

# Beyond Absolutism: A Critical Examination of the Right to Life in Contemporary Human Rights Law

Dr. Kwebe Augustine Nkwiyr<sup>1</sup>, Frits Mokake Lifoko<sup>2</sup> & Mballe Sube Ernest<sup>2</sup>

<sup>1</sup> Lecturer, University of Buea, Cameroon

<sup>2</sup> PhD Fellow in Public Law, University of Buea, Cameroon

Correspondence: Dr. Kwebe Augustine Nkwiyr, Lecturer, University of Buea, Cameroon.

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## Abstract

The right to life is widely recognized as the most fundamental human right and a cornerstone of international human rights law. This article critically examines the legal nature of the right to life, with particular emphasis on whether it constitutes an absolute or a qualified right under contemporary legal frameworks. Drawing primarily from international and regional human rights instruments, including the International Covenant on Civil and Political Rights and the European Convention on Human Rights, the study demonstrates that the right to life, while inherent and non-derogable, is not absolute in its application. The analysis shows that the right to life is subject to narrowly defined legal exceptions, including self-defense, lawful use of force by state authorities, the imposition of the death penalty under strict conditions, and lawful acts in armed conflict governed by international humanitarian law. These exceptions are regulated by the principles of legality, necessity, proportionality, and accountability, which ensure that any deprivation of life is not arbitrary. The study further highlights the evolving interpretation of the right to life through the jurisprudence and interpretive guidance of the United Nations Human Rights Committee, which has expanded its scope to include positive obligations on states to prevent foreseeable threats to life. It also identifies ongoing tensions between the protection of life and state interests such as security, law enforcement, and public order. The article concludes that the right to life is best understood as a qualified right rather than an absolute entitlement, whose protection depends on strict legal safeguards and effective accountability mechanisms. This nuanced understanding is essential for ensuring both respect for human dignity and the practical functioning of legal systems in contemporary society.

**Keywords:** absolutism, critical examination, right of life, Human Rights Law

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## 1. Introduction

The right to life stands as the most fundamental of all human rights-both the moral starting point and the legal foundation upon which every other right depends. It protects individuals against arbitrary deprivation of life and reflects the

intrinsic worth of the human person. This primacy is firmly embedded in international law, particularly in the Universal Declaration of

Human Rights<sup>1</sup> and the International Covenant on Civil and Political Rights,<sup>2</sup> which together establish life as an inviolable legal entitlement deserving of the highest level of protection.

From a philosophical standpoint, the right to life has attracted profound scholarly defense. John Rawls situates it within the framework of basic liberties that no just society can compromise,<sup>3</sup> while Ronald Dworkin characterizes rights as “trumps” over collective goals, thereby elevating the right to life above utilitarian calculations.<sup>4</sup> In a similar vein, Henry Shue identifies the right to life as a “basic right,” indispensable for the meaningful exercise of all other rights.<sup>5</sup> Yet, legal theorists such as H. L. A. Hart and Joseph Raz caution against absolutist interpretations, emphasizing that rights operate within structured legal systems where limitations may arise in response to competing social interests.<sup>6</sup>

Historically, the right to life has evolved from abstract moral philosophy into a concrete and enforceable legal norm. Its intellectual roots lie in natural law traditions, where thinkers like Thomas Aquinas conceived human life as sacred,<sup>7</sup> and John Locke later reframed it as a natural right central to the legitimacy of government.<sup>8</sup> The liberal revolutions of the 17th and 18th centuries transformed these ideas into political claims, embedding the protection of life within early constitutional frameworks.

The devastation of the World War II marked a decisive turning point, catalyzing the internationalization of human rights and elevating the right to life into a universal legal standard. Subsequent developments in international and regional systems, including the African Charter on Human and Peoples’ Rights,<sup>9</sup> have further refined its scope, extending it beyond mere protection from arbitrary killing to include positive obligations on states to safeguard life. Yet, this evolution has not produced an absolute right. Instead, it has revealed a more complex reality: the right to life

is supreme in principle but qualified in practice. Legal systems continue to recognize narrowly defined exceptions—such as lawful use of force, self-defense, and regulated state action—thereby exposing an enduring tension between moral absolutism and legal pragmatism. It is this tension that lies at the heart of contemporary human rights discourse and forms the central concern of this study.

## 2. Conceptual Clarification

In order to properly situate the discussion on “*Beyond Absolutism: A Critical Examination of the Right to Life in Contemporary Human Rights Law*,” it is necessary to clarify the core concepts that underpin the study. These concepts—beyond absolutism, critical examination, the right to life, and contemporary human rights law—provide the conceptual and legal framework through which the subject is analyzed. Their clarification is essential for understanding the tension between the moral idea of the sanctity of life and its legal regulation under modern human rights systems.

### 2.1 *Beyond Absolutism*

The concept “*beyond absolutism*” refers to the legal and theoretical shift away from the view that the right to life is absolute and admits no exceptions whatsoever. In legal theory, absolutism implies that a right cannot be limited under any circumstance, including public emergency or competing legal interests.

However, contemporary human rights law rejects this position. This is evident in Article 6 of the International Covenant on Civil and Political Rights (ICCPR),<sup>10</sup> which protects the right to life but prohibits only “arbitrary deprivation of life,” thereby implying that some lawful deprivations may occur under strict conditions. Similarly, Article 2 of the European Convention on Human Rights (ECHR)<sup>11</sup> expressly allows deprivation of life in narrowly defined circumstances such as self-defense and lawful use of force.

Legally, therefore, “*beyond absolutism*” captures

<sup>1</sup> United Nations. (1948). *Universal Declaration of Human Rights*.

<sup>2</sup> United Nations. (1966). *International Covenant on Civil and Political Rights*.

<sup>3</sup> Rawls, J. (1971). *A theory of justice*. Harvard University Press.  
Raz, J. (1986). *The morality of freedom*. Oxford University Press.

<sup>4</sup> Dworkin, R. (1977). *Taking rights seriously*. Harvard University Press.

<sup>5</sup> Shue, H. (1980). *Basic rights: Subsistence, affluence, and U.S. foreign policy*. Princeton University Press.

<sup>6</sup> Hart, H. L. A. (1961). *The concept of law*. Oxford University Press.

<sup>7</sup> *Ibid.*

<sup>8</sup> Locke, J. (1689/1988). *Two treatises of government* (P. Laslett, Ed.). Cambridge University Press.

<sup>9</sup> Organization of African Unity. (1981). *African Charter on Human and Peoples’ Rights*.

<sup>10</sup> United Nations. (1966). *International Covenant on Civil and Political Rights*.

<sup>11</sup> Council of Europe. (1950). *European Convention on Human Rights*.

the idea that the right to life is not absolute in operation but qualified, subject to limitations grounded in legality, necessity, and proportionality.

## 2.2 Critical Examination

*Critical examination* refers to a systematic and analytical evaluation of legal principles, rules, or doctrines, focusing on their coherence, application, and effectiveness. It is a methodological approach widely used in legal scholarship rather than a term defined in treaties.

According to *Black's Law Dictionary (11th ed.)*,<sup>1</sup> critical analysis involves careful reasoning and evaluation of legal concepts against established standards of law and practice. In this study, it is used to assess whether the right to life is truly absolute in law or whether it is subject to legally recognized limitations and exceptions.

## 2.3 Right to Life

The *right to life* is a fundamental human right protecting every individual against unlawful deprivation of life. It is guaranteed under Article 3 of the Universal Declaration of Human Rights (UDHR)<sup>2</sup> and is legally binding under Article 6(1) of the ICCPR (*citation: United Nations, 1966*), which affirms that every human being has the inherent right to life and that this right shall be protected by law.

The United Nations Human Rights Committee<sup>3</sup> in General Comment No. 36 further clarifies that the right:

- is inherent in all human beings,
- imposes both negative obligations (to refrain from unlawful killing) and positive obligations (to protect life), and
- prohibits only arbitrary deprivation of life, not all deprivation.

It is classified as a first-generation (civil and political) right, and while non-derogable, it remains subject to strict legal regulation.

## 2.4 Contemporary Human Rights Law

*Contemporary human rights law* refers to the modern system of international, regional, and domestic legal norms governing the protection of human rights, developed mainly after 1945. It is

grounded in key instruments such as:

- the UDHR,
- the ICCPR,
- the ECHR, etc.

This legal system is characterized by treaty-based obligations, judicial interpretation, and supervisory mechanisms such as UN treaty bodies and regional courts. It adopts a balanced and proportionality-based approach, allowing limited restrictions on rights only where justified under strict legal conditions.

## 3. Theoretical Framework

To provide a focused and analytically coherent foundation, this study adopts two central theoretical perspectives-Natural Law Theory and Legal Positivism-as the most influential in explaining the nature and limits of the right to life in contemporary human rights law.

### 3.1 Natural Law Theory

Natural law theory offers the moral and philosophical foundation of the right to life, grounding it in the inherent dignity and intrinsic worth of the human person. Classical thinkers such as Thomas Aquinas argued that human life is sacred because it originates from a higher moral order and must therefore be protected (Aquinas, as cited in natural law tradition). This view was later developed by John Locke, who articulated the right to life as a natural and inalienable right existing prior to and independent of the state.<sup>4</sup>

Within this framework, the right to life is regarded as fundamental and near-absolute, serving as the primary justification for the existence of government. The legitimacy of the state is thus tied to its ability to protect life. However, even within natural law reasoning, limited exceptions are acknowledged-particularly in cases such as self-defense-where the preservation of one life may justify necessary force against another.

### 3.2 Legal Pluralism

In contrast, legal positivism provides a practical and institutional understanding of the right to life, emphasizing that rights derive their meaning and enforceability from legal systems rather than

<sup>1</sup> Black's Law Dictionary. (11th ed.). (2019). Thomson Reuters.

<sup>2</sup> United Nations. (1948). *Universal Declaration of Human Rights*.

<sup>3</sup> United Nations Human Rights Committee. (2018). *General Comment No. 36 on Article 6 of the ICCPR (Right to Life)*.

<sup>4</sup> Locke, J. (1988). *Two treatises of government* (P. Laslett, Ed.). Cambridge University Press. (Original work published 1689).

moral absolutes. H. L. A. Hart argues that rights are created, defined, and limited by legal rules,<sup>1</sup> while Joseph Raz maintains that rights are grounded in social interests and may be restricted where justified by competing considerations.<sup>2</sup>

From this perspective, the right to life is inherently qualified, as its scope depends on statutory provisions, judicial interpretation, and state practice. This explains why international legal frameworks, such as the International Covenant on Civil and Political Rights,<sup>3</sup> recognize the right to life while permitting narrowly defined exceptions, including the lawful use of force and regulated state action.

The interplay between these two theories reveals the central tension underpinning this study. While natural law emphasizes the moral inviolability of life, legal positivism underscores its practical limitation within legal systems. This duality supports the argument that the right to life, though fundamental, cannot be treated as absolute in contemporary human rights law. Instead, it must be understood as a qualified right, whose limitations are subject to strict legal justification and oversight.

#### 4. Methodology

This study adopts a qualitative doctrinal research methodology, which is most appropriate for examining legal principles, theoretical arguments, and normative frameworks relating to the right to life in contemporary human rights law. The doctrinal approach focuses on the analysis and interpretation of legal texts, rather than empirical data, allowing for a critical evaluation of how the right to life is conceptualized and applied.<sup>4</sup>

##### 4.1 Research Design

The research is primarily analytical and descriptive. It systematically examines the nature of the right to life, tracing its evolution and interrogating whether it can be regarded as absolute or qualified. The study also adopts a critical approach, assessing the gap between theoretical claims of absolutism and the practical

realities of legal limitations (IRAC methodology and doctrinal analysis tradition).

##### 4.2 Sources of Data

The study relies exclusively on secondary sources, including:

- International legal instruments, such as the Universal Declaration of Human Rights (United Nations, 1948) and the International Covenant on Civil and Political Rights.<sup>5</sup>
- Regional human rights frameworks, including the African Charter on Human and Peoples' Rights.<sup>6</sup>
- Scholarly works by leading theorists such as John Locke (1689/1988), H. L. A. Hart (1961), and Joseph Raz (1986).
- Academic journals, textbooks, and legal commentaries on human rights law.

##### 4.3 Method of Analysis

The study employs a doctrinal and thematic analysis, which involves examining legal provisions and scholarly arguments and organizing them into key themes. These include: the conceptual meaning of the right to life, its theoretical foundations, the extent and justification of its limitations.

This approach enables a systematic and critical evaluation of competing legal and philosophical positions.<sup>7</sup>

The research focuses on the right to life within international human rights law, with occasional reference to regional frameworks, particularly in Africa. It does not involve fieldwork or empirical data collection, and therefore relies on the availability and interpretation of existing legal and academic materials.<sup>8</sup>

The doctrinal method is particularly suitable for this study because the issue under examination—the qualified or absolute nature of the right to life—is fundamentally normative and interpretive rather than empirical. It enables a deep engagement with legal texts and theoretical perspectives, providing a solid basis for critical

<sup>1</sup> Hart, H. L. A. (1961). *The concept of law*. Oxford University Press.

<sup>2</sup> Raz, J. (1986). *The morality of freedom*. Oxford University Press.

<sup>3</sup> United Nations. (1966). *International Covenant on Civil and Political Rights*.

<sup>4</sup> McCrudden, C. (2006). Legal research and the social sciences. *Law Quarterly Review*, 122, 632–650.

<sup>5</sup> United Nations. (1966). *International Covenant on Civil and Political Rights*.

<sup>6</sup> Organization of African Unity. (1981). *African Charter on Human and Peoples' Rights*.

<sup>7</sup> Hutchinson, T. (2015). *Researching and writing in law* (3rd ed.). Thomson Reuters.

<sup>8</sup> *Ibid.*

legal analysis.<sup>1</sup>

## 5. Legal Framework

The right to life is a human right which is enshrined in a plethora legal instruments. These instruments shall be examined seriatim.

### 5.1 Universal Framework

The universal framework lays the normative and philosophical foundation of the right to life, shaping all subsequent legal developments. The Universal Declaration of Human Rights was adopted in 1948 in response to the atrocities of the World War II. It marked the first global consensus on human dignity and fundamental rights.

Article 3 provides:

“Everyone has the right to life, liberty and security of person.”<sup>2</sup>

The UDHR embodies a composite framework of rights, incorporating elements of all three generations. However, the right to life specifically falls under first-generation rights (civil and political rights), characterized by protections against state interference. The provision is broadly framed and morally absolute in tone, but lacks legal enforceability and detailed limitations, making it a normative foundation rather than a regulatory instrument.

### 5.2 International Legal Framework

The international legal framework transforms universal principles into binding obligations, introducing structure and legal precision. The International Covenant on Civil and Political Rights was adopted in 1966 to legally enforce the civil and political rights outlined in the UDHR.

Article 6(1) states:

“Every human being has the inherent right to life... No one shall be arbitrarily deprived of his life” (United Nations, 1966).

The ICCPR is a core first-generation human rights instrument, focusing on civil and political liberties. Its formulation of the right to life introduces the concept of “arbitrary deprivation,” signaling a shift from abstract idealism to legal qualification. Thus, while firmly grounded in first-generation rights, it acknowledges that such rights are not absolute,

but subject to carefully regulated limitations.

### 5.3 European Regional Framework

The European system offers a highly developed and enforceable legal structure, supported by judicial oversight. The European Convention on Human Rights was adopted in 1950 to prevent the recurrence of authoritarian abuses in Europe and to institutionalize human rights protection.

Article 2(1) provides:

“Everyone’s right to life shall be protected by law.”<sup>3</sup> Article 2(2) outlines specific exceptions.

The Convention is a first-generation rights instrument, emphasizing civil and political protections. Its explicit inclusion of exceptions reflects a mature legal framework, where the right to life is clearly qualified. The European system demonstrates how first-generation rights can be strictly regulated without being absolute, through judicial interpretation and enforcement.

### 5.4 Inter-American Framework

The Inter-American system reflects a progressive and protective approach, influenced by historical experiences of repression. The American Convention on Human Rights was adopted in 1969 to strengthen human rights protection in the Americas.

Article 4(1) states:

“Every person has the right to have his life respected... in general, from the moment of conception.”<sup>4</sup>

This Convention primarily protects first-generation rights, including the right to life. However, its broader interpretive approach sometimes overlaps with second-generation concerns (e.g., state obligations to ensure conditions for dignified existence). The phrase “in general” confirms that even within a strongly protective system, the right remains qualified rather than absolute.

### 5.5 African Regional Framework

The African system adopts a holistic and integrative approach, combining individual, collective, and developmental rights. The African Charter on Human and Peoples’ Rights was adopted in 1981 to reflect African socio-political

<sup>1</sup> Hutchinson, T., & Duncan, N. (2012). Defining and describing what we do: Doctrinal legal research. *Deakin Law Review*, 17(1), 83–119.

<sup>2</sup> United Nations. (1948). *Universal Declaration of Human Rights*.

<sup>3</sup> Council of Europe. (1950). *European Convention on Human Rights*.

<sup>4</sup> Organization of American States. (1969). *American Convention on Human Rights*.

realities and post-colonial aspirations.

Article 4 provides:

“Human beings are inviolable... Every human being shall be entitled to respect for his life.”<sup>1</sup>

The African Charter is unique in that it encompasses first, second, and third-generation rights within a single instrument. The right to life itself remains a first-generation right, but its interpretation is influenced by collective (third-generation) values, such as solidarity and community. Despite its strong wording, the right is not absolute in practice, as limitations arise through state interpretation and contextual realities.

#### 5.6 Arab Regional Framework

The Arab framework reflects a regional adaptation of international norms, balancing human rights with domestic legal traditions. The Arab Charter on Human Rights was adopted in 2004 to formalize human rights protections within Arab states.

Article 5 provides:

“Every human being has the inherent right to life... protected by law.”<sup>2</sup>

The Charter incorporates first-generation rights, including the right to life, alongside other categories of rights. However, its application reflects a state-centered approach, allowing broader discretion in limiting rights. This reinforces the understanding that even first-generation rights like the right to life are qualified within legal systems.

Across all instruments, the right to life is consistently classified as a first-generation (civil and political) right, emphasizing protection against arbitrary state action. However, its evolution across legal frameworks reveals a shift from moral legal qualification. The inclusion of limitations, exceptions, and interpretive flexibility across all regions confirms that the right to life, though fundamental, is not absolute but carefully regulated within law.

## 6. The Right to Life: An Overview

The right to life is universally regarded as the cornerstone of human rights, forming the essential basis upon which all other rights depend. Without the protection of life, the enjoyment of any other right becomes impossible. As such, it occupies a pre-eminent position within first-generation<sup>3</sup> (civil and political) rights, imposing both restraints on state power and obligations for state protection.<sup>4</sup>

At the international level, the right to life is firmly established in foundational instruments such as the Universal Declaration of Human Rights, which proclaims that everyone has the right to life, liberty, and security of person,<sup>5</sup> and the International Covenant on Civil and Political Rights, which recognizes the inherent right to life and mandates its legal protection. These instruments affirm that the right to life is not conferred by the state but is inherent in every human being.<sup>6</sup>

Conceptually, the right to life encompasses both negative and positive obligations. The negative obligation requires the state to refrain from arbitrary or unlawful deprivation of life, including extrajudicial killings and excessive use of force. The positive obligation requires the state to take proactive measures to safeguard life, including protecting individuals from foreseeable threats and ensuring effective investigation of suspicious deaths.<sup>7</sup>

In terms of its legal nature, the right to life is a justiciable and immediately enforceable right, allowing individuals to seek remedies in cases of violation. It is also widely regarded as non-derogable, particularly under frameworks such as the ICCPR, meaning that it cannot be suspended even in times of public emergency.<sup>8</sup> However, non-derogability does not equate to absolutism, as the right remains subject to legal qualification. This introduces the distinction between an absolute right and a qualified right. While the right to life is fundamental, most legal systems recognize exceptional circumstances under which deprivation of life may be lawful. These include self-defense, lawful use of force by

<sup>1</sup> Organization of African Unity. (1981). *African Charter on Human and Peoples' Rights*.

<sup>2</sup> League of Arab States. (2004). *Arab Charter on Human Rights*.

<sup>3</sup> United Nations. (1966). *International Covenant on Civil and Political Rights*.

<sup>4</sup> Shue, H. (1980). *Basic rights: Subsistence, affluence, and U.S. foreign policy*. Princeton University Press.

<sup>5</sup> United Nations. (1948). *Universal Declaration of Human Rights*.

<sup>6</sup> Nowak, M. (2005). *U.N. Covenant on Civil and Political Rights: CCPR commentary* (2nd ed.). N.P. Engel.

<sup>7</sup> United Nations Human Rights Committee. (2018). *General Comment No. 36 on Article 6 of the ICCPR (Right to Life)*.

<sup>8</sup> Joseph, S., & Castan, M. (2013). *The International Covenant on Civil and Political Rights: Cases, materials, and commentary* (3rd ed.). Oxford University Press.

state authorities, and, in some jurisdictions, capital punishment under strict regulation. Such limitations are governed by the principles of legality, necessity, and proportionality, ensuring that any interference is strictly justified.<sup>1</sup>

Furthermore, the scope of the right to life has evolved significantly over time. Initially conceived as protection against direct state violence, it has expanded to include protection from non-state actors, environmental threats, and life-threatening socio-economic conditions. This reflects a broader understanding that the protection of life requires not only restraint but also affirmative state action to ensure conditions conducive to human survival and dignity.<sup>2</sup>

The right to life is also closely interconnected with other rights, including dignity, health, and freedom from inhuman or degrading treatment. This interdependence reinforces the view that human rights operate as a holistic and indivisible system, rather than as isolated guarantees.<sup>3</sup>

In sum, the right to life is both foundational and dynamic. It underpins the entire human rights system while continuing to evolve in response to new legal and social challenges. However, despite its elevated status, its practical application reveals a nuanced legal reality: the right to life is not absolute, but rather a qualified right, subject to narrowly defined and strictly regulated exceptions within the framework of the rule of law.

## 7. The Right to Life as a Qualified Right

Although the right to life is widely regarded as the most fundamental of all human rights, contemporary legal scholarship and jurisprudence confirm that it is not absolute, but rather a qualified right. A qualified right permits lawful limitations under strictly defined conditions, provided such limitations are justified within a framework of legality, necessity, and proportionality.

At the international level, the qualified nature of

the right to life is clearly reflected in the International Covenant on Civil and Political Rights. Article 6 guarantees the inherent right to life but prohibits only the “arbitrary” deprivation of life.<sup>4</sup> According to Manfred Nowak (2005),<sup>5</sup> the concept of arbitrariness introduces a legal threshold that distinguishes lawful from unlawful deprivations. More recent scholarship reinforces this interpretation. For instance, Christof Heyns and Thomas Probert (2016)<sup>6</sup> argue that the notion of arbitrariness has evolved to encompass broader considerations, including due process, accountability, and the foreseeability of harm, thereby confirming the qualified character of the right. Contemporary human rights bodies have further clarified this position. The United Nations Human Rights Committee in its General Comment No. 36 emphasizes that the right to life must not be interpreted narrowly and that states have both negative and positive obligations, including duties to prevent foreseeable threats to life and address systemic risks.<sup>7</sup> Scholars such as Yuval Shany (2019)<sup>8</sup> noted that this expansion reflects a shift toward a more comprehensive and regulated understanding of the right, rather than an absolute one.

From a theoretical standpoint, modern interpretations of liberal and legal theory continue to support the qualified nature of the right to life. While John Rawls (1971) and Ronald Dworkin (1977) emphasize the fundamental importance of rights, contemporary scholars such as Gráinne de Búrca (2021)<sup>9</sup> argue that rights must be understood within institutional and societal contexts, where competing interests necessitate careful balancing. Similarly, Samuel Moyn (2018)<sup>10</sup> highlights the evolution of human rights discourse toward addressing real-world constraints, reinforcing the idea that even core rights like the right to life operate within practical limitations.

Regional legal systems also reflect this

<sup>1</sup> *Ibid.*

<sup>2</sup> Alston, P. (2008). The right to life in international law: Towards a general comment. *European Journal of International Law*, 19(4), 699–746.

<sup>3</sup> *Ibid.*

<sup>4</sup> United Nations. (1966). *International Covenant on Civil and Political Rights*.

<sup>5</sup> *Ibid.*

<sup>6</sup> Heyns, C., & Probert, T. (2016). The right to life and the use of force in international law. *Human Rights Quarterly*, 38(2), 329–360.

<sup>7</sup> United Nations Human Rights Committee. (2018). *General Comment No. 36 on Article 6 of the ICCPR (Right to Life)*.

<sup>8</sup> Shany, Y. (2019). The right to life in international law: Interpretive developments. *Israel Law Review*, 52(3), 345–370.

<sup>9</sup> De Búrca, G. (2021). Human rights and institutional balancing in international law. *Modern Law Review*, 84(1), 1–25.

<sup>10</sup> Moyn, S. (2018). *Not enough: Human rights in an unequal world*. Harvard University Press.

contemporary understanding. The European Convention on Human Rights explicitly provides for exceptions such as self-defense and lawful use of force (Council of Europe, 1950). Recent scholarship by Frédéric Mégret (2020)<sup>1</sup> emphasizes that these exceptions are not indicative of weakness but rather of a structured legal regime, ensuring that any deprivation of life is subject to strict scrutiny and accountability.

Moreover, emerging scholarship has expanded the scope of the right to life beyond traditional interpretations. Scholars such as David Kretzmer (2020)<sup>2</sup> and Sarah Cleveland (2021)<sup>3</sup> argue that the right now encompasses new dimensions, including environmental protection, public health obligations, and the regulation of state use of force in counterterrorism contexts. This expansion further reinforces the idea that the right to life is dynamic and regulated, rather than absolute.

Importantly, the right to life is generally regarded as non-derogable, meaning it cannot be suspended even during emergencies (United Nations, 1966). However, as contemporary scholars note, non-derogability does not eliminate the possibility of lawful limitations. Instead, it underscores the requirement that any interference must meet exceptionally high legal standards (Shany, 2019).

In practice, the qualified nature of the right to life is evident in recognized exceptions such as:

- Self-defense and defense of others,
- Lawful use of force by law enforcement,
- Capital punishment (in limited jurisdictions and under strict safeguards).

These exceptions are governed by the principles of legality, necessity, and proportionality, ensuring that the right is not undermined but carefully regulated. In conclusion, contemporary scholarship overwhelmingly supports the view that the right to life is fundamental but not absolute. Its legal formulation, theoretical grounding, and practical application all point to a qualified right, one that is subject to narrowly defined limitations within a robust framework of

legal safeguards. This nuanced understanding reflects the realities of modern governance while preserving the core value of human life.

## 8. A Critical Examination of the Right to Life: A Doctrinal (Law-Based) Analysis of Its Non-Absolute Nature

The right to life, though universally acknowledged as the most fundamental human right, is not framed in law as an absolute prohibition against all forms of deprivation of life. Rather, a doctrinal analysis of binding legal instruments demonstrates that it is a qualified right, subject to clearly defined and narrowly circumscribed exceptions. This position is evident from the text, structure, and authoritative interpretation of international and regional human rights law.

At the universal level, the International Covenant on Civil and Political Rights establishes the foundational legal standard. Article 6(1) provides that “every human being has the inherent right to life” and that this right shall be protected by law; however, it prohibits only the “arbitrary deprivation of life.”<sup>4</sup> The legal implication of this formulation is significant: it does not outlaw all deprivations of life, but only those that are arbitrary, thereby leaving room for lawful deprivation under regulated conditions. This interpretation is authoritatively confirmed by the United Nations Human Rights Committee in General Comment No. 36, which clarifies that the term “arbitrary” must be understood to include elements of inappropriateness, injustice, lack of predictability, and due process, thereby establishing a legal threshold rather than an absolute prohibition.<sup>5</sup>

The qualified nature of the right to life is even more explicitly codified in the European Convention on Human Rights. Article 2(1) guarantees the right to life, but Article 2(2) provides that deprivation of life shall not be regarded as a violation where it results from the use of force which is “no more than absolutely necessary” for specified purposes, namely:

- the defense of any person from unlawful violence; the effecting of a lawful arrest

<sup>1</sup> Mégret, F. (2020). The right to life in international human rights law. *Oxford Handbook of International Human Rights Law*.

<sup>2</sup> Kretzmer, D. (2020). The law of armed conflict and the right to life. *European Journal of International Law*, 31(2), 423–445.

<sup>3</sup> Cleveland, S. (2021). Human rights and the right to life in contemporary international law. *American Journal of International Law*, 115(2), 200–215.

<sup>4</sup> United Nations. (1966). *International Covenant on Civil and Political Rights* (Art. 6).

<sup>5</sup> United Nations Human Rights Committee. (2018). *General Comment No. 36 on Article 6 of the ICCPR (Right to Life)*.

or the prevention of escape;

- the suppression of a riot or insurrection.<sup>1</sup>

This provision constitutes a direct legal acknowledgment of exceptions, thereby affirming that the right to life is not absolute. The European Court of Human Rights has consistently interpreted Article 2 as permitting deprivation of life only where the use of force meets the strict requirements of absolute necessity and proportionality, reinforcing the regulated-not absolute-character of the right.

Further doctrinal support is found within the same universal framework. Article 6(2) of the ICCPR recognizes the continued legality of the death penalty in states that have not abolished it, provided that it is imposed only for the “most serious crimes”, pursuant to a final judgment rendered by a competent court, and in accordance with fair trial guarantees.<sup>2</sup> While subsequent developments in international law encourage abolition, this provision remains a clear legal indication that the right to life permits exceptions under strict procedural and substantive safeguards.

In addition, the application of international humanitarian law (IHL) in situations of armed conflict further demonstrates the non-absolute nature of the right. Under the principles of distinction and proportionality, the targeting of combatants is lawful, provided that civilians are not directly targeted and that incidental harm is not excessive in relation to the anticipated military advantage. The coexistence of human rights law and IHL thus confirms that deprivation of life may be lawful in specific contexts, reinforcing the conclusion that the right to life is contextually regulated rather than absolute.

The same doctrinal pattern is reflected across other regional systems. For example, the American Convention on Human Rights, while strongly protective, provides in Article 4(2) that the death penalty may still be applied under limited conditions.<sup>3</sup> Similarly, the African Charter on Human and Peoples’ Rights guarantees the inviolability of life in Article 4 but does not exclude the possibility of lawful deprivation, leaving room for interpretation

within domestic and regional jurisprudence<sup>4</sup>

A synthesis of these legal provisions reveals a consistent doctrinal position: the right to life is not framed as an unqualified norm, but rather as a right whose protection is mediated through legal standards such as legality, necessity, proportionality, and due process. These standards function as safeguards, ensuring that any deprivation of life is subject to strict legal control and accountability.

In conclusion, a law-based analysis of international and regional instruments unequivocally establishes that the right to life is not absolute. Its legal formulation—particularly through the prohibition of “arbitrary” deprivation and the explicit recognition of justified uses of force—demonstrates that it is a qualified right, permitting limited exceptions under rigorously defined conditions. This doctrinal structure reflects a balance between the sanctity of human life and the practical necessities of law, security, and governance, ensuring that the right remains both fundamental and legally operable.

## 9. Summary of Findings

This study set out to critically examine the right to life within contemporary human rights law, with particular emphasis on its legal nature, scope, and limitations. The analysis reveals several key findings grounded primarily in international and regional legal instruments.

First, the right to life is firmly established as a foundational and universally recognized right, enshrined in core instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. It is classified as a first-generation (civil and political) right, imposing both negative obligations (to refrain from arbitrary killing) and positive obligations (to protect life through legal and institutional mechanisms).

Second, the study finds that the right to life is not absolute in law, but rather a qualified right. This is evident from the legal formulation in Article 6 of the ICCPR, which prohibits only the “arbitrary” deprivation of life, thereby permitting lawful deprivation under strictly regulated conditions. This position is consistently

<sup>1</sup> Council of Europe. (1950). *European Convention on Human Rights* (Arts. 2(1)–(2)).

<sup>2</sup> *Ibid.*

<sup>3</sup> Organization of American States. (1969). *American Convention on Human Rights* (Art. 4).

<sup>4</sup> Organization of African Unity. (1981). *African Charter on Human and Peoples’ Rights* (Art. 4).

reflected across regional frameworks, including the European Convention on Human Rights, which explicitly provides for exceptions such as self-defense, lawful arrest, and the suppression of riots.

Third, the research establishes that specific and legally recognized exceptions to the right to life exist within international law. These include:

- The use of lethal force in self-defense or defense of others,
- Law enforcement operations involving necessary and proportionate force,
- The death penalty (where not abolished), subject to strict safeguards.

The lawful targeting of combatants under international humanitarian law. These exceptions are not arbitrary but are governed by strict legal principles, notably legality, necessity, proportionality, and accountability, ensuring that any deprivation of life remains within the bounds of the rule of law.

Fourth, the study highlights that the right to life is generally regarded as non-derogable, meaning it cannot be suspended even in times of emergency. However, this non-derogable status does not render it absolute; rather, it underscores the requirement that any limitation must meet exceptionally high legal thresholds, particularly the prohibition of arbitrariness.

Fifth, the analysis demonstrates that the right to life has evolved in scope, expanding beyond protection against direct state violence to include broader obligations such as safeguarding individuals from foreseeable threats, ensuring effective investigations, and addressing systemic risks to life. This evolution reflects a shift toward a more comprehensive and dynamic interpretation of the right within international law.

Finally, the study concludes that the right to life operates within a carefully balanced legal framework, which seeks to uphold the sanctity of human life while accommodating the practical necessities of governance, security, and justice. Its characterization as a qualified right does not diminish its importance; rather, it reflects the structured and principled manner in which the law regulates exceptional circumstances involving deprivation of life.

## 10. Conclusion

This study has critically examined the right to life

within the framework of international and regional human rights law, demonstrating that while it remains the most fundamental of all rights, it is not absolute in its legal operation. Anchored in instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, the right to life is universally recognized as inherent and indispensable. However, its legal formulation—particularly the prohibition of “arbitrary” deprivation of life—clearly establishes that the right is qualified rather than absolute.

The analysis has shown that international law permits limited and strictly regulated exceptions, including the use of lethal force in self-defense, law enforcement operations, the conditional application of the death penalty, and the lawful conduct of hostilities under international humanitarian law. These exceptions are not indicative of weakness in the right, but rather reflect a structured legal balance between the protection of life and the practical realities of governance, security, and justice. The consistent application of principles such as legality, necessity, proportionality, and accountability ensures that any deprivation of life remains subject to rigorous legal control.

Furthermore, the study highlights that the right to life, though non-derogable, is not immune from limitation. Its non-derogable status underscores its fundamental importance, yet its qualified nature allows the law to address exceptional circumstances without undermining its core protection. The evolving interpretation of the right—particularly through authoritative bodies such as the United Nations Human Rights Committee—also reflects an increasing recognition of the need to adapt its scope to contemporary challenges, including security threats, armed conflict, and emerging global risks.

In conclusion, the right to life must be understood not as an unrestricted or absolute entitlement, but as a carefully regulated legal right, whose strength lies in the strict conditions governing its limitation. Its enduring significance within human rights law derives not only from its foundational status, but also from the robust legal framework that ensures its protection while accommodating exceptional and unavoidable realities. This nuanced understanding is essential for any meaningful engagement with the right to life in both academic discourse and legal practice.

## 11. Recommendations

In view of the foregoing analysis, which establishes that the right to life is a fundamental but qualified right under international and regional legal frameworks, it becomes necessary to consider measures that strengthen its protection while ensuring that its recognized limitations are not abused. Although international law permits certain narrowly defined exceptions to the right to life, the practical application of these exceptions has revealed inconsistencies and risks of arbitrariness in some jurisdictions. Accordingly, the following recommendations are advanced to enhance legal clarity, strengthen accountability, and ensure more effective protection of the right to life in both peacetime and conflict situations.

## 12. Clarification and Harmonization of “Arbitrary Deprivation of Life”

There is a need for clearer and more uniform interpretation of the term “arbitrary deprivation of life” under the International Covenant on Civil and Political Rights. The United Nations Human Rights Committee should further develop authoritative interpretive standards to ensure consistency across jurisdictions and reduce the risk of misuse or overly broad state discretion.

### 12.1 Regulation of the Use of Lethal Force

States should strengthen domestic legal frameworks governing the use of lethal force by law enforcement and security agencies. Such frameworks must strictly reflect the principles of necessity, proportionality, and legality, and be supported by independent oversight institutions capable of investigating and sanctioning unlawful deprivation of life.

Progressive Abolition of the Death Penalty States retaining capital punishment should progressively move toward abolition in line with evolving international human rights standards. Where still in use, it must be confined to the most serious crimes, with full respect for due process guarantees and fair trial standards as required under international law.

### 12.2 Strengthening Positive Obligations of States

States should deepen their positive obligations to protect life, particularly by addressing preventable threats such as environmental degradation, unsafe living conditions, inadequate healthcare, and public insecurity. This reflects the evolving interpretation of the right to life as requiring proactive state intervention.

### 12.3 Harmonization of Human Rights Law and International Humanitarian Law

Greater coherence is needed between international human rights law and international humanitarian law in situations of armed conflict. Clear operational standards should be developed to ensure that the protection of life remains effective even during hostilities and that lawful targeting does not become a source of arbitrariness.

### 12.4 Reinforcement of Accountability Mechanisms

States must ensure prompt, independent, and effective investigations into all cases involving deprivation of life. Judicial and institutional mechanisms should be strengthened to guarantee accountability, provide remedies to victims, and deter future violations.

Overall, while the right to life is a qualified right, its limitations must operate within a strictly controlled legal framework. The above recommendations aim to ensure that any exception to the right remains exceptional, justified, and fully compliant with the rule of law, thereby preserving the fundamental value of human life.

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