

# Civil and Political Rights

## The Substantive Rights

### The Right to Self-Determination: Article 1

*All Peoples have the right of self-determination*

- First article of both the ICCPR and ICESCR contain identical text setting out the right to self-determination
- It is a right that has simultaneously civil, political, economic, social and cultural aspects
- The right to self-determination is not an individual right, but a collective right of 'peoples'
- The term 'peoples' is not defined in either covenant, but commonly understood to mean a group bound together by a common identity such as: ethnicity, geographic location, or religion or culture
- The lack of precise definition is likely to be deliberate, to allow for all peoples in all parts of the world without excluding any single group
- The political element of self-determination entitles people to freely determine their political status – decolonisation

*The economic element of self-determination stipulates;  
All peoples may, for their own ends, freely dispose of their natural wealth and resources. In no case may a people be deprived of its own means of subsistence*

- The consequence of the collective nature of the right to self-determination is that the Human Rights Committee has held it to be non-justiciable – the communications system under the First Optional Protocol to the ICCPR permits complaints by individuals only
- The ICJ stated that the right to self-determination is an essential principle of customary international law and has erga omnes character

### The Right To Life: Article 6

*Every human being has the inherent right to life.  
This right shall be protected by law.  
No one shall be arbitrarily deprived of his life.*

- Not every action that results in death will be arbitrary, and therefore not every death will be a violation of the right to life
- Much of Article 6 is devoted to the death penalty, seeking to limit circumstances in which it is used by states as to not render executions arbitrary
- Extrajudicial executions are arbitrary – and do constitute a violation of the right to life
- The right to life does carry proactive obligations on States – taking all possible measures to decrease infant mortality, increase life expectancy and adopting measures to eliminate epidemics

### Arbitrary Deprivation of Life

*The right to life has been described as the supreme right from which no derogation is permitted, even in times of emergency. It is basic to all human rights.*

- While an arbitrary killing carried out by a state agent will violate the right to life, it is not always clear when a killing will be arbitrary

### Capital Punishment

- A series of qualifications under article 6 of the ICCPR that address issues for countries that have not abolished the death penalty'
- Only apply for the most serious crimes
- Be provided by law at the time of the offence
- Be carried out only after a final sentence by a competent court

#### Suarez De Guerrero v Colombia (Human Rights Committee) 1979

##### Facts:

- Suspected ambassador kidnapping, police lay in wait at the home
- As 7 people came through the door, shot at point blank range
- At this time the law had a provision for police officers that killed anyone in the course of kidnapping or drug operations – a defence
- Therefore the killings were legal under Colombian law

##### Finding:

- The Human Rights Committee held that arbitrary means more than just 'lawful'
- It was legitimate for a state to authorise the use of lethal force in some circumstances – however the response must be proportionate to the circumstance
- The Committee found that these killings were arbitrary – violating Article 6 of the ICCPR

- Not apply for crimes committed by persons under 18; and
- Not be carried out on pregnant women
- The Human Rights Committee has held that only intentional killings or attempted killings, and perhaps the international infliction of grievous bodily harm – may attract the death penalty
- States that had abolished the death penalty have an obligation to not expose a person to execution (extradition) *Judge v Canada* – departing directly from ten years earlier *Kindler v Canada*
- This creates a paradox in international law, where different states have different obligations

### Abortion and Euthanasia

- Abortion and euthanasia have been difficult issues to reconcile with the standard of international human rights law
- In the case of abortion, the key definitional issues include;
- The definition of life itself
- When life is said to begin – at conception, at the point where the foetus would be viable outside the womb or at birth
- The declaration in article 1 of the UDHR states; all human beings are **born** free and equal in dignity and rights – suggesting human rights crystallize at birth
- A woman's choice to terminate her pregnancy will not constitute a violation under the right to life – although forced abortions or sterilisations will violate other human rights
- No access or restriction on abortions also could amount to violations under other human rights in international law
- Euthanasia unequivocally involved the ending of a life
- The only justification for euthanasia consistent with the right to life would therefore be that such a deprivation is not arbitrary
- The Committee believed that euthanasia of a terminally ill patient does not amount to an arbitrary killing
- However, the Committee urged a very high standard of vigilance on that standards and preconditions are met