

Universal Periodical Review

Third Cycle

SPAIN



Right to Life and

Related Human Rights Issues

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

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***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 D. Paige (1929-2017), political science Professor and author of the book *Nonkilling Global Political Science*, translated in numerous languages¹. The book is available in Spanish, having been published in 2012 by Jaume I University, in Castellón de la Plana². 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 life³. CGNK 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 issues⁴. This is a short submission.

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 cancelled⁵.

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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.

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 treatment⁶. 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

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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. 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 in 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 developed⁷. It is with regret that we note that Spain has not supported the adoption of the Declaration on the Right to Peace in 2016⁸.

Nevertheless, 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.

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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*. 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 Spain

We wish a happy UPR to the peoples and the country of Spain.

The international human rights constitution.

The following 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 (basic treaties), 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 the right to 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, our good will: it is what we offer to each other and to humanity for life, living well and 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 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 celebrate the fact that Spain has already ratified the Convention on the prevention and punishment of the crime of genocide, the Covenant on civil and political rights (ICCPR) and the Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).

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.

Spain has ratified both the Second Optional Protocol of the international covenant on civil and political rights (ICCPR) aiming at the abolition of the death penalty and Protocol 13 of the European Convention on Human Rights (ECHR), both of which prohibit the application of the

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death penalty in any circumstance whatsoever. Although Organic Law 11/95 of 27 November banned the application of the death penalty under military law in times of war, a special provision remains in Article 15 of the 1978 Spanish Constitution:

*Everyone has the right to life and physical and moral integrity and in no case may be subjected to torture or inhuman or degrading punishment or treatment. **The death penalty is abolished except in those cases which may be established by military penal law in times of war.***

A future revision of the Spanish Constitution should fully remove such provision to align the *carta magna* with the full abolition of the death penalty in any and all circumstances.

I. Therefore, we strongly encourage the peoples and the Authorities of Spain to change the Spanish Constitution to remove any exceptions in the abolishment of the death penalty and to write in the constitution the definitive ban of capital punishment.

Police brutality

CGNK is concerned over ongoing reports on alleged cases of police brutality, which have been particularly noted during the 2017 events in Catalonia. This matter had already been noted in the Concluding observations on the sixth periodic report of Spain (CCPR/C/ESP/6, 2015⁹), stating “concern [over] complaints of excessive use of force, including torture and ill-treatment, by State officials, particularly in the context of public protests” as well as “reports of shortcomings in the investigation of complaints and punishments, and expresses its concern at the deficiencies in forensic assessment in cases of the investigation of human rights violations by State officials”. Several bodies, including Human Rights Watch¹⁰ and Amnesty International¹¹ have stated that police have used excessive force in Catalonia during the 2017 events in Catalonia, particularly the October 1 referendum. Such conducts, in the given context, could represent breaches of the international covenant on civil and political rights (ICCPR), as well as international guidelines on use of police force, including the “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials” (Adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, 1990).

II. Therefore, we strongly encourage the peoples and the Authorities of Spain to adopt the necessary institutional and regulatory changes and provisions needed to put an end to police brutality.

Historical Reparation of Enforced Disappearances and Killings during the 1936-29 Civil War and subsequent Dictatorship

The human toll of the Spanish Civil War (1936-1939) is placed at approximately half a million deaths, of which one out of four were victims of enforced or involuntary disappearance. Most relatives have little or no information about where they died and where they are buried. Human Rights organizations have repeatedly criticized lack of support and cooperation from the Spanish State in locating and excavating mass graves and facilitating access to relevant historical

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information held in State archives. Historical reparation and remembrance are vital to build social awareness about the tragedy of mass killing, and are instrumental in fulfilling the mandate of the Convention on the prevention and punishment of the crime of genocide and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).

III. Therefore, we strongly encourage the Authorities and the people of Spain to become fully engaged in the location of all remaining mass burial sites and graves associated to enforced disappearances and killings that took place during the 1936-39 Civil War and the subsequent dictatorship, providing historical reparation to the families of victims and promoting historical remembrance.

Non-compliance with environmental treaties, that could potentially lead to accidental deaths or diseases connected to pollution.

Several environmental organizations have expressed concerns over lack of enforcement of environmental regulations regarding critical structures that represent risks of accidents with considerable impacts over the human and environmental populations. This includes the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, which is currently processing several complaints regarding Spain through its Compliance Committee (ACCC).

As an example, procedure ACCC/C/2017/153¹² is noted, as it involves the abandonment of a 1939 tailings dam at the San Finx mine in Lousame (Galicia, Spain) of which significant human and environmental costs would follow in the event of failure. According to complainants, regional authorities have failed to conduct oversight on this mine waste facility, obstructing access to critical environmental information. For unknown reasons, the San Finx tailings dam was not included in the Spanish National Inventory of Sludge Deposits (2002) or its subsequent updates.

IV. Therefore, we strongly encourage the peoples and the Authorities of Spain to uphold the rights set by the Aarhus Convention and other relevant regulations to protect life and to enforce environmental rights by providing adequate supervision and restoration of critical facilities, including abandoned mine tailings dams such as those in the San Finx mine.

**Welcoming the delegation of Spain 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.**

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

² <https://nonkilling.org/center/book-review/no-matar-es-posible-hacia-una-nueva-ciencia-politica-global-spanish/>

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

⁴ For more comprehensive analysis, see the ones recently done for the UPR's of Lesotho, 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 fulfilment 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

⁵ 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

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>. Or the Declaration on the Right to Peace A/RES/71/189.

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

⁹ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fE%2fSP%2fCO%2f6&Lang=en

¹⁰ <https://www.hrw.org/news/2017/10/12/spain-police-used-excessive-force-catalonia>

¹¹ <https://www.amnesty.org/en/countries/europe-and-central-asia/spain/report-spain/>

¹² <https://www.uncece.org/env/pp/cc/accc/c/2017/153.html>