

Universal Periodical Review

Third Cycle

SOUTH SUDAN



Right to Life Related Human Rights Issues

July 15th 2021

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

**We understand the right to life as being
the full enjoyment of Life,
as being the right not to be killed,
and 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”¹. The book is available in Arabic². The Center is a worldwide congregation of persons, scholars and others, working at creating societies that do not kill. Valuing life in all its dimensions is a necessary mission: please join with the Center for Global Nonkilling and become a Nonkilling Centre yourself, celebrating, enhancing and protecting life³. The Center has ECOSOC special consultative status since 2014. At each session of the UPR, we make one or more submissions, usually one providing the International Community with a more or less comprehensive report on all aspects of the situation of life in the country under review. We also make systematic submission to all the countries that have not yet ratified the Convention on the prevention and the punishment of the crime of genocide.

Human rights

All human rights are universal, of equal importance, indivisible, interlinked and mutually reinforcing. They arise out of our fundamental human nature, bear in our conscience and express themselves by our cultures, knowledge, feelings and values. They grow within ourselves as shared and remain through awareness, practice and kindness. They are needed to build lasting and prosperous, thriving and humane societies, on a sustainable planet, enabling everyone to lead a fulfilling life, in solidarity leaving no one behind.

As a universal legal basis, fundamental rights form the infrastructure of our civilisation, as needed for it to flourish in dignity, through present time and in future History. We, humanity, support and implement human, universal and fundamental rights by using universal and fundamental peaceful methods, such as education and exemplarity, the cultures of peace and non-violence, cooperation and consensus, prevention and precaution, peaceful settlements of disputes. These methods are essential for the full respect and the common enjoyment, for the achievement of all human rights, as well as for the existence and continuity of societies and cultures.

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The right to life

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

a. Dignity can be said as being the paramount right present when each and all human rights are fulfilled. Similarly, the right to life is present in all human rights, at their base. *The right to life precedes* all other human rights and is needed to fulfill all human rights: if life is taken, all human rights are cancelled⁴.

Conversely, joyfully living and celebrating life gives a solid and happy ground to the existence of each and all. Further, life and the quality of life, in equality are the conditions needed for the peaceful progress and the fulfillment, the completion of all human rights.

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

c. Only *full and effective prevention can guarantee respect and reverence for life* and for the right to life. Once a life is lost, compensation may be due, but there are no possible reparations.

d. The right to life is also the *absolute duty not to kill*. So forth, the right to life is a fully reciprocal right, granted by all to all.

The Center for Global Nonkilling encourages all persons and institutions to refuse the recognition of any *right to kill*. Killing is never admissible, henceforth if law is humane and meant to express itself in full dignity and exemplarity, killing cannot be a right or be granted as a right.

Yet so far, three *powers to kill* have sometimes been legally granted, always under very strict and exceptional circumstances. We do not approve or condone to these powers to kill. They shall be considered unwanted and inhumane remnants of the past and be terminated as soon as may be.

These three legal powers to kill are:

1) Use of *self-defence*. Legally, presently legitimate self-defence requires a proportionate reaction in response to a direct, severe and imminent threat that cannot be addressed otherwise. The circumstances where self-defence may be needed are most always a large failure of prevention. A failure that should be thoroughly analysed to extract lessons learned and best practices, to design accurate policies preserving life for the future. If prevention fails and self-defence circumstances nevertheless occur, using nonviolent and nonkilling means they are no possible proportionate reactions to the threat, the threat can largely be addressed otherwise. Whatever ends and means used, the result of legitimate self-defence shall always be reviewed by an independent mechanism.

Because *use of force* highly impacts on the rights to life, to personal integrity, to security and because self-defence is often used to justify such use of force by officials or anyone, use of force shall always be prevented and avoided, or highly limited⁵. States have an ethic and legal duty of exemplarity regarding fundamental rights and values, and as such a duty to act non-violently – force is not violence! – and to enable themselves to avoid maiming or worse. Security forces must be trained in prevention and non-violent techniques and are due to report, debrief and practice

lessons learned and best practices to avoid recurrences of use of force. Again, any official use of force should be monitored by a totally independent mechanism.

2) *Death penalty*, if ever permissible, is a major and definitive breach of the right to life, as well as a denial of numerous other human rights including those of other related persons. It is considered an inhumane, cruel and degrading treatment⁶. It is the worst example of absence of respect for the right to life a State can give. Preventive effects being undemonstrated, death penalty is unworthy. It severely lacks the necessary dignity, legitimacy and exemplarity required of any authoritative power; as such it is a double-standard. Death penalty is not compatible with the Sustainable Development Goals (SDG) as they grant universal development and as their main assertion and goal is to “leave no one behind”. Killing someone is worse than leaving this person behind, it is depriving this person of its share of our common human destiny and if need be of its full right to amend itself and if possible repair wrongdoings. The SDG’s were unanimously adopted by all Member States of the United Nations and thus grant a right to development and to rehabilitation to all. The SDG’s also require “significant reduction of violence and related killings (SDG 16.1)”. This surely and foremost includes killings by the State.

3) *Powers of war* as conceded by humanitarian law dare an exception to the right to life, permitting under strict circumstances, given due precautions, the taking of the life of soldiers. This is morally unacceptable and profoundly backward. Seeing peace and respect of life prevail – always – nullifying this exception to the right to life as well as the two previous ones (violent self-defence and death penalty) is one of the objectives of the Center for Global Nonkilling.

The right to peace

Peace originates in our human nature, is supported by human thoughts, feelings and knowledge, continues through care and prevention and is assured by non-violent institutions and practices, peaceful methods and relations of all sorts, peaceful settlements of disputes.

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

Peace is fully present (if not worded) in article 28 of the Universal Declaration of Human Rights when it states: “*Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized*”. Such an order is indeed a peaceful order.

The links between *human rights and peace* are being widely developed⁷.

We salute with great respect the vote by South Sudan in favour of the Declaration on the Right to Peace at the General Assembly in 2016⁸. It is time to adhere and to learn about peace and peaceful methods, to implement them⁹.

Peaceful methods provide means to prevent and solve conflicts without aggravating them (including between competing human rights), to the advantage of all concerned persons and parties, in a constructive or reconstructive way. Conflicts solved peacefully alleviate feelings with respect, make it possible to draw lessons learned from difficult situations and favour the design of preventive policies for the future.

Other related human rights

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

Some of them may be of more direct influence for the full realisation of the rights to life and peace, to avoid their breach.

The universal *right to participate in the decision-making* is highly important. It creates inclusive and humane societies where responsibilities regarding life are equally shared by, for and towards the well-being of all. The more people participate in the decision-making process, the more people work by consensus, the more people will respect the consequences of their decisions, the easier it will be to achieve the SDG's and specifically SDG 16: safe and inclusive societies.

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

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

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

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

“Happy people breed a happy world”

Universal Periodic Review of South Sudan

We wish a happy, constructive and peaceful UPR
to the People and the Authorities of South Sudan.

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

Living happily

The following international legal obligations:

- The Convention on the prevention and punishment of the crime of *genocide*,
- The Covenant on *civil and political rights*,
- Its Optional protocol aiming at the *abolition of the death penalty*,
- The Convention on *enforced disappearances*

are the treaties mostly concerned by the direct enjoyment of the right to life.

These conventions are the legal minimum standards needed for any country to internationally recognize and show full human respect for life and the right to life.

National constitutions shall similarly reflect this stand in favor of life.

Prevention of genocide

In a time in which humanity must learn to survive as a whole, on our planet; in South Sudan in the aftermath of a violent conflict, the prevention of genocide and the sustenance of life for all individuals, and for all social and political groups as for our species remains of vital importance the prevention of genocide will be a great sign of care for the people, all the people.

Every individual, every social groups and every State have a right and a responsibility, a duty to protect and enhance life for each and all, to be exemplar in this respect.

Every person needs to be part of a social group to live and thrive in society, to relate with its kin, its government and institutions and has, individually and collectively a right and a duty to protect and be protected against any forms of violence, racism, discrimination or worse, against any destruction of life, including genocide.

The United Nations Special Adviser for the Prevention of Genocide has called in 2018 for the universal ratification of the Convention on the prevention and the punishment of the crime of genocide¹⁰. The Human Rights Council has adopted without a vote at its 37th and 43rd sessions resolutions containing similar calls¹¹.

South Sudan supported in the second cycle of the UPR three recommendations (Armenia, Belgium and Rwanda) and three more made towards the criminalisation of genocide (Czech Republic, Spain and Uruguay).

The ratification of the Convention and adapting local laws is a rather simple commitment. It requires a decision to ratify, a parliamentary decision expressed at least by a change in the criminal code to criminalize genocide and a certified letter to the Secretary General confirming ratification.

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Tools and initiatives are available for efficient prevention of genocide and atrocity crimes, and ratification, however modest, is a step ahead¹².

I. To stand firm with the UPR, we strongly recommend to the Authorities of South Sudan the swift ratification of the Convention on the prevention and punishment of the crime of genocide, at best before its UPR working group in February 2022.

The international covenant on civil and political rights

The universality of human rights implies a commitment by all States to the values and practices of the basic standards of human dignity and well-being. The covenant is almost universally ratified. It is time for South Sudan to do likewise.

II. We strongly support and encourage the urgent ratification of the Covenant on civil and political rights by the authorities of South Sudan.

Prohibition of the death penalty

To respect life is to value all lives, without exceptions, distinctions or discriminations.

It is also living as being an example of this valuation of life.

The act of killing is the same, be it official or a crime: a killing. States have the duty to stand as examples of respect for life and for the right to life. The unabated right to life gives confidence in life and opens wide the door for the betterment of life. It also recalls our common destiny as members of the human community.

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 and accepting to kill anyone is accepting that the act of killing impedes our own quality of life. As such, regardless of who is killed by whom, why or how, a killing is always a destruction of life, inasmuch of the right to life.

III. South Sudan needs to review its constitution and policies regarding respect for life and to prepare the abolition of the death penalty.

We recommend and urgently call upon the people of South Sudan to engage their authorities in a participative process, as needed to amend their Constitution and to fully value life therein.

IV. Thereafter, we recommend the swift ratification of the Second Protocol of the 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 and acknowledgeable presence with and for one's kin.

As such enforced disappearances violate numerous human rights, be them in law or in *jus cogens*. They are outstanding cases of enforced disappearances listed by the working group on enforced disappearances in 2020 and though South Sudan invited the group for a country visit, it has not yet taken place¹³.

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Whatever, the convention has universal effects and contains provisions regarding cases beyond the national territory¹⁴.

V. Therefore, we strongly recommend to the State of the South Sudan to ratify the Enforced Disappearances Convention and to organize the invited for country visit.

*Calling on each and all to fulfill a nonkilling world,
where life can be sustained on Earth,
we welcome the delegation of South Sudan
to Geneva,
the City of Peace,
and we wish 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 <https://nonkilling.org/center/book-review/arabic-alm-assyasa-wa-al-unf-al-kawni/>

³ <http://nonkilling.org/center/how-to-help>

⁴ The Human Rights Committee, in 2018 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 The constitution of the Swiss local State of the Canton of Geneva states it clearly (§ 184.3): “Conflictive situations are treated in priority so as to rule out, or limit the use of force. Concerned persons have a duty to concur”, unofficial translation from French.

<https://www.admin.ch/opc/fr/classified-compilation/20132788/index.html#a184>

⁶ See i.e. the 9th meeting of the 34th session of the Human Rights Council.

⁷ 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 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>.

> United Nations General Assembly’s Declaration on the Right to Peace A/RES/71/189,

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

> Florence Foster: “Sustaining Peace: how can human rights help?”, QUNO-OHCHR, February 2021, available here:

https://quno.org/sites/default/files/timeline/files/2021/2021_QUNO-OHCHRSustainingPeace-HowCanHumanRightsHelp.pdf

⁸ <http://www.undocs.org/A/RES/71/189>

⁹ 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.

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 and <https://undocs.org/A/HRC/RES/43/29> § 7

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

¹³ <https://undocs.org/A/HRC/45/13> § 37.

¹⁴ 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 which any person arrested has the right to make his arrest know, within 48 hours of his arrest, to a person or an institution of his choice or one designed therefore. 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.