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Summary record of the 3321st meeting
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Chair: Mr. Salvioli

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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 (*continued*)

Draft general comment No. 36 on article 6 of the Covenant (Right to life)
(CCPR/C/GC/R.36/Rev.2 and Rev.5)

1. **Mr. Shany** (Rapporteur for the general comment) said that there were two revised versions of draft general comment No. 36 on article 6 of the Covenant before the Committee: CCPR/C/GC/R.36/Rev.2 and CCPR/C/GC/R.36/Rev.5. Paragraphs 1 to 19 of CCPR/C/GC/R.36/Rev.5 corresponded to the paragraphs that had been provisionally adopted on first reading at the Committee's 117th session. It was possible that the sequence of those paragraphs would be altered. Paragraphs 20 to 25 of CCPR/C/GC/R.36/Rev.5 corresponded to the paragraphs that had been discussed at the 117th session and amended in the intersessional period. Those six paragraphs were now being submitted for provisional adoption.

2. **The Chair** invited Committee members to consider revised draft general comment No. 36 (CCPR/C/GC/R.36/Rev.5), beginning with paragraph 20.

Paragraph 20

3. **Mr. Shany** (Rapporteur for the general comment) said that paragraph 20 would eventually be moved to another section. The reference to the imposition of the death penalty on persons with disabilities had been moved to another paragraph. Paragraph 20 conveyed the general notion that persons with disabilities were entitled to special measures of protection. It made use of two concepts derived from the Convention on the Rights of Persons with Disabilities, namely the provision of reasonable accommodation for persons with disabilities and the right to life on an equal basis with others. The two examples given in the second sentence of the paragraph were the accessibility to persons with disabilities of basic social services and the prevention of the excessive use of force by law enforcement agents against such persons, the latter being an issue that the Committee had often encountered in the periodic review process.

4. **Ms. Seibert-Fohr** proposed deleting the words "against deprivation of their life", since they made the first sentence overly narrow in scope. Additionally, she said, they did not reflect the language used in the Convention. She proposed including in the second sentence a recommendation not to impose the death penalty on persons with mental and intellectual disabilities. There was a general trend towards prohibiting the imposition of the death penalty on persons with mental and intellectual disabilities at the national level and a number of international bodies, including the Inter-American Commission on Human Rights, had recommended such a prohibition.

5. **Mr. de Frouville** said that paragraph 20 should be moved to section III, since it was related more to the duty to protect life than to the prohibition against the arbitrary deprivation of life. The paragraph overall was satisfactory; however, it could more clearly reflect the wording of article 10 of the Convention on the Rights of Persons with Disabilities. For example, the words "ensure the right to life" could be replaced with the words "ensure the enjoyment of the right to life". Furthermore, he wondered whether the cross reference to paragraph 28 was necessary. In any case, the concept of a basic social service lacked a precise definition in the sphere of human rights. The focus could instead be shifted to article 9 of the Convention on the Rights of Persons with Disabilities.

6. **Mr. Shany** (Rapporteur for the general comment) said that, if the paragraph was moved to section III, it would be necessary to use a less specific formulation in the first sentence. Such a formulation could be borrowed from article 10 of the Convention on the

Rights of Persons with Disabilities. Paragraph 28 could be placed in square brackets for the time being. Article 9 of the Convention on the Rights of Persons with Disabilities was very broad in scope and covered many aspects that were not directly relevant to the right to life. The issue of the imposition of the death penalty on persons with disabilities would be dealt with at a later stage in the drafting process. In his view, it would represent one of the general comment's major contributions.

7. **Sir Nigel Rodley** (Rapporteur for the general comment) said that the cross reference to paragraph 28 had been included to avoid reproducing the list of basic social services given in that paragraph.

8. *Paragraph 20 was provisionally adopted, subject to drafting changes.*

Paragraph 21

9. **Mr. Shany** (Rapporteur for the general comment) said that paragraph 21 laid down the basis for the positive obligations stemming from the duty to protect life. The concept of protection by law was the basis of two ideas conveyed by article 6 of the Covenant: the duty of States to create a protective legal framework for the right to life and their duty to ensure the enjoyment of the right to life within that legal framework.

10. Some Committee members had expressed concerns regarding the structure of the general comment. There were two possible approaches: the structure could either be based on that of article 6 or take a more analytical form. The Committee could make a final decision on the structure on completion of the first reading. He would be in favour of the first approach, since, although it entailed some degree of analytical overlap between sections, it would make the general comment easier to apply and invoke.

11. Few changes had been made to paragraph 21. One sentence had been inserted, for the time being in parentheses, to emphasize that the existence of a legal framework to protect the right to life did not absolve States of their duty to protect the right to life. The two duties were thus cumulative, although independent. The term "positive measures" had been replaced with "legal measures", and the adjective "full" had been inserted to qualify the word "enjoyment". In his view, although concerns had been expressed regarding the reference in the last sentence to private persons and entities, it provided a helpful context.

12. **Sir Nigel Rodley** (Rapporteur for the general comment) said that, in his view, the sentence in parentheses was not entirely satisfactory. It implied that some States did not have a legal framework for the protection of the right to life. It would be hard to think of a State that did not claim to have put in place such a framework. However, it was possible that not every aspect of a State's legal framework protected the right to life in the manner envisaged by the Committee.

13. **Ms. Seibert-Fohr** said that her concerns regarding the paragraph under consideration related not only to its structure, but also to its substance. The Committee set different standards for the duty to refrain and the duty to protect, the latter being a matter of due diligence. A clear distinction should be drawn between those two duties in order to avoid reducing the burden on States parties. According to her understanding, paragraph 21 related to the positive obligations of States parties, whereas paragraph 22 related to the deprivation of life. For that reason, she would be in favour of moving paragraph 22 to section II. The last sentence of paragraph 21, by contrast, was clearly a due diligence clause. Furthermore, in line with the relevant jurisprudence of the International Court of Justice and the application of the Convention on the Prevention and Punishment of the Crime of Genocide, she proposed replacing the word "possible" in the last sentence with the word "foreseeable".

14. **Mr. Rodríguez Rescia** said that he endorsed the paragraph as it currently stood, including the sentence in parentheses. He seemed to remember that an amendment to the Mexican Constitution had removed the framework for the protection of the right to life — a situation which highlighted the need for the Committee to insist on the existence of such a framework.

15. **Ms. Cleveland**, supported by **Mr. Politi**, proposed amending the second sentence to read as follows: "This implies that States parties are obligated to establish a legal framework in order to ensure the full enjoyment of the right to life for all individuals." The sentence in parentheses could then be deleted. Additionally, she proposed replacing the words "also serves as a basis for" in the last sentence with the word "includes".

16. **Mr. Politi** said that he, too, was in favour of replacing the word "possible" with the word "foreseeable". He accepted the explanation given by the rapporteurs with regard to the reference to private persons and entities. Lastly, he proposed replacing the second occurrence of the word "obligation" in the last sentence with the word "duty".

17. **Mr. de Frouville** said that, in his view, the first two sentences of paragraph 22 belonged elsewhere, since they dealt, in a somewhat incomplete manner, with the concepts of protection and prescription by law. They should be inserted after paragraph 15. It would be more logical to examine first the concept of protection by law and then that of the arbitrary deprivation of life. The structure of the section was otherwise relatively clear: paragraph 21 seemed to serve as an introduction by explaining that a legal framework for the protection of life must exist and that States parties must adopt positive measures to protect life from all possible threats, and those two aspects were followed up in paragraphs 23 and 24, respectively.

18. **Mr. Shany** (Rapporteur for the general comment) said that the Committee could decide on the structure of the general comment at a later stage in the drafting process. Paragraph 21 did indeed serve as an introduction to section III. It dealt with the duty to protect life in both its positive and negative aspects. He agreed with the proposed rewording of the second sentence and the proposed replacement of "possible" with "foreseeable".

19. **Sir Nigel Rodley** (Rapporteur for the general comment) said that the obligation to investigate a suspicious death and to bring the perpetrator to justice was not an obligation of due diligence. However, when a State was aware of a threat to a person's life, it was under an obligation of due diligence to protect the person concerned.

20. *Paragraph 21 was provisionally adopted, subject to drafting changes.*

Paragraph 22

21. **Mr. Shany** (Rapporteur for the general comment) said that paragraph 22 provided details of the requisite legal framework. The first part, which concerned the obligation to regulate by law instances of deprivation of life, was closely related to section II. The second part focused on the duty to protect the right to life by law. The previous lengthier version of the paragraph had covered measures to regulate interference with the right to life by both States and non-State actors. It had now been split into two paragraphs. Paragraph 22 dealt with regulations governing State conduct and paragraph 23 with regulations governing non-State actors. The last sentence of paragraph 22 had been expanded to include examples of State's positive obligations. The phrase "investigating and prosecuting cases of deprivation of life" should be amended to read "investigating and prosecuting cases of unlawful deprivation of life".

22. **Ms. Cleveland** proposed inserting the word "potential" before the phrase "cases of unlawful deprivation of life".

23. *Paragraph 22, as amended, was provisionally adopted.*

Paragraph 23

24. **Mr. Shany** (Rapporteur for the general comment) said that paragraph 23 dealt with arbitrary deprivation of life by private persons and focused on the interface between criminal law and the enactment of a protective legal framework. Some amendments had been made to the wording in light of the previous discussion. The term "manslaughter" had been replaced with "homicide"; the word "honour" in the reference to honour killings had been placed in quotation marks; references to femicide and disappearances had been deleted because they were addressed elsewhere; and the words "terrorist acts" had been replaced with "terrorist attacks". The phrase "while remaining compatible with all provisions of the Covenant" had been inserted at the end of the final sentence concerning criminal sanctions.

25. **Sir Nigel Rodley** (Rapporteur for the general comment) expressed reservations concerning the reference to extrajudicial killings, since killings of any kind perpetrated by non-State actors were, by definition, extrajudicial. It should therefore be deleted.

26. *Paragraph 23, as amended, was provisionally adopted.*

Paragraph 24

27. **Mr. Shany** (Rapporteur for the general comment) said that paragraph 24 dealt with positive obligations, which raised complicated legal issues. The previous version of the paragraph had been split in two. Paragraph 24 now dealt with positive obligations vis-à-vis private individuals and entities within States and paragraph 25 with protection against the impact of extraterritorial activities.

28. The wording of the second sentence of paragraph 24, relating to due diligence, had been amended. The word "reasonable" had been inserted before "positive measures" and the second phrase now referred to "impossible or disproportionate burdens", which reflected the wording used in the judgment of the Inter-American Court of Human Rights in the *Sawhoyamaxa Indigenous Community v. Paraguay* case. Footnote 72 contained a reference to the views of the Committee on the Elimination of Discrimination against Women concerning arbitrary deprivation of life in hospitals. The reference to gun control had been amended to read: "reduce the proliferation of potentially lethal weapons to unauthorized individuals". The reference to "irregular armed groups" had also been expanded.

29. **Mr. de Frouville** noted that the paragraph referred only to positive measures that constituted due diligence obligations and failed to mention strict obligations of States, such as the investigation and prosecution of cases of enforced disappearances, which did not fall into that category. He said that the reference to a "due diligence obligation to undertake reasonable positive measures", which did not impose "impossible or disproportionate burdens" on States in response to threats to life from private persons and entities, established a far less rigorous standard than that laid down in paragraph 6 bis.

30. Noting that the last sentence referred to "lawful entities" rather than "private persons and entities", he said that the State bore full responsibility for offences committed by, for example, public hospitals and public transportation service-providers. Therefore, the different status of the two categories should be clarified.

31. **Mr. Shany** (Rapporteur for the general comment) said that due diligence standards were those applicable to threats originating from private persons and entities. To make that clearer, he suggested inserting the language used in paragraph 6 bis — "whose conduct is not attributable to the State" — after the phrase "private persons and entities". The strict standards would be dealt with in due course.

32. The last sentence did not mention due diligence but dealt with adequate measures of protection, including ongoing supervision, of what constituted a mixture of public and private entities. He therefore agreed that it might cause confusion because of the combination of two separate standards of responsibility. The Rapporteurs would give further consideration to its deletion.

33. **Mr. Ben Achour** said that the paragraph addressed attacks on the right to life committed, on the one hand, by illegal entities such as criminal, militant or terrorist groups and, on the other, by legally established public or private entities.

34. **The Chair** said that in Latin America the term "*grupos militantes*" tended to refer to political groups that posed no threat to peoples' lives. He suggested replacing that term, in the Spanish text, with "*milicias*".

35. **Mr. Shany** (Rapporteur for the general comment) said that he concurred with the comments of the previous two speakers. The suggestion relating to the Spanish text would also apply to the other language versions of the draft general comment.

36. **Sir Nigel Rodley** (Rapporteur for the general comment) said that paramilitary groups, irregular armed groups and vigilante groups were often set up by States and their activities were therefore attributable to the States concerned. In such cases something more than due diligence was required, but it was difficult draw a distinction between the two categories in drafting the text. The Inter-American Court of Human Rights, which had addressed the issue in the case of *Velásquez-Rodríguez v. Honduras*, had felt obliged to formulate the State's obligations in terms of the duty to investigate and prosecute rather than attributing direct responsibility to the State. The Rapporteurs could seek to clarify the wording, but it would present a major challenge.

37. *Paragraph 24 was provisionally adopted, subject to drafting changes.*

Paragraph 25

38. **Mr. Shany** (Rapporteur for the general comment) said that paragraph 25 dealt with the obligation to protect individuals against deprivations of life by other States operating within their territory "or in other areas subject to their jurisdiction". The last phrase had been inserted in light of the previous discussion. According to the second sentence, States were required to ensure that all activities were consistent with article 6 of the Covenant. In response to a proposal made during the previous discussion, the Rapporteurs had inserted in square brackets the phrase "and with related international standards of corporate social responsibility". As such standards were soft law but might well evolve into hard law, the Committee's comments on the subject would be appreciated.

39. **Mr. Rodríguez Rescia**, expressing support for the phrase in square brackets, said that the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights was currently discussing States' extraterritorial obligations related to transnational corporations.

40. **Mr. Politi** said that he too considered that the phrase in square brackets should be retained. He understood that the second sentence of the paragraph referred, inter alia, to hazardous industrial activities, such as nuclear power plants and industries that caused transboundary pollution. He wondered whether such activities should be deemed to have "a direct, significant and foreseeable impact" on the right to life of individuals outside a State's territory. In his view, due diligence measures would be required even if such activities merely had a potential impact on the right to life.

41. **Mr. de Frouville** said that the reference to international standards of corporate social responsibility should be retained but the footnote referring to Guiding Principles on Business and Human Rights should, in his view, be deleted, since it was unduly restrictive.

42. **Ms. Cleveland** suggested that a sentence should be inserted at the beginning of the paragraph reiterating that the measures in question were positive State obligations.

43. **Ms. Seibert-Fohr** proposed replacing, in the first sentence, the words "should take" with the words "shall take". She supported the reference to activities having "a direct, significant and foreseeable impact" on the right to life because States could not be required to regulate all activities that could have a potential or far-reaching impact. However, she suggested as alternative wording "a real and immediate impact" on the right to life, since such wording was frequently used with respect to due diligence. She proposed amending the bracketed phrase to read "taking due account of related international standards of corporate social responsibility".

44. **Mr. Iwasawa** said that he preferred to retain, in the second sentence, the phrase "having a direct, significant and foreseeable impact", which served to soften the strong language of "ensure". The second sentence referred to all activities in a State's territory, whether private or not, which would seem to include State activities as well. If the text specified clearly that it was dealing with private activities and due diligence obligations there might be no need to have any reference to impact. In the last part of the sentence, there should be a reference to article 6 and international standards of corporate responsibility; however, the latter should not be equated with article 6.

45. **Mr. de Frouville** said that replacing, in the second sentence, the phrase "direct, significant and foreseeable" with the words "real and immediate" would be too restrictive; there were situations where the effect of activities on the environment for example might not become apparent for a long time. It would also be too restrictive to emphasize only private activities without underscoring the State's obligation of due diligence. The Committee was likewise concerned with the effects of State activities, including in the territory of another State.

46. **Mr. Politi** said that he also preferred to keep the reference to "direct, significant and foreseeable" in the second sentence; perhaps the word "direct" could be deleted. With regard to some experts' misgivings about the use of the word "ensure" in the second sentence, he recalled that principle 21 of the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) required States to "ensure that activities within their jurisdiction or control did not cause damage to the environment in other States or areas beyond their national jurisdiction". Such an obligation, already accepted in international law, was even more important in the current paragraph, which involved the duty to protect life.

47. **Mr. Shany** (Rapporteur for the general comment) said that he agreed that, in the first sentence, the word "should" should be replaced with "shall" and, in the last sentence, the phrase "taking due account of relevant international standards of corporate social responsibility" should be inserted following the phrase "article 6". He would retain footnote 75 as a valuable reference to evolving jurisprudence on that issue. While the second sentence did not mention States' due diligence specifically, it did encompass all extraterritorial consequences, whether for States or non-State entities. The word "ensure" was a strong word and reflected the language in article 2 (1) of the Covenant and in the Stockholm Declaration. The sentence went on however to limit State responsibility somewhat by referring to "direct, significant and foreseeable impact" because States could not be held responsible for every effect, but only for significant and foreseeable effects. He preferred to retain the word "direct" to make it clear there must be some causal link between the activity and the effect on life. He anticipated however that States would have a strong reaction to the text and suggested that the word "direct" should be placed in square brackets pending further discussion.

48. The Committee was to some extent breaking new ground and should take care not to exceed its mandate, given the lack of jurisprudence on issues of human rights and the environment in a transboundary context. With regard to extraterritoriality, he said that States parties had a duty to protect individuals from threats emanating from other sources. In dealing with that issue the Committee could bring in the notion of extraterritorial effects or sources and a State's duty to protect against the effects of another State's activities.

49. **Sir Nigel Rodley** (Rapporteur for the general comment) said that the issues in the paragraph would be dealt with in detail later in the general comment. There might for example be discussion of a more flexible definition of the nature of State responsibility. That should elucidate the issues at hand and help the Committee to find the most appropriate language for the paragraph.

50. **Ms. Cleveland** said that she had not meant to question the introduction of the issue of extraterritoriality in paragraph 25. However, in separating paragraph 25 of the most recently revised version of the draft general comment (CCPR/C/GC/R.36/Rev.5) from paragraph 24 of the version currently being considered (CCPR/C/GC/R.36/Rev.2), the link to the issue of due diligence and States' responsibility had become somewhat more tenuous because paragraph 25 dealt mainly with one aspect of extraterritoriality. Perhaps language could be added to the beginning of the paragraph to recall the link to the broader issue of States' due diligence obligation and duty to protect life.

51. **Mr. Fathalla** said that he agreed that the word "ensure" should be retained in the second sentence. The reference in the first sentence to other areas subject to States parties' jurisdiction should be repeated in the second sentence. Perhaps the phrase "or subject to their jurisdiction" could be inserted following "within their territory".

52. *Paragraph 25 was provisionally adopted, subject to drafting changes.*

The meeting was suspended at 4.40 p.m. and resumed at 5 p.m.

Paragraph 26

53. **Mr. Shany** (Rapporteur for the general comment) drew the Committee's attention to the previous version of the draft general comment (CCPR/C/GC/36/Rev.2), which contained the remaining paragraphs to be considered by the Committee for adoption on first reading. In paragraph 26, he said that, in the first sentence, the words "vulnerable persons" should be replaced with "persons in situations of vulnerability"; that change would be made throughout the general comment. A proposed paragraph on persons with disabilities would be inserted following paragraph 26.

54. Paragraph 26 dealt with States' duty to adopt special protection measures for groups who faced significant threats to their lives — situations that were often highlighted in the context of the Committee's consideration of States parties' periodic reports. It also gave examples of the types of protection measures that might be envisaged.

55. **Mr. Ben Achour** said that he agreed with the substance of the paragraph but that it should be reorganized. The words "for example" should be deleted from the beginning of the second sentence, as the sentence did not really contain examples of that stated in the first sentence. Furthermore, it would be more logical to switch the order of the first and second sentences.

56. **Mr. Rodríguez Rescia** said that he agreed with the changes suggested by Mr. Ben Achour but that more emphasis should be placed on the fact that it was an individual's particular circumstances, not just being a woman or a child for example, that put them at risk. In the first sentence, the words "whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence" should be moved to the beginning of the same, after the phrase "persons in a situation of vulnerability".

57. **Mr. Iwasawa** said that in the first sentence the word "exceptional" should be replaced with the word "special" to reflect the language in the third sentence. In the second sentence he agreed that the words "for example" should be deleted and further suggested that the words "adopt special measures of protection" should be inserted following "States parties must". Those amendments and the change in order suggested by Mr. Ben Achour would make the paragraph more coherent.

58. **Mr. Fathalla** said that he agreed that the words "for example" should be deleted from the second sentence but wondered whether the third sentence referred to measures to protect the persons described in the first or the second sentence; "around-the-clock" police protection might be possible for some of the categories of persons in the second sentence but would not be feasible for all the persons mentioned in the first sentence. He also wondered whether "journalists" in the second sentence was a broad enough term to include all media.

59. **Mr. Iwasawa** said that in the third sentence the words "of vulnerable individuals" should be deleted. That way, as proposed by Mr. Ben Achour, the first sentence would deal with specific categories of individuals, the second with persons in a situation of vulnerability and the third with examples of special measures. Since the third sentence listed examples of possible special measures, the words "may include" addressed the concern raised by Mr. Fathalla.

60. **Ms. Pazartzis** said that she agreed that the phrases "for example" and "of vulnerable individuals" should be deleted from the second and third sentences respectively. That would make it clear there were two groups of concern to the Committee.

61. **Mr. Shany** (Rapporteur for the general comment) said that he agreed that there were two categories of individuals, those in positions of vulnerability and those whose activities exposed them to risk. The text would be redrafted to either broaden the language in the first sentence or give a list of vulnerable persons and then deal with persons facing a specific risk. He said that the third sentence was meant to refer to the category of individuals whose activities exposed them to risks, not persons in situations of vulnerability in general. He believed that the word "journalists" referred to all media.

62. **Ms. Jelić** suggested that stateless persons should be added to the list of persons exposed to risk.

63. **The Chair** said that since measures of protection were not necessarily exceptional but could be regular or ongoing, the word "exceptional" should be deleted from the first sentence.

64. **Mr. Muhumuza** said that he supported deleting the word "exceptional".

65. **Sir Nigel Rodley** (Rapporteur for the general comment) said that, in the first sentence the word "exceptional" would be replaced with "special" to reflect the language in the third sentence. The word "special" was necessary to underscore that the individuals in question required not only the normal measures of protection provided to everyone by the State party but also special measures because they were particularly targeted in some way.

Paragraph 27

66. **Sir Nigel Rodley** (Rapporteur for the general comment) said that paragraph 27 dealt with the heightened responsibility of a State to protect the life of an individual whom it had deprived of liberty or whom it had allowed to be deprived of liberty. The examples came mostly from the Committee's practice. There was potentially overlap between the last sentence on presumption of a State's responsibility to investigate the death of a person in custody, and the first sentence of paragraph 31. He suggested that the last sentence of paragraph 27 could therefore be deleted.

67. **Mr. Ben Achour** said that, in the second sentence, the translation of the expression "life-threatening diseases" as "*maladies potentiellement mortelles"* in the French text was inaccurate and left room for prison authorities to determine for themselves which diseases were potentially fatal and which were not, thereby opening the door to interpretations intended to serve purposes that ran contrary to the spirit of the Covenant. He proposed that the French text should be amended to bring it into line with the English text.

68. **Mr. Rodríguez Rescia** proposed that, in the first sentence, a more general reference to "individuals under the control and supervision of the State" [*las personas bajo el control y supervisión del Estado*] should be inserted so that it would come before the more specific reference to "individuals incarcerated by the State", since it included not only the latter but also persons in both public and private psychiatric hospitals, orphanages and homes for the elderly. It should be made clear in the final sentence that the principle expressed applied to all individuals under the control and supervision of the State, not only those who were incarcerated.

69. **Mr. Fathalla** asked whether, in the second sentence, the expression "inter-prisoner violence" applied only to incarcerated individuals or whether it also applied to arrested and detained individuals, since all three of those categories of persons could be subjected to violence from other inmates and should therefore be protected from it.

70. **Mr. Politi** proposed that, in the first sentence, the words "and personal security" should be inserted after the words "care for their life". In effect, the duty of the State extended beyond caring for the life of individuals in its custody and included protecting them against "intentional infliction of bodily or mental injury", as set out in paragraph 9 of the Committee's general comment no. 35.

71. **Mr. Iwasawa** said that he was uneasy about the use of the word "heightened" to refer to States parties' obligations, given that it implied that those obligations were quantitatively greater than States' other obligations, when in fact it was the content, not the level of the obligations referred to in paragraph 27, that set them apart from others. He therefore proposed that the word "heightened" should be replaced with "special".

72. **Mr. Bouzid** said that the draft general comment should include a reference to street children, who were exposed to a myriad of life-threatening risks and were a category of vulnerable persons who needed adequate protection.

73. **Ms. Seibert-Fohr** proposed replacing, in the first sentence, the word "responsibility" with the word "obligation", given that the former might be mistakenly understood as referring to the responsibility of States for internationally wrongful acts. Although she could agree in principle with the proposal to extend the scope of the first sentence to include all persons under the control and supervision of the State, paragraph 27 did not seem the most appropriate place for such a change, as it might lower the standard that the paragraph currently set for incarcerated individuals. The Committee might consider formulating a separate paragraph on that subject.

74. She had doubts about the wording of the final sentence, which seemed to set a more stringent standard than the one reflected by the Committee's case law. The standard to be adopted by the Committee ought to convey the principle that, when a person died in custody, it was the obligation of the State party to demonstrate that it had taken all measures to prevent all threats to the prisoner's life.

75. **Sir Nigel Rodley** (Rapporteur for the general comment) said that he agreed with the proposal to replace, in the first sentence, the first occurrence of the word "responsibility" with the word "obligation". He also concurred that the standard reflected in the final sentence went beyond the case law of the Committee, or any institution for that matter, and would need to be redrafted. He invited Committee members to review the first sentence of

paragraph 31 in order to determine whether any concerns that were not addressed in that paragraph could be included in the final sentence of paragraph 27.

76. He would be reluctant to delete the word "heightened" in the first sentence, since States parties did indeed have a heightened obligation with regard to persons who were deprived of their liberty; however, he would not object to deleting that word from the third sentence so that the sentence would begin "A similar duty to protect".

77. A terminological issue arose anytime there was discussion of persons deprived of their liberty, given that the associated words, such as "incarceration", "imprisonment" and "detention", had multiple meanings depending on the context and language in which they were used. He would be amenable to using the expression "deprivation of liberty", at least in the first sentence, as it was less likely to give rise to confusion, but it was too cumbersome an expression to use on an exclusive basis.

78. In view of the fact that, in its general comment No. 35, the Committee dealt with the issue of personal security at length, he saw no reason to include it in draft general comment No. 36. The term "inter-prisoner violence" applied to any detainee or person deprived of their liberty. Given that paragraph 27 concerned persons deprived of their liberty who were held without freedom of movement either directly or indirectly by authority of the State, he was unsure whether a reference to orphanages belonged there.

79. **Sir Nigel Rodley** (Rapporteur for the general comment) said that the proposal to include a reference to street children was valid; perhaps the phrase "particularly street children" might be added in paragraph 26, where there was already a reference to children. He did not object to including a reference to orphanages in the draft general comment, since orphanages were State-run institutions in which persons were subject to the control of the State, but he was not sure that such a reference belonged in a paragraph about deprivation of liberty.

80. **Mr. Shany** (Rapporteur for the general comment) said that the rapporteurs would give further consideration to the issue of whether or not to include orphanages in that paragraph and would subsequently present their suggestions to the Committee.

81. **Mr. Muhumuza** said that, with regard to the second sentence, he wondered whether it might be more accurate to refer to "intra-prisoner violence" than to "inter-prisoner violence", in view of the activity of gangs perpetrating violence in other prisons. In the penultimate sentence, he proposed that the words "State's support" should be replaced with "State's approval" since the former might suggest financial support, especially since it was used in the context of private incarceration facilities.

82. **Mr. Politi** said that he had raised the question of adding a reference to personal security because paragraph 27 dealt with persons who had been taken into custody — an issue that went to the heart of many of the provisions of general comment No. 35. Paragraph 27 referred to a number of situations that were not necessarily life-threatening, such as inter-prisoner violence. From that perspective, the addition of a reference to personal security could serve to dispel any claim a contrario that the Committee was reducing the protection of incarcerated individuals by not addressing the duty of the State to protect incarcerated persons not only from direct threats to their life but also from being subjected to bodily and mental injury.

83. **Sir Nigel Rodley** (Rapporteur for the general comment) said that he would reflect further on the best way to incorporate the issue of personal security, which did not seem to conflict with the basic purpose of the draft general comment, namely, the protection of the right to life. That said, the farther the draft comment drifted from that purpose, the harder it would be to persuade States parties and their prison officials to take it seriously. One

solution to that problem might be to include a reference in draft general comment No. 36 to the relevant paragraph of general comment No. 35.

84. Although the issue of cross-institutional violence was a valid one, such violence was the exception and not the rule. Violence within a particular institution, on the other hand, was much more prevalent, and the term "inter-prisoner violence" was a readily understood expression for describing it. Regarding the penultimate sentence, he would attempt to find a suitable alternative to the word "support" in the expression "private incarceration facilities operating with the State's support", such as "authorization" or "acquiescence".

85. **Mr. Rodríguez Rescia** asked whether the suggestion for including a reference to "personal security", which was a very broad concept, might better be met by a reference instead to the concept of "protection against bodily harm" [*integridad personal*] since such bodily harm could be life-threatening.

86. **The Chair** said that although prison officials might not be in the habit of reading the Committee's general comments, the Committee could ask States parties to train prison officials in certain areas, including in its general comments.

The meeting rose at 6 p.m.