

## ZOOM IN

### *The question:*

#### **The Obligation to Investigate Violations of the Right to Life Reloaded: How Far Does it Go in Times of Armed Conflict?**

*Introduced by Gabriella Citroni\**

The right to life has been referred to as ‘the supreme right’<sup>1</sup> and ‘the most important of all human rights’.<sup>2</sup> It has further been observed that it is ‘basic to all human rights’,<sup>3</sup> given that its enjoyment is ‘essential for the exercise of all other human rights. If not respected, all rights lack meaning’.<sup>4</sup>

The pivotal role played by this fundamental right – which is recognised as non-derogable in the major international human rights treaties<sup>5</sup> – has prompted the development of a rich international jurisprudence, extensive scholarly analysis,<sup>6</sup> as well as the adoption of relevant soft law legal instruments. States’ obligations vis-à-vis the right to life have been spelled out in detail, both in terms of the duty not to arbitrarily deprive anyone of his or her life, and in terms of so-called positive obligations,

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<sup>1</sup> UN Human Rights Committee (HRC) General Comment no 6: Article 6 (Right to Life) (1982) para 1.

<sup>2</sup> Y Dinstein, ‘The Right to Life, Physical Integrity, and Liberty’, in L Henkin (ed), *The International Bill of Rights* (Columbia UP 1981) 128.

<sup>3</sup> UNHRC ‘General Comment no 14: Art. 6 (Right to Life)’ (1984) para 1.

<sup>4</sup> Inter-American Court of Human Rights (IACtHR) *Villagrán Morales and others (Street Children) v Guatemala* (19 November 1999) para 144.

<sup>5</sup> Art 4(2) International Covenant on Civil and Political Rights; art 27(2) American Convention on Human Rights; art 15(2) European Convention on Human Rights. The African Charter on Human and Peoples’ Rights does not contain a specific provision on derogation.

<sup>6</sup> See, among others, E Wicks, ‘The Meaning of “Life”: Dignity and the Right to Life in International Human Rights Treaties’ (2012) 12 Human Rights L Rev 199-219.

including that of conducting effective investigations into an alleged violation.

After a period where the case law on the right to life has been regarded as relatively settled, the past two years have seen the resurgence of a vibrant debate and several international human rights mechanisms have deemed it fit to initiate the process of assessing existing standards and revising previously adopted documents. Notably, in 2015 the African Commission on Human and Peoples' Rights issued a general comment on Article 4 of the African Charter on Human and Peoples' Rights.<sup>7</sup> In the same year, the Human Rights Committee launched a procedure – currently ongoing – to issue a new general comment on the right to life;<sup>8</sup> and the UN Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions opened a thorough process of revision of the UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions ('the Minnesota Protocol').<sup>9</sup> International human rights courts have also been called to reconsider their previous jurisprudence on the right to life.<sup>10</sup>

One of the most debated subjects in the context concerns the extent and implications of the States' obligation to investigate violations of the right to life, in particular in times of armed conflict. This also requires an in-depth analysis of the inter-play between international humanitarian law and international human rights law. These topics are certainly

<sup>7</sup> African Commission on Human and Peoples' Rights General Comment on Article 4 (2015) available at <[www.achpr.org/files/instruments/general-comments-right-to-life/general\\_comment\\_no\\_3\\_english.pdf](http://www.achpr.org/files/instruments/general-comments-right-to-life/general_comment_no_3_english.pdf)>.

<sup>8</sup> UNHRC 'Procedure for the Adoption of the General Comment–General Comment no 36: Article 6 (Right to life)' (2015) available at <[www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx](http://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx)>.

<sup>9</sup> Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions, 'Revision of the UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions' (16 June 2016) UN Doc A/HRC/32/39/Add. 4.

<sup>10</sup> J Chevalier-Watts, 'Effective Investigations under Article 2 of the European Convention on Human Rights: Securing the Right to Life or an Onerous Burden on a State?' (2010) 21 *European J Intl L* 701-721; and L Lavrysen, 'Positive Obligations in the Jurisprudence of the Inter-American Court of Human Rights' (2014) 7 *Inter-American and European Human Rights J* 94-115.



not new,<sup>11</sup> however, there is more to be said and a number of issues call for further study. Is the States' obligation to investigate alleged violations of the right to life somewhat mitigated in times of armed conflict? If so, under what conditions and with what consequences? Does the situation change when the conflict comes to an end? What is the role played by avoidance doctrines against this background? Would an integrated application of international human rights law and international humanitarian law answer the previous questions or would grey areas remain? In particular, is it possible to find a solution to these conundrums that is feasible and realistic enough, without letting the States' off the hook completely and fostering impunity?

Luca Gervasoni and Gloria Gaggioli try to answer these questions in the present zoom-in. The former explores the latest jurisprudential and normative developments concerning the obligation to investigate alleged violations of the right to life in times of conflict, with a particular focus on international human rights law. On her part, Gaggioli focuses on this obligation pursuant to international humanitarian law, evaluating whether there is any clash between the two regimes or whether rather they can positively and realistically interact in a way that is more conducive to the highest level of protection of the right to life.

In the light of the above-mentioned ongoing process of revision and jurisprudential re-assessments concerning the right to life, these contributions seem especially timely and hopefully they will further enrich the debate and inspire new ideas, with the aim to find effective responses that are both theoretically sound and practically workable and sustainable.

<sup>11</sup> L. Doswald-Beck, 'The Right to Life in Armed Conflict: Does International Humanitarian Law Provide All the Answers?' (2006) 88 *Intl Rev Red Cross* pp. 881-904.

