**Comments of PORTUGAL to the Draft General Comment to Article 6 of the International Covenant on Civil and Political Rights**

The delimitation of the content of the right to life (already well-established by jurisprudence and doctrine in the Council of Europe, but less so under the ICCPR) has a direct impact on the ethical-social understanding and hence on the legislative compatibility with the death penalty, the voluntary interruption of pregnancy or euthanasia.

The right to life is inherent in the human person and must be protected by law, and no one can be arbitrarily deprived of life.

The death penalty that is still part of the legal system of some countries is a limitation of the right to life. The imposition of the death penalty is governed by the International Covenant on Civil and Political Rights, which provides for its application in exceptional cases for the most serious crimes and within strict limits. Portugal has pioneered the refusal to enshrine the death penalty and, as such, considers that the abolition of the death penalty is a contribution to the right to life.

The draft General Comment does not, in our view, place enough emphasis on the duty to fulfil the right to life, and to adopt positive measures in this regard in relation to all dimensions of such right. We believe it is of utmost importance to capture the spirit of paragraph 5 of General Comment 6 (1982), which reads:

*Moreover, the Committee has noted that the right to life has been too often narrowly interpreted. The expression “inherent right to life” cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.*

Paragraph 5 refers to number 2, 4, 5 and 6 of article 6 of the Covenant which regulates the imposition of the death penalty. However, it seems to us that a paragraph should be included on the issue of abolition of the death penalty, reinforcing the importance and the need for more and more States parties to take the decision to abolish the death penalty, as States have the duty to ensure the effectiveness of the right to life;

*“States parties should reflect about the importance of the abolition of [of considering a moratory on] the death penalty, as a corollary of the obligation to respect and ensure the right to life.”*

Paragraph 9 refers to an example that identifies the situation related to pregnant women who are not married. It seems to us that the idea should be reinforced that States parties should allow all women to stop pregnancy on a voluntary basis on an equal basis, not discriminating because they are married or not:

*“Measures adopted by States parties to regulate the terminations of pregnancy should apply to all pregnant women based on the principle of equal treatment without any type of discrimination.”*

In paragraph 10 a more flexible wording is suggested, namely*“states parties [may allow] [should not prevent] medical professionals to provide medical treatment or the medical means in order to facilitate the termination of life of [catastrophically] afflicted adults (…)”.*

We consider that paragraph 15 should be re-phrased in order to include the obligations to respect, protect and fulfill the right to life, and would suggest the following wording:

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

In paragraph 16, according to the Portuguese Constitution the right to life is inviolable and in no case shall there be the death penalty (article 24). We do not understand the meaning of the 1st sentence of this paragraph as we do not understand its link with the Universal Declaration of Human Rights, namely article 3.

In paragraph 18, “discrimination” should be added.

In paragraph 30, we would favour deleting the last sentence (in brackets).