair trial standards are illegal and should not take place. In no circumstances shall the imposition of the death penalty be mandatory for an offence. The death penalty shall not be imposed for crimes committed by children, and the burden of proof rests upon the State to prove the age of the defendant. Military courts shall not have the power to impose the death penalty.
- (25) Whatever the offense or the circumstances of the trial, the execution of pregnant or nursing women, children, elderly persons or persons with psycho-social or intellectual disabilities, will always amount to a violation of the right to life.
- (26) Where the death penalty has not yet been abolished, it shall be used in a completely transparent manner, with States giving reasonable advance notice of the timing, manner, and number of executions to those involved, including those under sentence of death, their families and lawyers, and to the public at large. States shall not conduct executions in public, nor use methods that cause unnecessary physical or mental suffering. After an execution, the body should be treated with respect, and, where requested, be returned to the family for burial or other funeral rites, or information about the burial or cremation should be provided.

E. The use of force in law enforcement

- (27) The primary duty of law enforcement officials – meaning any actor officially tasked with exercising a law enforcement

function, including police, gendarmerie, military or private security personnel – is to protect the safety of the public. The State must take all reasonable precautionary steps to protect life and prevent excessive use of force by its agents, including but not limited to the provision of appropriate equipment and training as well as, wherever possible, careful planning of individual operations. States must adopt a clear legislative framework for the use of force by law-enforcement and other actors that complies with international standards, including the principles of necessity and proportionality. Force may be used in law enforcement only in order to stop an imminent threat. The intentional lethal use of force by law enforcement officials and others is prohibited unless it is strictly unavoidable in order to protect life (making it proportionate) and all other means are insufficient to achieve that objective (making it necessary).

- (28) The right to assemble and to demonstrate is integral to democracy and human rights. Even if acts of violence occur during such events participants retain their rights to bodily integrity and other rights and force may not be used except in accordance with the principles of necessity and proportionality. Firearms may never be used simply to disperse an assembly
- (29) Members of the armed forces can only be used for law enforcement in exceptional circumstances and where strictly necessary. Where this takes place all such personnel must receive appropriate instructions, equipment and thorough training on the human rights legal framework that applies in such circumstances.
- (30) Particular attention should be paid to ensuring the availability and use of weapons less likely to cause death or serious injury than are firearms. However such weapons should not be abused – they can also cause death or serious injury. Special training concerning the use of such weapons should be provided.
- (31) Where advanced technology is employed, law enforcement officials must remain personally in control of the actual delivery or release of force, in a manner capable of ensuring respect for the rights of any particular individual, as well as the general public.

F. The use of force in armed conflict

- (32) In armed conflict, what constitutes an 'arbitrary' deprivation of life during the conduct of hostilities is to be determined by reference to international humanitarian law. This law does not prohibit the use of force in hostilities against lawful targets (for example combatants or civilians directly participating in hostilities) if necessary from a military perspective, provided that, in all circumstances, the rules of distinction, proportionality and precaution in attack are observed. Any violation of international humanitarian law resulting in death, including war crimes, will be an arbitrary deprivation of life.
- (33) International humanitarian law on the conduct of hostilities must only be applied during an armed conflict and where the use of force is part of the armed conflict. In all other situations of violence, including internal disturbances, tensions or riots, international human rights rules governing law enforcement operations apply.
- (34) Where military necessity does not require parties to an armed conflict to use lethal force in achieving a legitimate military objective against otherwise lawful targets, but allows the target for example to be captured rather than killed, the respect for the right to life can be best ensured by pursuing this option.
- (35) The use during hostilities of new weapons technologies such as remote controlled aircraft should only be envisaged if they strengthen the protection of the right to life of those affected. Any machine autonomy in the selection of human targets or the use of force should be subject to meaningful human control. The use of such new technologies should follow the established rules of international law.

G. State obligations with respect to persons held in custody

- (36) When the State deprives an individual of liberty, its control of the situation yields a heightened level of responsibility to protect that individual's rights. This includes a positive obligation to protect all detained persons from violence or from emergencies

that threaten their lives, as well as to provide the necessary conditions of a dignified life, including food, water, adequate ventilation, an environment free from disease, and the provision of adequate healthcare (including maternal healthcare and the provision of antiretroviral drugs). The State should provide necessary information on places of detention, the identity and age of those detained, as well as the authorities responsible.

- (37) Where a person dies in State custody, there is a presumption of State responsibility and the burden of proof rests upon the State to prove otherwise through a prompt, impartial, thorough and transparent investigation carried out by an independent body. This heightened responsibility extends to persons detained in prisons, in other places of detention (official and otherwise), and to persons in other facilities where the State exercises heightened control over their lives.

H. Responsibility for violations by non-State actors

- (38) The State also has an obligation to protect individuals from violations or threats at the hands of other private individuals or entities, including corporations. The State should ensure that all individuals are able to exercise their rights and freedoms, for example, by promoting tolerance, non-discrimination, and mutual respect. Moreover, the State has a responsibility for those deaths where authorities knew or ought to have known of an immediate threat and failed to take measures that might have been expected to avoid those deaths. States shall take appropriate measures to investigate cases of enforced disappearances committed by persons or groups acting without the authorisation, support or acquiescence of the State, and to bring those responsible to justice.
- (39) The State is responsible for killings by private individuals which are not adequately prevented, investigated or prosecuted by the authorities. These responsibilities are heightened when an observable pattern has been overlooked or ignored, such as is often the case with respect to mob-justice, gender-based violence, femicide, or harmful practices. States must take all appropriate measures effectively to respond to, prevent and eliminate such patterns or practices.

- (40) The right to life cannot be enjoyed fully by individuals whose lives are threatened. In the case of death threats this implies that the State must investigate and take all reasonable steps to protect the threatened individuals. Similarly, States should not violate the principle of *non-refoulement*, through extradition or other mechanisms, by transferring or returning individuals to circumstances where their lives might be endangered.

I. Interpreting the right to life broadly

- (41) The right to life should be interpreted broadly. The State has a positive duty to protect individuals and groups from real and immediate risks to their lives caused either by actions or inactions of third parties. In cases where the risk has not arisen from malicious or other intent then the State's actions may not always be related to criminal justice. Such actions include, inter alia, preventive steps to preserve and protect the natural environment and humanitarian responses to natural disasters, famines, outbreaks of infectious diseases, or other emergencies.
- (42) Attention is also required to address more chronic yet pervasive threats to life, for example with respect to preventable maternal mortality, by establishing functioning health systems and eliminating discriminatory laws and practices which impact on individuals' and groups' ability to seek healthcare.
- (43) Given the role of the State in the enjoyment of a number of other rights which might, collectively, be constitutive of the condition of life, especially a dignified life, its progressive realisation of various economic, social and cultural rights will contribute to securing a full and dignified life. Violations of such rights may in certain circumstances therefore also entail violations of the right to life.