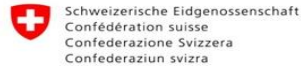




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Mission permanente de la Suisse auprès de l'Office des Nations Unies et des autres organisations internationales à Genève



## Concept Note

### 'Exploring the economic and social dimensions of the right to life'

Side event at the 40<sup>th</sup> session of the Human Rights Council

6 March 2019, 13:30 – 15:00

Room XXIV, Palais des Nations, Geneva

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The Human Rights Committee's recent adoption of a new general comment on Article 6 of the ICCPR, the right to life, expands the understanding of this 'supreme' right and acknowledges its strong interdependence and indivisibility with economic and social rights. In this respect the Committee confirms its understanding that article 6 should not be interpreted narrowly, it guarantees a 'right to enjoy a life with dignity' and that States have obligations to take measures to address the general conditions of society. Such 'general conditions' include: *'the prevalence of life threatening diseases, such as AIDS, tuberculosis or malaria, extensive substance abuse, widespread hunger and malnutrition and extreme poverty and homelessness'*. The Committee identifies some of the measures required for addressing the 'general conditions' for protecting the right to life: 'where necessary, measures designed to ensure access without delay by individuals to essential goods and services such as food, water, shelter, health-care, electricity and sanitation.'

Advocates of economic and social rights are expecting that, in addition to the implications at the international level, the General Comment also has important implications for the access to justice for economic and social rights issues at the domestic level, given that significantly more States have enshrined the right to life in their constitutions and national laws compared to those that have comprehensively enshrined economic and social rights.

The Committee debates on this topic during the process for the elaboration of the general comment reveal that some Committee members were eager to ensure that the new general comment did not become the subject of claims under the Optional Protocol focusing on issues such as homelessness and access to adequate health care. That objective did not find support in the final text, which is silent on whether individuals could bring such claims under the Optional Protocol. Thus the door remains potentially open for such claims as well as for more national and regional Courts to apply the approach of the General Comment and interpret the right to life as including these economic and social dimensions, integral to a life lived in dignity.

At the time of the deliberations, the Committee had before it a case that alleged a violation of the right to life on the ground that the State failed to allow the author access to long-term health care,



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due to her immigration status. The decision in that case was published in 2018: *Toussaint v Canada*. In this ground-breaking case the Committee found that the government had violated the author’s right to life. The Committee said “States parties have the obligation to provide access to existing health care services that are reasonably available and accessible, when lack of access to the health care would expose a person to a reasonably foreseeable risk that can result in loss of life.” This decision has significant implications for access to health and other public services (such as housing, water and sanitation) for undocumented migrants, asylum seekers and other displaced persons.

Whilst ground-breaking at the international level, cases that allege violations of the right to life on the basis of the State’s failure to fulfil economic and social rights, have been more common at the regional and national levels. The jurisprudence of the Indian Supreme Court and other South Asian courts have been particularly interesting, showing how a range of economic and social rights including food and housing can be enforced through constitutional litigation under the right to life. This occurred despite the fact that rights such as food and housing are only considered as non-justiciable social rights in the ‘Directive Principles’ of their constitutions. The experience in the Inter-American, African and the European human rights systems also offer interesting lessons.

This event will explore the ever-deepening relationship between economic and social rights and the right to life. It will consider the legal developments at the regional and national levels and how they have contributed to the position taken in General Comment 36. It will critically examine whether the positive advances in GC 36 have the potential to advance economic and social rights including by providing a stepping stone towards full access to justice for persons living in poverty.

Speakers:

Yuval Shany	Professor and Hersch Lauterpacht Chair in International Law at the Law Faculty of the Hebrew University of Jerusalem Chair of the Human Rights Committee and Rapporteur for General Comment 36
Rodrigo Uprimny	Professor Emeritus at the National University of Colombia Member of the Committee on Economic, Social and Cultural Rights
Bruce Porter	Executive Director, Social Rights Advocacy Centre Chief Advisor to the UN Special Rapporteur on the right to adequate housing
Joanna Bourke-Martignoni	Senior Research Fellow, Geneva Academy of International Humanitarian Law and Human Rights
Sandra Epal Ratjen	International Advocacy Director and Deputy Executive Director, Franciscans International