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Chair: Mr. Fathalla (Vice-Chair)

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Mr. Fathalla (Vice-Chair) took the Chair.

The meeting was called to order at 3.05 p.m.

Organizational and other matters, including the adoption of the report of the Working Group on Communications

Draft general comment No. 36 on article 6 of the Covenant (Right to life) (CCPR/C/GC/R.36/Rev.7)

1. **The Chair** invited the Committee members to resume their discussion of paragraph 56 of the revised draft general comment (CCPR/C/GC/R.36/Rev.7).

Paragraph 56

2. **Mr. Shany** (Rapporteur for the general comment) said that he had redrafted paragraph 56 in order to clarify the relationship between articles 6 and 7 of the Covenant in cases involving the application of the death penalty for an offence not constituting a most serious crime. In the new version, the words "and article 7" had been replaced with: "and, in light of the disproportionate nature of this severe punishment, also article 7".

3. **The Chair** said that he took it that there were no objections to the amendments proposed by Mr. Shany.

4. *Paragraph 56, as amended, was adopted.*

Paragraph 57

5. **Mr. Shany** said that paragraph 57 linked the right to life with the need to protect human rights defenders and other individuals who might be subject to reprisals because of the work that they did. The Committee had received comments from several stakeholders on the paragraph. For example, the Government of the Russian Federation had questioned whether the linkage described in the paragraph was in fact reflected in the practice of States. Unfortunately, the Committee had encountered cases where human rights defenders had been threatened and had even lost their lives because of their work in the field, so that linkage was indeed reflected in its experience. The Government of Canada had asked the Committee to distinguish more clearly between legal obligations and best practices. However, to his mind, the strong wording of the paragraph reflected the Committee's approach to the specific vulnerabilities of human rights defenders. The Government of France and Human Rights Watch had both asked the Committee to include references to specific groups of human rights defenders in the paragraph. However, the broad term "human rights defenders" had been deliberately chosen because, if the Committee made specific references to certain groups of human rights defenders, it would then be obliged to list many other groups in subsequent passages.

6. Lastly, Amnesty International had proposed that the following words should be inserted at the end of the paragraph: "including the creation and maintenance of a safe and enabling environment for defending human rights". He supported that addition as it reflected the responsibility of States parties to take action to facilitate the creation of conditions that were conducive to the work of human rights defenders. He would also suggest that a footnote should be included that cited the 2016 report of the Special Rapporteur on the situation of human rights defenders (A/HRC/31/55).

7. **Mr. de Frouville**, **Ms. Cleveland** and **Ms. Pazartzis** said that they supported the additions proposed by Mr. Shany.

8. **Mr. Ben Achour**, referring back to paragraph 56, said that it was important to remember that the application of certain methods of execution ran contrary to more than one article of the Covenant. For example, the use of crucifixion and stoning by States parties not only went against the Covenant's provisions on the death penalty, but also violated article 7 because victims were subjected to torture prior to their execution.

9. **The Chair** said that Mr. Ben Achour's concern was in fact addressed in paragraphs 58 and 59.

10. **Mr. Zimmermann** said that paragraph 44 also dealt with the issue in that it obliged States parties that had not yet prohibited the death penalty to respect article 7 of the Covenant, which barred certain methods of execution.

11. **Ms. Cleveland** said that Mr. Ben Achour's point was a very important one but, as Mr. Zimmerman had noted, paragraph 44 did make the connection between forms of execution and article 7 and, in fact, it also explicitly mentioned stoning. She would like to express her support for the proposals made by the Rapporteur regarding the paragraph in question.

12. **Ms. Pazartzis** said that she was in agreement with the substance of paragraph 57 but was not sure whether it was correctly positioned within the general comment, since the paragraphs immediately preceding and following it all made reference to the relationship of article 6 with other articles of the Covenant.

13. **Mr. Santos Pais** said that he was unsure what was meant by the words "and such measures should reflect the importance of their work" in the second sentence of the paragraph. Did that wording mean that the level of protection provided to human rights defenders should vary in accordance with the importance of their work or that protection measures should always be taken for human rights defenders, simply because they carried out important work? In order to eliminate the ambiguity, he proposed that those words should be replaced, either with "due to the importance of their work" or with "commensurate with the importance of their work".

14. Following a discussion in which **Mr. Politi** and **the Chair** took part, **Ms. Brands Kehris** said that the Committee should be careful about saying that human rights defenders should be provided with protection if they received death threats due to the importance of their work. Such a formulation suggested that States parties might not need to provide protective measures in the event of death threats that were made for other reasons. Did the addition of the reference to the creation of a safe and enabling environment not make the reference to the importance of the work of human rights defenders redundant?

15. **Mr. Shany**, endorsing the point made by Ms. Brands Kehris, suggested that the second sentence should be amended to read: "States parties must take the necessary measures to respond to death threats and to provide adequate protection to human rights defenders, including the creation and maintenance of a safe and enabling environment for defending human rights." With respect to Ms. Pazartzis's comment regarding the positioning of paragraph 57, several suggestions had been made earlier about reordering various paragraphs. It would be more practical to decide on any changes in order once the text had been fully adopted. He therefore suggested that they should return to that subject at a later date.

16. **The Chair** said he took it that the Committee wished to adopt the paragraph, subject to the amendments proposed by Mr. Shany.

17. *Paragraph 57, as amended, was adopted.*

Paragraph 58

18. **Mr. Shany** said that paragraph 58 dealt with two different linkages between the torture or ill-treatment of individuals and articles 6 and 7 of the Covenant: first, the possibility that the physical and mental consequences of torture and ill-treatment could put a victim's life at risk; and, second, the fact that convictions based on information procured by torture or ill-treatment could result in the imposition of the death penalty.

19. The Committee had received only a few observations from stakeholders concerning paragraph 58. The Government of Canada had expressed concern about the Committee's work overlapping with the provisions of the Convention against Torture. The Government of Japan had suggested replacing "would violate" with "could violate" in the second sentence of the paragraph, as it believed that cases concerning mild forms of ill-treatment did not necessarily violate article 6. Lastly, an organization representing the rights of persons with disabilities had urged the Committee to consider the particular position of those individuals in relation to the issues covered by the paragraph.

20. The only amendment to the paragraph that he wished to propose, however, was to replace the term “ill-treatment” with the words “cruel, inhuman and degrading treatment”. His reasoning was that, in cases where information procured as a result of less severe forms of torture led to the application of the death penalty, articles 6, 7 and 14 of the Covenant would nonetheless have been violated. The proposed substitution in the text would provide more clarity on those less severe forms of torture and bring the language of the general comment more closely into line with the language of the Covenant.

21. **Ms. Cleveland** said that she endorsed the proposed amendment.

22. **Mr. Heyns**, while supporting the amendment proposed by Mr. Shany, said that the Committee needed to ensure that the linkages between article 14 and article 6 were consistent throughout the general comment. When read in conjunction with paragraph 46, the wording of paragraph 45 implied that serious violations of article 14 that resulted in the imposition of the death penalty did not necessarily constitute a violation of article 6. Although that was not an issue that directly affected the drafting of paragraph 58, the Committee might wish to review the general comment at a later date in order to ensure that it was sending out a clear message concerning serious violations of article 14.

23. **Mr. Shany** said that the language currently used in paragraph 45 was of a broader nature and did not focus on serious violations of article 14. He acknowledged the merit of Mr. Heyns’s point and thought that it might be a subject that the Committee would wish to revisit. However, he did not think that it was advisable for the Committee to amend paragraphs that had already been adopted.

24. **The Chair** said that he took it that the Committee supported the replacement of the term “ill-treatment” with the words “cruel, inhuman and degrading treatment” in paragraph 58, as proposed by Mr. Shany.

25. P*aragraph 58, as amended, was adopted.*

Paragraph 59

26. **Mr. Shany** said that paragraph 59 dealt with two specific types of violations of articles 6 and 7: cases of refoulement and cases involving the wrongful or deceitful placement of individuals on death row. The Government of Canada had asked the Committee to make it clear that the individuals mentioned in the first sentence could face a real, foreseeable and personal risk to their lives. The language used in that passage had been taken from general comment No. 31 and, to his mind, for the sake of consistency, should therefore not be altered. The Government of the United States of America had questioned the extraterritorial applicability of the Covenant and stated that the only non-refoulement obligations that it had assumed were those entailed in the provisions of the Convention against Torture and international refugee law. It was the Committee’s long-standing position, however, that non-refoulement obligations were also entailed by articles 6 and 7 of the Covenant.

27. **Mr. Santos Pais**, supported by **Mr. Ben Achour**, said that the term “void ab initio” in the last sentence of the paragraph required clarification. Specifically, the Committee would need to indicate why, and according to whom, the death sentence in question was void ab initio.

28. **Mr. Shany** said that the last sentence referred to a particular case that the Committee had encountered in 1998 involving an individual who had been a minor at the time of the offence. On closer inspection, that example did overlap somewhat with paragraph 58, as well as with provisions elsewhere in the general comment on death sentences imposed in violation of the Covenant. The Committee should not include such examples if they caused confusion or did not contribute new elements. He therefore proposed removing the words “placing an individual on death row pursuant to a death sentence that is void ab initio” from the paragraph.

29. **Mr. Ben Achour** said that, while he was not opposed to the deletion of the phrase, he would prefer to retain it and to insert the words “in the Committee’s view” before “void ab initio”.

30. **Ms. Cleveland** said that she was in favour of retaining the wording used in paragraphs 34 and 35, namely "foreseeable, real and personal risk". Reference could be made to those paragraphs in footnote 237, which addressed non-refoulement and stated that the risk must be personal.

31. **Mr. Santos Pais** said that the proposed addition of the words "in the Committee's view" implied that the Committee must state in advance that specific judgments were void. They should be deemed void pursuant to the Covenant rather than pursuant to the Committee's opinion.

32. **Mr. Politi** agreed that the Committee should not act as though it were a court of law. The phrase should either be deleted or amended to read: "pursuant to a death sentence that should be considered void ab initio under the Covenant".

33. **Ms. Pazartzis** said that both proposals would imply that the Committee was deciding whether a judgment was null and void. She agreed with Mr. Shany's proposal to delete the phrase.

34. **Mr. Heyns** said that he supported the proposal to delete the phrase, since it was unclear at what point a judgment became void. The wording thus raised many questions that then remained unanswered.

35. **Mr. Politi** proposed replacing the phrase with "pursuant to a death sentence that should be considered to violate the Covenant".

36. **Mr. de Frouville** said that he would prefer to retain the sentence as it stood.

37. **Mr. Ben Achour** said that a reference to judgments that were void pursuant to the Covenant implied that they were void pursuant to the Committee's interpretation of the Covenant in accordance with its mandate.

38. **Mr. Shany** said that he continued to believe that the phrase should be deleted, given the complexity of its implications. He was unwilling to support wording that restricted the application of the principle in question to instances in which the Committee had expressed its Views, since that would reduce the level of protection that the Committee was seeking to provide.

39. **Ms. Cleveland**, supported by **Ms. Kran**, proposed maintaining the sentence as it stood. The footnote clearly addressed the issue of who had the authority to conclude that a judgment was null and void.

40. **Mr. Heyns** said that the implications of the proposed amendment were unclear. That wording could be construed as meaning that there were two violations, namely that the person had been sentenced to death in violation of the Covenant and that the judgment had been void ab initio.

41. **Mr. Shany** said that there were indeed two violations, namely of article 6 and article 7 of the Covenant. It appeared that most Committee members seemed to be in favour of maintaining the wording as it stood.

42. **The Chair** said that he took it that the Committee members wished to adopt the paragraph without the proposed amendment.

43. *Paragraph 59 was adopted.*

Paragraph 60

44. **Mr. Shany** said that paragraph 60 dealt with the issue of the impact of the death penalty on the relatives of persons who were executed or deprived of their lives.

45. The Government of Australia had stated that it was unhelpful to extrapolate general rules from the Committee's Views on specific cases. It was the Committee's practice, however, to analyse such cases in order to determine whether they had general implications.

46. The Government of Japan had proposed that the reference in the second sentence to the date on which execution of the death penalty was anticipated should be deleted. The State party's position was that it was more humane not to notify inmates or their families of

the date of execution in advance. The Committee had discussed that point, however, and disagreed with that position, as did the Japanese Bar Association, which had provided statistics showing that 60 per cent of inmates and families would wish to be notified.

47. The Palestinian non-governmental organization Al-Haq had stated that the last sentence should refer to the families of individuals who had been arbitrarily deprived of their life by State authorities, as well as to those of persons who had been executed. The words "executed individuals" could be replaced with "individuals killed by the State" in order to reflect that concern. He would prefer to avoid referring to "individuals arbitrarily deprived of their lives by the State" because the point was to highlight the need to return the remains of such persons to their families rather than to refer to article 6.

48. **Mr. Zimmerman** said that the first sentence referred to "relatives" and the last sentence to "families". He wondered whether the distinction was intentional. He supported the proposed amendment but would prefer the wording "individuals deprived of their lives by the State" to "individuals killed by the State".

49. **Ms. Kran** proposed using the word "families" in both the first and last sentences and changing "circumstances surrounding the death" to "circumstances of the death" in the second sentence.

50. **Mr. Santos Pais** said that if the phrase "circumstances of the death" was intended to refer to the method of execution, then perhaps the order of the elements in the second sentence should be modified so that the reference was to the circumstances first, followed by the date of execution and then the location of the body.

51. **Ms. Brands Kehris** said that people tended to define the concept of "family" in different ways. The word "relatives" was used in both the first and second sentences and she proposed that it should also replace "families" in the third sentence.

52. **Mr. de Frouville** supported the proposal to replace "families" with "relatives". He would prefer to retain the wording "circumstances surrounding the death", since it was important for relatives to be informed of the manner in which a person died or was executed.

53. **Ms. Cleveland** said that she noted that paragraph 32 referred in one place to "the family" and in another to "relatives". It was important to be consistent throughout the general comment.

54. **Mr. Shany** said that he agreed that the word "families" should be replaced by "relatives" throughout the text. He also agreed with the proposal to replace "executed individuals" in the last sentence with "individuals deprived of their lives by the State". With regard to the proposals made by Mr. Santos Pais, he believed that the first concern could be addressed by removing the second reference to "circumstances" altogether. He also agreed with Mr. Santos Pais's proposed reordering of the elements in that sentence.

55. **Mr. de Frouville** said that the word "receive" should be translated into French as "*restituer*" rather than "*recevoir*".

56. **The Chair** said that he took it that the Committee was in agreement with the proposed changes outlined by the rapporteur.

57. *Paragraph 60, as amended, was adopted with minor drafting changes.*

Paragraph 61

58. **Mr. Shany** said that the main proposition set forth in paragraph 61, which dealt with the interplay between article 6 and article 9 of the Covenant, was that extreme forms of arbitrary detention that were in themselves life-threatening could also constitute a violation of article 6. A few observations from stakeholders had been received. The Government of the Russian Federation was of the opinion that dealing with the issue of enforced disappearance exceeded the scope of the commentary on the Covenant. He wished to note, however, that the issue nonetheless arose frequently in practice.

59. The International Disability Alliance (IDA) had requested the Committee to raise issues relating specifically to persons with disabilities who were deprived of their liberty. In

his view, however, paragraph 61 did not lend itself to the inclusion of a list of specific groups.

60. In order to be somewhat more precise in referring to the types of extreme forms of arbitrary detention at issue in the paragraph, he proposed replacing "as well as the right to life" with "and are incompatible with the right to life" in the second sentence.

61. **Mr. de Frouville** said that he agreed with that proposal and also wished to propose that the words "acts and omissions constituting" appearing before "enforced disappearance" should be deleted in the second sentence in order to maintain consistency with the language used in the rest of the comment, particularly article 8.

62. **The Chair** said that he took it that the Committee wished to accept the proposed amendments.

63. *Paragraph 61, as amended, was adopted.*

Paragraph 62

64. **Mr. Shany** said that paragraph 62 dealt with the connection between article 6 and article 20. The only stakeholder to comment on the paragraph had been the International Lesbian, Gay, Trans and Intersex Association (ILGA), which had suggested adding a sentence containing a lengthy list of grounds of discrimination. That issue was covered in a number of other paragraphs in the general comment, however.

65. *Paragraph 62 was adopted.*

Paragraph 63

66. **Mr. Shany** said that paragraph 63 dealt with the interconnection between articles 6 and 24 of the Covenant and used language drawn from the Convention on the Rights of the Child. The Committee had received few comments on it. The Government of Canada had expressed the view that the Committee was employing an overly broad interpretation of article 6, and the Committee might wish to re-examine that concern when reviewing the paragraphs dealing with international humanitarian law. Suggestions had also been made that the Committee should refer specifically to children with disabilities and that it should address the issues of the applicability of article 24 to the unborn. The protection of all persons with disabilities was the subject of paragraph 28, however, and it seemed inadvisable to revisit the Committee's lengthy discussion of the issue of the termination of pregnancy. He was therefore not proposing any changes to the wording of the paragraph.

67. **Mr. Santos Pais** said that the death penalty should not be applied to children in any circumstances. He was therefore worried that any mention of the best interests of the child in a text relating to capital punishment might be misunderstood.

68. **Ms. Pazartzis** said that she agreed with Mr. Santos Pais. She was also concerned by the fact that the paragraph in question cited the Convention on the Rights of the Child extensively rather than being based on the Covenant and the Committee's own Views.

69. **Mr. Shany** said that the last sentence elaborated on the second sentence of the paragraph. It referred to special measures to protect the life of every child, which was consonant with general comments Nos. 17 and 32. In the case of *Prutina et al. v. Bosnia and Herzegovina* (CCPR/C/107/D/1917, 1918, 1925/2009 and 1953/2010), the Committee had made it clear that States parties were under an obligation to take protective measures to prevent the disappearance of a minor. The paragraph had not been drafted in a normative vacuum but instead reflected established practice. The third sentence forged a link between the special measures referred to in the second sentence and the most relevant principles embodied in the Convention on the Rights of the Child. Survival, development and well-being mirrored the principles that applied to adults in respect of social and economic rights. While the Committee naturally did not have any case law on the Convention on the Rights of the Child, it drew on the latter when it interpreted the Covenant. No State, apart from Canada, had opposed that approach.

70. **The Chair** said that he took it that the Committee wished to adopt the paragraph in its existing form.

71. *Paragraph 63 was adopted.*

Paragraph 64

72. **Mr. Shany** said that, while there was no explicit reference to any article of the Covenant, paragraph 64 reflected articles 2 (1), 3 and 26 and focused on respect for the right to life without discrimination of any kind. Numerous comments had been made by stakeholders on the paragraph. The Government of Poland and a religious organization had raised the issue of discrimination on the basis of the stage of human development, thereby taking an approach to the subject of discrimination which had not been considered by the Committee previously and which it was not in a position to embark upon at the current time. A number of other Governments, organizations and experts had suggested the deletion, addition and/or modification of various elements in the list of prohibited grounds for discrimination, and the reference to femicide had elicited a variety of comments. He would not go into detail concerning all the various proposals, since they were readily available for perusal on the Committee's website. A number of the proposed additions were so specific that their inclusion would make the text exceedingly unwieldy. Based on the stakeholder comments, he proposed that the paragraph should be recast to read:

> "The right to life must be respected and ensured without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or any other status, including caste, ethnicity, membership in an indigenous group, poverty, sexual orientation or gender identity, disability, socioeconomic status, albinism and age. Legal protections for the right to life must apply equally to all individuals and provide them with effective guarantees against all forms of discrimination, including multiple and intersecting forms of discrimination. Any deprivation of life based on discrimination in law or fact is ipso facto arbitrary in nature. Femicide, which constitutes an extreme form of gender-based violence that is directed against girls and women, is a particularly grave form of assault on the right to life and should be punished with criminal sanctions commensurate with the particular gravity of the crime."

73. **The Chair** invited the Committee members to comment on the new wording proposed by the Rapporteur.

74. **Ms. Brands Kehris** said that she was in favour of the proposed additions. She wished to note that, in case law, the terms "poverty" or "socioeconomic status" were often used instead of "property" or "social origin".

75. **Ms. Pazartzis** said that she felt that the proposed additions were unnecessary. She was uneasy about the fact that the text did not rest on the Committee's own practice and jurisprudence. Moreover, the first sentence covered subjects, such as albinism and age, that were absent from the Covenant. Although it was true that femicide should be flagged as an extreme form of gender-based violence, she queried the wisdom of including the phrase regarding its punishment.

76. **Ms. Cleveland** said that, in general, she supported the suggestions made by the Rapporteur. She would be in favour of using the term "socioeconomic status" rather than "poverty" for the sake of consistency with the language used in the Whelan and Millet cases (CCPR/C/119/D/2425/2014 and CCPR/C/116/D/2324/2013). All the additions to which Ms. Pazartzis had objected referred to forms of discrimination which the Committee had addressed in its Views or concluding observations, or both. The Committee had addressed discrimination on the basis of albinism in concluding observations which could be cited in footnote 244.

77. **Ms. Kran** said that she agreed with the three additions in the first sentence. Apart from those additions, however, she was not in favour of including any new categories which had not been thoroughly considered by the Committee. She, too, preferred the term "socioeconomic status" to "poverty".

78. **Ms. Pazartzis** said that the reference in the Covenant to national or social origin covered ethnicity or membership in an indigenous group. She strongly objected to the inclusion of a reference to socioeconomic status or poverty because, when the draft text had

first been discussed, the members had agreed that the issue of the interdependence of civil and political rights and social and economic rights should be avoided as far as possible

79. **Mr. de Frouville** said that the Committee would not be overstepping its mandate by stipulating that socioeconomic status must not constitute a basis for discrimination. It should be remembered that death squads had been formed in some countries to murder poor people and street children because they were regarded as undesirable elements of society.

80. **Mr. Heyns** said that, although the Committee should indeed take a conservative approach to the inclusion of new categories, it was considering forms of discrimination which interfered with the right to life. In that context, the effects of socioeconomic status were far-reaching and included a lack of legal representation due to penury, the purging of "undesirable elements", an absence of policing and a failure to investigate crimes in poor communities, despite States' duty to protect. The link between socioeconomic status and the right to life should therefore be clearly reflected in the text.

81. **Mr. Shany**, replying to Ms. Pazartzis, agreed that the interplay between the right to life and socioeconomic status was an extremely difficult matter. His impression was that the earlier discussion on that subject had focused on States' positive obligations in that respect. It was, however, more straightforward to identify discriminatory policies that had negative implications for the poor than to adopt a more general stance on the resources that States should devote to aiding the poor because they had greater needs. Protection of the indigent against discrimination could hardly be deemed controversial

82. **Ms. Pazartzis** said that the Committee had already tried to reach a consensus on the issue of discrimination on the grounds of socioeconomic status during its discussion of the positive obligations of States parties. She hoped that her opposition would be duly noted. The general comment must be concise and understandable. The main thrust of paragraph 64 was made sufficiently clear in the second sentence. The Committee should limit the number of prohibited grounds for discrimination that it chose to mention explicitly since, otherwise, it would end up with a cumbersomely long list.

83. **Mr. Muhumuza** said that in some places the armed forces were deployed to murder street children, all of whom were poor, en masse. While there was merit in the general assertion that all forms of discrimination must be prohibited, it could be useful to emphasize certain forms that might otherwise be overlooked.

84. **Ms. Cleveland** said that the Committee had contemplated introducing a paragraph on discrimination with regard to the right to life at the beginning of the draft general comment. Ultimately, however, it had decided that the paragraph should be placed in the section currently under discussion. Nevertheless, the paragraph remained of the utmost importance because it was the only part of the comment that addressed the general relationship between discrimination and the right to life. The section on positive obligations only addressed positive measures and the relationship between the right to life and socioeconomic rights. In paragraph 48, the Committee had taken the position that discrimination on the grounds of indigence in the application of the death penalty was prohibited. It would therefore be remiss not to mention the relationship between discrimination on the grounds of socioeconomic status and the right to life in a paragraph that dealt with discrimination more generally.

85. **Mr. Shany** said that Ms. Pazartzis should clarify whether she wished to insist on her reservation or simply wanted her position to be noted in the record of the discussion. It seemed to him that the other members were in favour of introducing the proposed language on socioeconomic status.

86. **Ms. Pazartzis** said that the unanimous consent of the Committee had not been required for the adoption of other paragraphs and should not be required here. She had made her position known.

87. **The Chair** said that Ms. Pazartzis's reservation had been duly noted. He took it that the Committee agreed to the proposed amendments to the first sentence and asked the Rapporteur to move on to the remaining proposals.

88. **Mr. Shany** said that he was in favour of inserting language on multiple and intersecting forms of discrimination at the end of the second sentence. Those terms were useful and relevant in that context, as many pertinent issues, such as the discriminatory use of force by State officials or the application of the death penalty, involved a combination of geographical, racial and socioeconomic discrimination.

89. **The Chair** said that he took it that the Committee agreed to the proposed amendment of the second sentence.

90. **Mr. Shany** said that he was unsure whether to agree to insert language on criminal sanctions for femicide. Such specifications were not made with regard to the other forms of discrimination mentioned in the paragraph. If the members were comfortable with the proposal, he would acquiesce; otherwise he would withdraw it.

91. **Ms. Kran** said that emphasis should be placed on the importance of ensuring that the sanctions imposed for femicide were commensurate with the crime. However, perhaps paragraph 64 was not the appropriate place to make that point, given that it addressed so many other forms of discrimination without going into the question of sanctions in those cases.

92. **Ms. Brands Kehris** said that the notion of an aggravating circumstance should apply to any deprivation of life based on discrimination. She was, nevertheless, in favour of forgoing language on sanctions for the sake of substantive consistency and conciseness.

93. **The Chair** said that he took it that the Committee did not wish to amend the final sentence.

94. *Paragraph 64, as amended, was adopted.*

The meeting was suspended at 5.20 p.m. and resumed at 5.30 p.m.

Paragraph 65

95. **Mr. Shany** said that paragraph 65 had not existed in the first draft of the general comment and had been inserted to address concerns raised by Mr. Politi. Some States parties had objected to the paragraph on the grounds that the draft general comment should not touch on environmental matters, which, they claimed, were the preserve of other international treaties and forums. The United Kingdom and the United States of America, for example, were against connecting the right to life with international environmental law. However, in accordance with article 31 (3) (c) of the Vienna Convention on the Law of Treaties, the Committee's position was that it was proper for it to consider all topics that had a human rights dimension, regardless of whether or not they pertained to human rights law or to another area of international law.

96. The Government of Canada had taken issue with the idea, expressed in the second sentence, that the obligation to protect the right to life "must reinforce" States parties' obligations under international environmental law. It saw that wording as an attempt on the Committee's part to introduce obligations established under human rights law into the sphere of environmental law. He therefore proposed that "must reinforce" should be replaced with "should inform", which made it clear that the sentence was intended to convey that the two legal regimes should not be interpreted in isolation. The Canadian Government had also stated that the penultimate sentence implied that the ability of individuals to enjoy the right to life directly depended on measures taken by States parties to protect the environment, which, it claimed, was not the case. In that regard, he proposed that the words "inter alia" could be inserted after "depends" to make it clear that States parties' fulfilment of their obligations under international environmental law was only one factor that could affect the right to life.

97. The Governments of both Canada and the Netherlands had suggested that the final sentence should use the term "precautionary approach", rather than "precautionary principle", and he was inclined to accept that proposal.

98. The Government of the Netherlands had remarked that the Declaration of the United Nations Conference on the Human Environment, which was cited in a footnote to the paragraph, did not address climate change. That was true, but climate change was addressed

in the other conventions and treaties cited in the footnotes to the paragraph, and the Committee was not maintaining that every specific obligation was mentioned in all of the sources it cited.

99. The French National Consultative Commission on Human Rights had raised the issue of environmental harm caused by private actors. That concern could be accommodated in the third sentence of the paragraph by referring to harm and pollution caused by public and private actors.

100. Human Rights Watch had suggesting addressing the issue of access to information; that could be done by stating, in the final sentence, that States parties needed to provide appropriate access to information on environmental hazards. Lastly, he proposed that the Committee should agree to suggestions from the Global Initiative for Economic, Social and Cultural Rights to include a reference to the Paris Agreement on Climate Change and to make it clear, in the third sentence, that individuals' ability to enjoy the right to life was affected by the measures taken by States parties to protect the environment from "reasonably foreseeable" harm and climate change.

101. **Ms. Cleveland** said that she wondered whether the paragraph should also address States parties' positive obligation to protect the public from known and reasonably foreseeable environmental hazards.

102. **Mr. Politi** said that he would be in favour of adding language on the positive obligation of States parties to protect the public from environmental hazards, although not necessarily in paragraph 65.

103. **Ms. Kran** proposed that the final sentence of the paragraph should also include the recommendation that States parties should put in place or maintain and enforce substantive environmental standards that were non-discriminatory and non-retrogressive.

104. **Mr. Politi** said that "non-sustainable", in the first sentence, should be changed to "unsustainable", which was the term used in the Rio Declaration on Environment and Development.

105. **The Chair** said that he took it that the Committee agreed with Mr. Politi's proposal. He would come back to Ms. Kran's proposal when the members discussed the final sentence.

106. **Mr. Shany** said that using the wording "should inform" in the second sentence would convey the interpretative interplay between the regimes of human rights laws and environmental law more concisely.

107. **Mr. Politi** said that he agreed with Mr. Shany, although he would have preferred to use stronger language, for example, by changing "should" to "must".

108. **Mr. Heyns** said that he preferred the wording "should also inform" because it made it clear that the relationship between article 6 and environmental law was a two-way street.

109. **Mr. Politi** said that specifying that States parties had an obligation only to protect the environment from "reasonably foreseeable" harm excluded a number of factors that were not reasonably foreseeable, such as nuclear pollution. Furthermore, the Committee might wish to consider indicating that States parties had a responsibility to preserve the natural environment.

110. **Mr. de Frouville** said that he agreed with Mr. Politi regarding States' responsibility to preserve the natural environment. He was unsure of the merit of inserting "reasonably foreseeable" into the text. Harm to the environment was generally foreseeable. Moreover, it was indicated in the final sentence that States had an obligation to take note of the precautionary principle.

111. **Ms. Cleveland** said that States parties had certain legal obligations under international environmental law that ran counter to the notion that they should protect the environment only from "reasonably foreseeable" harm.

112. **Mr. Shany** said that, in view of the members' comments, it appeared that he should not add the words "reasonably foreseeable" to the text. He agreed with Mr. Politi that States

parties also had a responsibility to preserve the natural environment. He would redraft the paragraph to reflect that point and present his changes at the Committee's subsequent meeting on the draft general comment.

The meeting rose at 6 p.m.