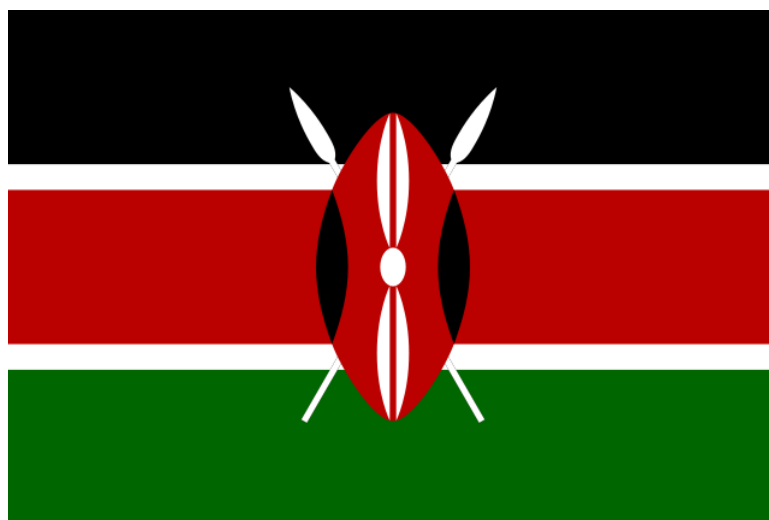


Universal Periodical Review

Third Cycle

Kenya



Right to Life and Related Human Rights Issues

18th of July 2019

“From the politics of taking life to the politics of affirming it”

Center for Global Nonkilling | Christophe Barbey | Main representative in Geneva
C/° Center John Knox, 27, ch. des Crêts-de-Pregny, CH-1218 Grand-Saconnex, Geneva, Switzerland
+41 79 524 35 74 | cb@apred.ch

Thank you for your kind support at www.nonkilling.org

***We understand the right to life as being the full enjoyment of Life,
as being the right not to be killed,
but also as being everyone’s responsibility not to kill or let others die.***

The Center for Global Nonkilling has a unique mission,
inspirational for individuals and transformative for societies:
*“To promote change toward the measurable goal of a killing-free world
by means open to infinite human creativity in reverence for life”.*

Introduction

The Center for Global Nonkilling (CGNK) was founded by Glenn Paige (1929-2017), political science Professor and author of the book “Nonkilling Political Science”, translated in numerous languages¹. The Center is a worldwide congregation of committed individuals, scholars and groups working at creating societies that do not kill. Valuing life in all its worthwhile dimensions is a necessary mission; please join the Center for Global Nonkilling in celebrating, enhancing and protecting life². The Center has ECOSOC special consultative status since 2014.

At each session of the UPR, CGNK makes usually one as comprehensive as possible submission and a few shorter ones focusing on specific issues. This is a short submission, focusing mainly on international legal aspects of the right to life³.

Human rights

All human rights are universal, of equal importance, indivisible, interlinked and mutually reinforcing. They arise out of our fundamental human nature and are expressed by our feelings and values. They grow and remain through knowledge, practice and kindness. They are needed to build lasting and prosperous, thriving and humane societies enabling each and every one to lead a fulfilling life. Human rights are universal values, human and legal values.

They are supported and implemented by universal and fundamental methods such as education, the culture of peace, prevention and precaution, peaceful settlements of disputes and if need be non-violence. These methods are fully needed for the full respect, the common enjoyment and the achievement of all human rights.

The right to life

Compared to other human rights, the right to life has four specific features:

- a. If dignity can be said to be the paramount human right, present when each and all human rights are fulfilled, so is the right to life present within all other human rights. However, the right to life precedes all other human rights: if life is taken all human rights are cancelled⁴.
- b. Conversely, joyfully living and granting life, thus giving solid ground to life and to the right to life, to the equality and quality of life, is the base needed for the peaceful progress, the proactive fulfillment and the completion of all human rights.

Center for Global Nonkilling | Christophe Barbey | Main representative in Geneva
C/° Center John Knox, 27, ch. des Crêts-de-Pregny, CH-1218 Grand-Saconnex, Geneva, Switzerland
+41 79 524 35 74 | cb@apred.ch

Thank you for your kind support at www.nonkilling.org

c. There are no possible limitations or restrictions to the right to life: one is either alive or not. Issues pertaining to the beginning and to the end of life such as reproductive rights, abortion, suicides and euthanasia as well as prenatal and genetic engineering should thus be dealt with in a preventive, human and humane sustainable manner, for each and all, in full dignity.

d. There is only one way to guarantee the respect of, to protect the right to life: full and effective prevention. Once a life is lost, compensation may be due, but there are no possible reparations for that lost life.

e. Henceforth, the right to life is also the absolute *duty not to kill*. As such, the right to life is a fully reciprocal right, granted to all and in need of being granted by all to all, individually as collectively.

The Center for Global Nonkilling, whatsoever, recognises no *right* to kill and encourages all persons and institutions to do likewise.

Though not rights, three powers to kill have sometimes been legally granted (or remain), always under very strict circumstances. We do not approve or condone to these existing powers. They should be made into what they often already are: unwanted remnants of the past. These powers are:

1) The use of legitimate self-defence, by a proportionate reaction linked to a direct, serious and imminent threat as legally required. The circumstances where self-defence may be needed are always a failure of prevention: failure that should be thoroughly analysed to extract lessons learned and design more accurate policies. If these circumstances nevertheless occur, using nonviolent means, reaction should never result in killing or maiming. Thereafter and whatever the result of legitimate defence, an independent judicial control over it is part of the rule of law.

Similarly, because it highly impacts on the rights to life, personal integrity and security, any *use of force* by officials or any one shall be avoided, or highly limited. We recall that States have a duty of exemplarity regarding fundamental values and respect of human rights. Outmost attention is therefore to be given to prevent situations which may result in loss or losses of lives or in any type of maiming. Failures of prevention shall be thoroughly monitored to extract lessons learned and instigate changes in policies. Methods used when the use of force is nevertheless needed should be inspired by non-violent techniques as used by civil society: force is not violence as long as it causes no harm. Again, any official use of force should be monitored by a totally independent mechanism. We encourage the creation of police complain courts, having investigative and decisional powers, yet being totally separated and independent from police and prosecutors.

2) Death penalty, if ever permissible, is however a major and definitive breach of the right to life and of numerous other human rights, including of other persons. It is also considered as being an inhumane, cruel and degrading treatment⁵. It is the worst example of respect for the right to life a State and a nation can give. Preventive effects being undemonstrated, it is unworthy and lacks the necessary dignity, the moral standards and exemplarity required of any authoritative power. Death penalty is not compatible with the Sustainable Development Goals (SDG) as these grant universal development: to “leave no one behind” is development and rehabilitation for all.

Center for Global Nonkilling | Christophe Barbey | Main representative in Geneva
C/° Center John Knox, 27, ch. des Crêts-de-Pregny, CH-1218 Grand-Saconnex, Geneva, Switzerland
+41 79 524 35 74 | cb@apred.ch

Thank you for your kind support at www.nonkilling.org

The SDG's, unanimously adopted, require "significant reduction of violence and related killings (SDG 16.1)": it includes State killings.

3) Powers of war, as conceded by humanitarian law as an exception to the right to life, permit under certain circumstances only, the taking of the life of soldiers. Seeing peace and respect of life prevail – always – and nullifying this exception is one of the objectives of the Center for Global Nonkilling and shall be a purpose for humanity, for the sake of life as for the sake of peace.

The right to peace

Peace originates in our human nature, is supported by human feelings and continues through intelligence and practices, supported by non-violent institutions.

No life would be possible without a sufficient attainment of peace, and dignity can only be fully achieved when peace and human rights prevail. Peace is a right but it is also a method, a universal method needed for the completion of all human rights.

Peace is fully present (if not worded) in article 28 of the Universal Declaration of Human Rights when it states that "*Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized*". It is only through a peaceful order that such an endeavour can be accomplished: all rights set forth in the Universal Declaration being fully realized.

The links between *human rights and peace* are progressively being developed⁶. It is with great respect that we salute the fact that Kenya has supported the adoption of the Declaration on the Right to Peace in 2016⁷. It is time to implement it⁸.

Henceforth, peace and peaceful methods provide means to prevent and solve conflicts without aggravating them (including between competing human rights) and as may be to the advantage of all concerned, in a constructive or reconstructive way. Conflicts solved peacefully make it easier to alleviate feelings with respect, to draw lessons learned from difficult situations and to design policies for future prevention, overcoming, for thriving and well-being.

Other related human rights

All human rights are needed to fulfil a safe and happy life.

However, some of them may be of more direct importance either for the full realisation of the rights to life and to peace, or to avoid their breach.

The *right to participation*, including of women, youth and disabled persons is highly important as it creates societies where responsibilities are shared, for the progress of all towards the well-being of all. The more people participate in the decision making process, the more people will respect the consequences of their decisions and the easier it will be to achieve SDG 16: safe and inclusive societies.

The right to *accurate standards of living*, including the rights to food, water and sanitation, clothing and housing, to work and social security deserve full attention, in all circumstances.

The *right to health* is an essential right for the fulfilment of the right to life and of the subsequent right to longevity. It is needed as well to achieve societies in which *human rights are all equally shared*.

Center for Global Nonkilling | Christophe Barbey | Main representative in Geneva
C/° Center John Knox, 27, ch. des Crêts-de-Pregny, CH-1218 Grand-Saconnex, Geneva, Switzerland
+41 79 524 35 74 | cb@apred.ch

Thank you for your kind support at www.nonkilling.org

The *human right to a healthy natural environment*, thus sustaining humanity and life on Earth, deserves accurate protection and full attention as well.

The *right to happiness* and to fulfilment, in reverence for life, should always be mentioned:

“Happy people breed a happy world”

Universal Periodic Review of Kenya

We wish a happy UPR to the people and the country of Kenya.

The right to life in the national and international human rights constitutions

The following international legal obligations – the convention on the prevention and punishment of the crime of *genocide*, the covenant on *civil and political rights* and its optional protocol on the *abolition of the death penalty*, and the convention on *enforced disappearances* – are, within the human rights constitution, the ones mostly concerned with the right to life. They are the minimum international standards needed for any country to show full legal respect for life and for the right to life. National constitutions shall similarly reflect this human and legal stand in favor of life.

Beyond legal aspects, it is consciously evident that it is the bounty of life, the ethics, the knowledge and the human best practices, strong heart feelings and our well understood instincts and our good will: it is what we offer to each other and to humanity for life, to be living well with accurate living means and it is what our institutions promote and exemplify to pursue progress in dignity and to achieve a sustainable civilization on Earth, so forth it is our personal and collective feelings, intelligence and commitments that give a future, a meaning and a worth to the lives we lead and live, leaving no one behind, for ourselves as for future generations.

We salute the existence in Kenya of a State mechanism for the prevention of mass atrocity crimes⁹. However, legal action is still needed to complete the international and local protection of the right to life.

Prevention of genocide

The right to live is also to duty not to kill, for individuals and inasmuch for groups of people. Every person needs life and needs to be part of a social group to live, to be part of a society and to relate with its government, ideally all thriving for the good of each and all. Therefore all individuals as well as all social and political groups should be protected against genocide.

We recall, that the United Nations Special Adviser of the Secretary-General on the Prevention of Genocide has called, for the 70th anniversary of the Convention on the 9th of December 2018 for its universal ratification¹⁰. We also recall that the Human Rights Council has adopted, without a vote, at its session 37 in March 2018, a resolution containing a similar call¹¹.

The fact that they are various social and minority groups in Kenya makes the ratification of the Convention on the prevention and punishment of the crime of genocide all more valuable and urgent.

Center for Global Nonkilling | Christophe Barbey | Main representative in Geneva
C/° Center John Knox, 27, ch. des Crêts-de-Pregny, CH-1218 Grand-Saconnex, Geneva, Switzerland
+41 79 524 35 74 | cb@apred.ch

Thank you for your kind support at www.nonkilling.org

Nothing in the political or strategic situation of a country can justify the absence of the needed tools for the prevention of genocide and atrocity crimes. However, if the ratification of the convention may seem to be a light commitment, it is a clear sign that such crimes will never be tolerated and a head start for long term policies. It is an overall measure preceding or accompanying other measures and policies. More than not, as tools and initiatives are now available for prevention¹².

I. Hereupon, we strongly urge and recommend to the authorities of Kenya the ratification of the Convention on the prevention and punishment of the crime of genocide.

Prohibition of the death penalty

To respect life is to value all lives, without distinction or discrimination.

The act of killing is the same, be it official or a crime. States have the duty to stand as examples of respect for life and for the right to life. We recall that the right to life granted to all is also the responsibility vested in all to refuse to kill. Accepting that one could be killed or to kill one is accepting the act of killing. As such, regardless of who is killed, how many are killed or why, there is a killing.

Though no execution has been practiced in Kenya since 1987, death penalty is still present, and sometimes used to condemn in the law of Kenya.

We recall that States have a duty of exemplarity regarding fundamental values and respect of human rights, specifically here the right to life and the duty not to kill.

II. Therefore, we urge the People and the Authorities of Kenya to change the law and to inscribe in the constitution the prohibition of the death penalty.

III. Thereafter, we recommend to the Authorities of Kenya the swift ratification of Protocol II of the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.

Illegality of enforced disappearances

To be granted a life is also receiving a right to a presence, to a public presence before the law and to a private presence, or an acknowledgeable presence with and for one's kin.

As such enforced disappearances violate numerous human rights, be them in law or in *jus cogens*. There are, as know of today in Kenya, no cases of enforced disappearances listed by the working group on enforced disappearances¹³.

The convention has universal effects and contains provisions regarding cases beyond the national territory

IV. Henceforth, we hereby recommend to the State of Kenya the ratification the Enforced Disappearances Convention.

A strong measure that will prevent the occurrence of enforced disappearances will be to include in law, in the criminal code or the criminal procedure code a disposition by witch any person arrested has the right to make is arrest know to a person or an institution of his choice within 48

Center for Global Nonkilling | Christophe Barbey | Main representative in Geneva
C/° Center John Knox, 27, ch. des Crêts-de-Pregny, CH-1218 Grand-Saconnex, Geneva, Switzerland
+41 79 524 35 74 | cb@apred.ch

Thank you for your kind support at www.nonkilling.org

hours of his arrest. A public roster of arrested persons shall be available to persons making a legitimate demand and prolongation of the 48 hours delay may only be authorized, for investigative purposes, for a very short time and non-renewable period.

V. We encourage the authorities of Kenya to evaluate and implement such a possibility.

The international peace constitution

We recommend to Kenya the adoption of comprehensive peace policies for the fulfillment of SDG16, for the well-being and safety of its entire people and for the progress of peace and non-killing worldwide.

**Welcoming the delegation of Kenya to
Geneva, the city of peace,
we wish to you as to all the people of the country
a constructive, successful, enhancing and fulfilling
Universal Periodic Review.**

¹ <http://nonkilling.org/center/publications-media/books-translations>

² <http://nonkilling.org/center/how-to-help>

³ For more comprehensive analysis, see the ones recently done for the UPR's of Lesotho (on the right to peace), or Costa Rica or Mauritius. Such submissions look at all legal aspects of the right to life and at many practical aspects of a fulfilling and lasting life, including in relation with the Sustainable Development Goals. Statistics are used therein to uphold the Universal Periodic Review process regarding the fulfillment of life from conception until death, including inter alia reproductive rights and abortions, birth registrations, child and mother's mortality, suicides of all sorts and homicides, traffic, work and leisure casualties and life expectancy. Other topics such deaths in custody, minimal standards of living and other applications of the right to life may be added as accurate for the enhancement, the enjoyment and the protection of life and of the right to life.

Rights to health, minimum standards of living, a healthy environment and peace, all deeply related to the right to life, are studied as needed or according to available means

⁴ The Human Rights Committee, in its general comment 36 on the right to life describes it this way: "It is the supreme right from which no derogation is permitted (...). The right to life has profound importance both for individuals and for society as a whole. It is most precious for its own sake as a right that inheres in every human being, but it also constitutes a fundamental right whose effective protection is the prerequisite for the enjoyment of all other human rights (...)".

https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf

⁵ See i.e. the 9th meeting of the 34th session of the Human Rights Council.

⁶ See 3rd meeting of the 34th session of the Human Rights Council on mainstreaming human rights on the contribution of human rights to peacebuilding, but also resolutions 2250 on youth and peace of the Security Council, the common resolution of the

Center for Global Nonkilling | Christophe Barbey | Main representative in Geneva
C/o Center John Knox, 27, ch. des Crêts-de-Pregny, CH-1218 Grand-Saconnex, Geneva, Switzerland
+41 79 524 35 74 | cb@apred.ch

Thank you for your kind support at www.nonkilling.org

General Assembly and the Security Council (2282) on Sustaining peace. Or the 13th of June 2016 appeal by Switzerland and 70 States, <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-62152.html>. Or the Declaration on the Right to Peace A/RES/71/189.

⁷ <http://www.undocs.org/A/RES/71/189>

⁸ They are possibilities described here: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/39/31

We add peaceful settlement of disputes for internal disputes as for international ones.

⁹ I.e. : http://www.auschwitzinstitute.org/wp-content/uploads/2015/06/AIPR_National_Mech_Booklet_2015.pdf
https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session41/layouts/15/WopiFrame.aspx?sourcedoc=/EN/HRBodies/HRC/RegularSessions/Session41/Documents/A_HRC_41_24_EN.docx&action=default&DefaultItemOpen=1

§ 27 et 30.

¹⁰ http://www.un.org/en/genocideprevention/documents/171208_AD_International%20Day_FINAL.pdf

¹¹ http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/37/26

¹² I. e. : <http://www.gaamac.org/organizations>

¹³ http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/WGEID/116/1

Center for Global Nonkilling | Christophe Barbey | Main representative in Geneva
C/° Center John Knox, 27, ch. des Crêts-de-Pregny, CH-1218 Grand-Saconnex, Geneva, Switzerland
+41 79 524 35 74 | cb@apred.ch

Thank you for your kind support at www.nonkilling.org