# Revised Draft General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights – Right to Life, Prepared by the Rapporteur of the Committee on Human Rights

The Human Rights Committee

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Submission by Article 36, the Toxic Remnants of War Project and the Women’s League for International Peace and Freedom (WILPF), non-governmental organizations working in the field of humanitarian disarmament and armed violence reduction.[[1]](#footnote-1)

1. **General Remarks**
2. The submitting organizations welcome the inclusion of language on the impact on the right to life of armed violence and certain weapon technologies in Revised Draft General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights (hereinafter, GC 36).
3. GC 36 recognizes a general duty on States to consider the impact of weapons on the right to life, both in the study, development or acquisition of new weapons, and in the use of existing ones (para. 12). The Draft also contains references to particular classes of weapons, notably, “lethal autonomous robot[ic]s” (para. 12), “weapons of mass destruction” (para. 13), “less-lethal weapons” (para. 14) and “non-lethal means” (para. 19), “firearms” (paras. 24, 33), “lethal weapons” (paras. 20, 25), as well as more general references to the use of (lethal) force, “cyber-attacks” (para. 30), “gun violence” (para. 30), “physical means for the commission of murder” (para. 39), and “means and methods of warfare” (paras. 12, 67).

We believe that a more holistic approach to weapons and armed violence would strengthen GC 36. This could be done by more systematically recognizing the differential impacts of weapons, including their use, development, testing, possession, transfer and post-use effects, on the enjoyment of the right to life, and by including specific concerns raised by particular weapons and forms of armed violence not yet mentioned in GC 36.

1. To this end, we respectfully submit suggestions for the revision of GC 36. Part II is organized thematically but suggestions for revision are based on existing text (footnotes are omitted) and closely follow the existing structure of GC 36 to facilitate their integration.
2. **Suggested Revisions**

Weapons and armed violence – Particular weapon technologies

1. GC 36 acknowledges that “[w]ars and other acts of mass violence continue to be a scourge of humanity resulting in the loss of lives of many thousands of innocent human beings every year” (para. 70). The Draft enjoins States parties to the Covenant, in the use of weapons, to “always consider their impact on the right to life” (para. 12), and to “monitor the impact on the right to life of less-lethal weapons” (para. 14). It also underlines that the duty to protect life implies that “States parties should take appropriate measures to address the general conditions in society that may eventually give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity”, including “high levels of criminal and gun violence” (para. 30). GC 36 could be strengthened by specifying what preventive and remedial measures States parties are expected to take, in accordance with relevant international standards, to address these general conditions, and by drawing attention to particular challenges to the protection of life raised by certain weapons and forms of armed violence.
2. Consideration of the impact of weapons on the right to life involves recognizing weapon-specific patterns of loss of life and life-threatening injury. For example, nearly half of all homicides are caused by firearms.[[2]](#footnote-2) They are “the main vector of violent death and injury worldwide”.[[3]](#footnote-3) States parties’ obligation to “maximize human rights protection for the greatest number of people, both in their own societies and in the international community”[[4]](#footnote-4) entails that State officials must refrain from violations with small arms and that they “must take steps to minimize armed violence between private actors” that impair the right to life.[[5]](#footnote-5) Minimum effective measures that States parties must adopt to comply with their due diligence obligations under the right to life include the criminalization of acts of small arms violence by private actors that violate the law, the enforcement of minimum licensing requirements, and effective controls over the full lifecycle of small arms and their ammunition so as to prevent their illicit trade, destabilizing accumulation and misuse, in accordance with relevant international standards.[[6]](#footnote-6)
3. The use of conventional weapons that are prohibited by an international treaty, such as anti-personnel landmines[[7]](#footnote-7) or cluster munitions,[[8]](#footnote-8) or whose use is restricted, such as incendiary weapons[[9]](#footnote-9) or anti-vehicle mines,[[10]](#footnote-10) bears a particularly high risk of resulting in arbitrary deprivation of life. Similarly, when explosive weapons (e.g. artillery shells, air-dropped bombs, or rockets) are used in a populated area, around 90 percent of those directly killed or injured are bystanders, respectively, civilians.[[11]](#footnote-11) Survivors of explosive weapons often sustain severe injuries and life-long physical or psychosocial impairments. Additional loss of life predictably results from the destruction of critical public infrastructure, including health care facilities, and private property and from forced displacement. With a view to enhancing the protection of life, States parties should gather and share data on the impact of explosive weapons on the right to life, disaggregated by age and gender/sex of the victims, among other relevant factors, and review policy and practice on the use of explosive weapons.[[12]](#footnote-12) Due to the serious risk of violating the right to life, States Parties should limit the use of explosive weapons to the conduct of hostilities (as opposed to law enforcement) and refrain from using explosive weapons with wide-area effects[[13]](#footnote-13) in populated areas.[[14]](#footnote-14)
4. The threat that weapons pose to the right to life is not limited to their use. Ageing, unstable and excess ammunition stockpiles have repeatedly caused humanitarian disasters.[[15]](#footnote-15) Effective stockpile management of conventional munitions, including safe and secure accounting, storage, transportation, handling and disposal, helps to avoid ammunition depot explosions, and prevent diversion into the illicit trade and contamination of the environment.[[16]](#footnote-16)
5. States parties should strictly control the export of conventional arms, ammunition and parts and components and promote responsibility, transparency and accountability in the global arms trade. GC 36 should orient itself in this regard at the norms embodied in the 2013 Arms Trade Treaty (ATT) which establishes common international standards for the regulation of the international trade in arms for the purpose of contributing to peace and security, reducing human suffering, and promoting cooperation and transparency. In particular, prior to authorizing any export, States parties must assess the potential that the arms could be used to commit a serious violation of human rights law,[[17]](#footnote-17) and they must not authorize any transfer if they have knowledge that the arms would be used in the commission of an international crime.[[18]](#footnote-18)
6. Some weapons continue to negatively impact the enjoyment of life with dignity for decades after their use. For example, the humanitarian, socio-economic and environmental impact of mines and explosive remnants of war (ERW) continues to be a major source of concern worldwide. States parties should take effective measures to prevent the occurrence of ERW, record, store and share information on unexploded (UXO) and abandoned explosive ordnance (AXO), clear, remove and destroy mines and ERW, and undertake and support other mine action activities, including risk education and victim assistance.[[19]](#footnote-19) Toxic remnants of war (TRW) also inflict persistent pain and suffering on communities,[[20]](#footnote-20) including through genotoxic effects, impacting on the enjoyment of life of children and on future generations.[[21]](#footnote-21) States parties should prevent, mitigate and remediate the environmental impacts of military activities, including through impact assessment, clean-up and restoration measures, and provide an effective remedy, including funding for full remediation, comprehensive medical treatment, and compensation for individuals experiencing the effects of exposure to these materials.[[22]](#footnote-22)
7. In recognition of States parties’ duty to respect and ensure the right to life without distinction of any kind and given that “[a]ny deprivation of life based on discrimination in law or fact is *ipso facto* arbitrary in nature” (para. 64), States parties must consider the differential vulnerabilities, risks and impacts of armed violence on the effective enjoyment of the right to life in terms of age, ability, gender, race and sex among other relevant factors.[[23]](#footnote-23) For example, children have unique vulnerabilities to TRW.[[24]](#footnote-24) Indigenous peoples are disproportionately affected by nuclear weapons testing.[[25]](#footnote-25) “[T]he patterns of harm from the use of explosive weapons in populated areas are shaped by issues of gender and age”.[[26]](#footnote-26) “Women are biologically more vulnerable to harmful health effects of ionizing radiation [from nuclear weapons, for example,] than men”.[[27]](#footnote-27) Adult men are at a disproportionate risk of being targeted in drone strikes when the male sex is taken as a signifier of combatant or militant identity (“signature strikes”).[[28]](#footnote-28) The latter are forms of gender-based killings amounting to arbitrary deprivation of life. To respect, protect and fulfil the right to life, States parties must take effective measures to prevent and respond to the multiple and intersectional forms of discrimination that perpetuate gender-based armed violence.[[29]](#footnote-29)
8. GC 36 recognizes the duty to provide effective remedies and reparation to all victims of violations of the right to life and their families (paras. 4, 31). To ensure the right to life of everyone on an equal basis, States parties should collect reliable data on the needs of victims of different forms of armed violence and weapons. They must provide adequate age- and gender-sensitive assistance, remediation, health care, rehabilitation and psychosocial support to victims, and provide for their social and economic inclusion.[[30]](#footnote-30) They must also remove systemic obstacles, including in relation to the burden of proof and causation,[[31]](#footnote-31) that prevent victims from accessing remedies.
9. “An important element of the protection afforded to the right to life by the Covenant is the obligation to investigate and prosecute allegations of deprivation of life” (para. 31). GC 36 already recognizes the importance of “identifying bodies of individuals who had lost their lives” to establish the truth (para. 32). Casualty recording is a key element of States’ duty to monitor and account for the impact of armed violence on the right to life and helps to prevent the occurrence of violations in the future (para. 32). States parties should ensure the prompt recording, correct identification and public acknowledgment of every death. Systematic casualty recording helps specify the causes of loss of life and effective measures for their avoidance, and works against dehumanization and disappearance of victims from collective memory. The 2016 Standards on Casualty Recording, developed as a result of a multi-stakeholder process, provide methodological principles and guidance.[[32]](#footnote-32)
10. Finally, GC 36 refers to States parties’ duty to “take appropriate measures to establish the truth relating to the events leading to the deprivation of life, including revealing the reasons for targeting certain individuals and the procedures employed by State forces before, during and after the time in which the deprivation occurred,” (para. 32). Although the degree of public scrutiny may vary from case to case, it must secure accountability in practice as well as in theory.[[33]](#footnote-33) Transparency is essential to accountability and in order to ensure that States parties uphold the rule of law.[[34]](#footnote-34) The use of armed drones, in particular, is characterized in present practice by States parties’ failure to conduct an effective investigation into the lawfulness of the use of force, to ensure the participation of the victims or their next of kin to safeguard their rights, and to make public their findings, conclusions and recommendations (para. 32). States parties have also demonstrated a lack of transparency regarding the contamination or pollution resulting from the use of force, which has impeded the identification of contaminated sites, and limited access of affected communities to preventative measures and remedies.[[35]](#footnote-35) Weapons or practices of armed violence, including virtual, algorithm-based or remote use of force, that impede transparent judicial review of the use of force or otherwise undermine States parties’ duty to secure accountability, prevent impunity, and guarantee victims’ effective access to remedies are incompatible with the right to life.[[36]](#footnote-36)
11. Suggested revision of para. 14: *States parties must monitor the impact of weapons on the right to life and take preventive and remedial measures to protect life from armed violence. This includes measures for the safe management of stockpiles of conventional weapons and munitions and strict controls over their transfer, in accordance with international standards. States parties must take measures to prevent persistent impediments to the enjoyment of the right to life from the use of weapons, including explosive and toxic remnants of war, by assessing the risk of exposure, mitigating that risk, including through fencing and warnings, conducting risk education, clearance and remediation of contaminated areas, and to ensure the rights of victims, including by providing remedies and gender-, age- and ability-sensitive assistance and removing systemic obstacles to accessing them. States parties must collect, including through systematic casualty recording, and publicly share data on the differential impacts of weapons and armed violence, including in terms of ability, age, ethnicity, gender, race, sex, and other relevant factors. States parties must review policies and practices on the use of force and of specific weapons to prevent future violations, contribute to the elaboration of standards that enhance the protection of life, and promote international assistance and cooperation towards these ends.*

[New paragraph] *To prevent violations of the right to life from specific weapons or forms of armed violence, States parties must not use weapons that cause unwarranted injury or present an unwarranted risk,[[37]](#footnote-37) including weapons that are prohibited by an international treaty, such as antipersonnel landmines, cluster munitions or weapons of mass destruction, and they should destroy stockpiles of these weapons. States parties should take particular care when resorting to weapons whose use is restricted by an international treaty. They should not use explosive weapons for law enforcement purposes, and they should refrain in the conduct of hostilities from using explosive weapons with wide-area effects in populated areas. States parties must restrict the use of less lethal instruments[[38]](#footnote-38) ….*

1. Suggested revision of para. 28: *Persons with disabilities, including those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others,[[39]](#footnote-39) are entitled to special measures of protection. To ensure their effective enjoyment of the right to life without discrimination on the basis of disability, such measures of protection shall include reasonable accommodation of public policies which are necessary to ensure the effective enjoyment of the right to life, such as ensuring access of persons with disabilities to essential goods and services, and special measures designed to prevent excessive use of force by law enforcement agents against persons with disabilities. States parties must take all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict or armed violence, humanitarian emergencies and the occurrence of natural disasters.*
2. Suggested revision of para. 32: *Investigations into allegations of violation of article 6 must always be independent, impartial, prompt, thorough, effective, credible and transparent, and in the event that a violation is found, full reparation must be provided, including, in view of the particular circumstances of the case, adequate measures of compensation, rehabilitation, satisfaction. States parties are also under an obligation to take steps to prevent the occurrence of similar violations in the future. To this end, States Parties must keep their policies and practices on the use of force and particular instruments of force constantly under review. Where relevant, the investigation should include a rigorous autopsy of the victim’s body, whenever possible, in the presence of a pathologist representing the victim’s family. States parties need to take, among other things, appropriate measures to establish the truth relating to the events leading to the violation of the right to life, including revealing the reasons for targeting certain individuals and the procedures employed by State forces before, during and after the time in which the violation occurred, and identifying bodies of individuals who had lost their lives, including through systematic casualty recording. They must also disclose relevant details about the investigation to the victim or their next of kin and make public its findings, conclusions and recommendations. Although the degree of public scrutiny may vary from case to case, it must secure accountability in practice as well as in theory.[[40]](#footnote-40) Weapons or forms of armed violence that impede transparent judicial review of the use of force or otherwise undermine States parties’ duty to secure accountability, prevent impunity, and guarantee victims’ effective access to remedies are incompatible with the right to life. States parties must also take the necessary steps to protect witnesses, victims and their relatives and persons conducting the investigation from threats, attacks and any act of retaliation. An investigation into an alleged violation of the right to life must commence ex officio – that is, even in the absence of a formal complaint. States should cooperate in good faith with international mechanisms of investigation and prosecution looking into possible violations of article 6.*
3. Suggested revision of para. 33: *States parties’ have a duty to account for alleged violations of the right to life.* *Loss of life occurring in custody, especially when accompanied by complaints by relatives or other reliable reports of an unnatural death, create a presumption of arbitrary deprivation of life by State authorities, which can only be rebutted on the basis of a proper investigation which establishes the State’s compliance with its obligations under article 6. States parties must conduct an effective investigation in case of any incident involving death or serious injury caused by the use of potentially lethal force, including firearms. This duty must not impose an impossible or disproportionate burden on the authorities.*
4. Suggested revision of para. 64: *The right to life must be respected and ensured without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, or any other status, including caste, sexual orientation and gender identity, disability,**albinism and age.[[41]](#footnote-41) Legal protections for the right to life must apply equally to all individuals and provide them with effective guarantees against all forms of discrimination. Any deprivation of life based on discrimination in law or fact is* ipso facto *arbitrary in nature. Weapons and practices of armed violence that are based on or result in discriminatory impacts, such as “signature drone strikes”, are incompatible with the right to life. Femicide, which constitutes an extreme form of gender-based violence that is directed against girls and women, is a particularly grave form of assault on the right to life.*

Weapons of mass destruction – Nuclear weapons

1. GC 36 is intended to replace General Comments No. 6 and 14 adopted by the Committee in 1982 and 1984. The former mentions “thermonuclear war” and the latter deals in detail with the impact of nuclear weapons on the right to life. GC 36 should build on these earlier comments, adequately reflect the normative evolution since the 1980s with regard to nuclear weapons, as embodied in the 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW), and reaffirm the norms against biological and chemical weapons.
2. The continued existence of nuclear weapons is among the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. Nuclear disarmament is critical the protection of life. Informed by recent scientific data, the TPNW recognizes that the continued existence of nuclear weapons –and with it, the possibility of a nuclear detonation by accident, miscalculation or intent– poses a serious and growing risk in an ever more interdependent world, with large parts of the population experiencing increasing vulnerability and food insecurity.
3. The TPNW comprehensively prohibits the development, testing, transfer, production, manufacture, acquisition, possession and stockpiling of nuclear weapons as well as their use and threat of use.[[42]](#footnote-42) The Treaty thereby corrects an anomaly in international law and finally places nuclear weapons on the same level as other weapons of mass destruction. Historically, the legal prohibition of a class of weapons has furthered progress towards its elimination.
4. The TPNW recognizes the rights of the victims of nuclear weapon use or testing, which has disproportionately impacted indigenous peoples, and contains an obligation to provide assistance to them. It also obligates States parties to it to take all necessary and appropriate measures towards the environmental remediation of contaminated areas under the jurisdiction or control.[[43]](#footnote-43)
5. The Treaty further acknowledges evidence that over the longer term, of those who are exposed to ionising radiation from a nuclear detonation, women and girls have a far higher risk of developing and dying from cancer than men or boys, highlighting the discriminatory impacts of nuclear weapons.[[44]](#footnote-44) The right to life must be respected and ensured without distinction of any kind.
6. Suggested revision of para. 13: *The use or threat of use of any weapon of mass destruction –chemical, biological or nuclear weapon– is incompatible with respect for the right to life and is abhorrent to the principles of humanity and the dictates of public conscience. Weapons of mass destruction are indiscriminate in their effects and cause unacceptable harm. The continued existence of nuclear weapons poses a risk to all humanity. The use of a nuclear weapon would result in catastrophic humanitarian consequences that cannot be adequately addressed, transcend national borders, pose grave implications for human survival, the environment, socioeconomic development, the global economy, food security and the health of current and future generations. Nuclear weapons have a disproportionate impact on women and girls, including as a result of ionizing radiation. In accordance with their international obligations, States parties must refrain from developing, producing, testing and stockpiling weapons of mass destruction, prevent their proliferation, including acquisition by non-state actors, and destroy existing stockpiles with a view to their complete elimination. States parties must also fulfil their international obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.[[45]](#footnote-45) States parties must adequately provide age- and gender-sensitive assistance, without discrimination, to individuals who are affected by the use, testing or stockpiling of weapons of mass destruction, and take appropriate measures towards the environmental remediation of contaminated areas.*

Emerging weapon technologies – Review of new weapons – Autonomous weapon systems

1. GC 36 recognizes that in the study, development, acquisition or adoption of a new weapon, means or method of warfare, States parties “must consider” its impact on the right to life (para. 12). Such a duty is articulated explicitly in international humanitarian law.[[46]](#footnote-46) It also derives from the duty to respect and ensure the right to life, and applies to all weapons and other instruments employed in the use of force.
2. GC 36 correctly identifies “lethal autonomous robotics” as raising concerns in relation to the right to life. Importantly, though, these concerns exist irrespective of whether the system is labeled as or intended to be “lethal”.[[47]](#footnote-47) “Autonomous weapon systems” (AWS) would therefore be a more suitable term. Furthermore, concerns raised by AWS do not relate to the “lack of human compassion and judgement” on the part of the weapon system –no weapon system is expected to have compassion or judgment. Instead, these concerns relate to the question at what point human beings no longer exercise meaningful control or appropriate judgement in the use of force.
3. Increasing autonomy in weapon systems affects the ability of human beings to perform legal duties and be accountable for the consequences. Autonomous targeting of force bears a significant risk of resulting in arbitrary deprivation of life and to violate procedural obligations under the right to life.[[48]](#footnote-48) To safeguard human dignity and the right to life, human agents must remain involved in algorithmic targeting processes in a manner that enables them to determine what legal rules govern applications of force in any particular context and adapt operations accordingly, to reveal the reasons for targeting particular individuals in concrete circumstances,[[49]](#footnote-49) to be continuously, actively and personally engaged in every instance of force application during law enforcement operations,[[50]](#footnote-50) to exercise active and constant human control over every individual attack in the conduct of hostilities, and to appropriately bound every attack in spatio-temporal terms so as to recognize changing circumstances and adjust operations in a timely manner. This is essential to respecting and ensuring the right to life, the availability of an effective remedy, accountability for the use of force and for maintaining public confidence in States’ adherence to the rule of law, in times of peace as well as war.
4. Other emerging weapon technologies and practices of armed violence,[[51]](#footnote-51) enabled by scientific advances, also raise novel issues or exacerbate existing threats to the protection of life and human dignity. These relate, *inter alia*, to the ability to contain and control weapon effects in space and time, discriminatory targeting practices resulting in arbitrary deprivation of life, and the lack of accountability and effective remedies, including when new weapon technologies are tested on or used among populations that have limited recourse against their effects.
5. To avoid that the continuous development of new weapons results in the creeping erosion of the normative protection of life, States should keep the ethical issues associated with new instruments of force constantly under review. The overarching question guiding States’ consideration of new weapon technologies and practices of armed violence must be whether they increase their ability to protect and secure human rights, including accountability, and enhance human dignity.[[52]](#footnote-52) States should assess the risk and harm of any new weapon or practice, including in an ability-, age-, gender-, generational-, sex-, ethnic-, indigenous-, race-, differentiated manner, and with due regard to the environment and sustainability. Considering the uncertainty, controversy and secrecy surrounding potential risks and harms, States must adopt a precautionary approach in the study, development, acquisition or adoption of a new technologies and practices of armed violence.
6. Finally, spending on the development and acquisition of new weapons not only detracts from the resources available to address pressing environmental, economic and social crises, but also reinforces the institutions that benefit from weapons and war,[[53]](#footnote-53) threatening the ability of present and future generations to enjoy the right to life (para. 65). Disarmament and efforts aimed at averting the risks of war and other forms of armed violence, reducing human suffering and strengthening international peace and security, “would count among the most important conditions and guarantees for safeguarding the right to life” (para. 70) and further sustainable development.[[54]](#footnote-54)
7. Suggested revision of para. 12: *States parties must consider the impact of new instruments and methods of force, on the right of all human beings, without distinction of any kind, to enjoy a life with dignity. In the study, development, acquisition or adoption of new weapons, means or methods of warfare or law enforcement, States parties must keep the ethical issues constantly under review. They must assess the risks to the right to life, including by way of environmental impact, and age-, ability-, gender- and generational-differentiated risk assessments and adopt precautionary measures where these risks are not well understood, and only adopt new instruments of force that maximize human rights protection, including accountability, and enhance human dignity. States parties must adopt regulations for the protection of persons affected by or involved in the development or testing of new instruments of force and strictly regulate their use in accordance with international law. The development of increasingly autonomous weapon systems, for example, raises difficult legal and ethical questions concerning the right to life and dignity, including questions relating to legal responsibility for their use. The Committee is therefore of the view that weapon systems that operate without meaningful human control should not be developed and put into operation, either in times of war or in times of peace, unless and until a normative framework has been established ensuring that their use conforms with article 6 and other relevant norms of international law.*
8. Suggested revision of para. 70: *Wars and other acts of mass violence continue to be a scourge of humanity resulting in the loss of lives of many thousands of human beings every year, forced displacement on an unprecedented scale, destruction of critical public infrastructure and degradation of the environment. Efforts to avert the risks of war, and other forms of armed violence, and to strengthen international peace and security, including through disarmament and armed violence reduction, would count among the most important conditions and guarantees for safeguarding the right to life.*
1. This submission was drafted by Ms Maya Brehm (Article 36). The following persons have provided oral or written feedback on an earlier version in their personal capacity: Ms Ray Acheson, Ms Laura Boillot, Dr Joanna Bourke-Martignoni, Dr Sandra Krähenmann, Ms Elizabeth Minor, Mr Loren Persi Vicentic, Ms Allison Pytlack, Ms Marianne Schulze, Mr Doug Weir, Mr Wim Zwijnenburg. [↑](#footnote-ref-1)
2. Geneva Declaration on Armed Violence and Development, [Global Burden of Armed Violence](http://www.genevadeclaration.org/measurability/global-burden-of-armed-violence/gbav-2015/executive-summary.html), 2015. [↑](#footnote-ref-2)
3. D. Mack, “[Small Arms, Big Violations](http://sur.conectas.org/en/small-arms-big-violations/)”, 12(22) SUR(2015) 51-65. [↑](#footnote-ref-3)
4. A/HRC/Sub.1/58/27, 27 July 2006, para. 4. [↑](#footnote-ref-4)
5. A/HRC/Sub.1/58/27, 27 July 2006, paras. 6, 9, 40. [↑](#footnote-ref-5)
6. 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF); 2001 Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition; 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (A/CONF.192/15); 2005 International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons; 2006 Principles on the Prevention of Human Rights Violations Committed with Small Arms (A/HRC/Sub.1/58/27/Add.1); 2013 Arms Trade Treaty (ATT); International Small Arms Control Standards (ISACS). [↑](#footnote-ref-6)
7. 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (APMBC). See also HRCttee, Klaus Dieter Baumgarten v Germany, Comm no 960/2000, UN doc CCPR/C/78/D/960/2000 (2003), paras. 9.4-9.5; ECtHR, Streletz, Kessler and Krenz v Germany, App nos 34044/96, 35532/97 and 44801/98, Grand Chamber, Judgment, 22 March 2001, para. 73. [↑](#footnote-ref-7)
8. 2008 Convention on Cluster Munitions (CCM). See e.g. IACtHR, Caso Masacre de Santo Domingo v. Colombia, Judgment, Series C No. 259, 30 November 2012, paras. 210-230. [↑](#footnote-ref-8)
9. 1980 Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons. [↑](#footnote-ref-9)
10. 1980 Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996. [↑](#footnote-ref-10)
11. E.g. S/2015/453, para. 31; S/2016/447, para. 3; S/2017/414, para. 17. [↑](#footnote-ref-11)
12. E.g. A/HRC/35/23, para. 117. [↑](#footnote-ref-12)
13. “Explosive weapons may have a wide impact area (or wide area effects) when used in populated areas because of the large blast and fragmentation range of the individual munition used, the inaccuracy of the delivery system, and/or the delivery of multiple munitions over a wide area.” (ICRC, Explosive Weapons in Populated Areas: Humanitarian, Legal, Technical and Military Aspects, Expert Meeting, 24- 25 February 2015, p 5.) [↑](#footnote-ref-13)
14. E.g. S/2015/453, para. 30; A/HRC/29/CRP.4; ICRC, International Humanitarian Law and the Challenges of Contemporary Armed Conflicts, report to the 31st International Conference of the Red Cross and Red Crescent, Geneva, 28 November-1 December 2011(2011), pp 40-42. [↑](#footnote-ref-14)
15. S. Paunila, “[Good Practice in Physical Security and Stockpile Management](http://www.cbrneportal.com/good-practice-in-physical-security-and-stockpile-management/)”, CBRNePortal, 30 June 2015. [↑](#footnote-ref-15)
16. International Ammunition Technical Guidelines (IATG). [↑](#footnote-ref-16)
17. ATT, Art 7. [↑](#footnote-ref-17)
18. ATT, Art 6. [↑](#footnote-ref-18)
19. APMBC, Arts 5-6; CCM, Arts 4-5; 2003 Protocol on Explosive Remnants of War; International Mine Action Standards (IMAS); See also, e.g., ECtHR, Albekov et al v Russia, App no 68216/01, Judgment, 9 October 2008, para. 88; ECtHR, Paşa and Erkan Erol v Turkey, App no 51358/99, Judgment, 12 December 2006, para. 38. [↑](#footnote-ref-19)
20. A/HRC/36/41, para. 44. [↑](#footnote-ref-20)
21. A/HRC/33/41. [↑](#footnote-ref-21)
22. A/CN.4/700; A/HRC/36/41; A/HRC/33/41. [↑](#footnote-ref-22)
23. See 2006 Convention on the Rights of Persons with Disabilities (CRPD), preamb. para. P and E/C.12/GC/20 for relevant factors. [↑](#footnote-ref-23)
24. A/HRC/33/41. [↑](#footnote-ref-24)
25. A/HRC/21/48/Add.1. [↑](#footnote-ref-25)
26. A/HRC/35/23, para.48; Reaching Critical Will, [Women and Explosive Weapons](http://www.reachingcriticalwill.org/images/documents/Publications/WEW.pdf), 2014. [↑](#footnote-ref-26)
27. A. G. Dimmen, “[Gendered impacts](http://nwp.ilpi.org/?p=3638)”, UNIDIR-ILPI Vienna Conference series, paper no. 5. [↑](#footnote-ref-27)
28. Reaching Critical Will, [Sex and Drone Strikes](http://www.reachingcriticalwill.org/resources/publications-and-research/publications/9367-sex-and-drone-strikes-gender-and-identity-in-targeting-and-casualty-analysis), 2014. [↑](#footnote-ref-28)
29. CEDAW/C/GC/35; A/HRC/35/23. [↑](#footnote-ref-29)
30. CCM, Art 5; CRPD, Art 16. [↑](#footnote-ref-30)
31. A/HRC/36/41, para. 106. [↑](#footnote-ref-31)
32. [Standards for Casualty Recording](https://www.everycasualty.org/downloads/ec/pdf/StandardsforCasualtyRecording-Version1.0%282016%29.pdf), 2016. [↑](#footnote-ref-32)
33. E.g. ECtHR, McKerr v. the United Kingdom, App no. 28883/95, Judgment, 4 May 2001, para. 115. [↑](#footnote-ref-33)
34. Columbia Law School Human Rights Clinic and Sana’a Center for Strategic Studies, [Out of the Shadows](https://www.outoftheshadowsreport.com/), 2017. [↑](#footnote-ref-34)
35. “Communities affected by military bases and testing of weapons often do not have access to the classified information necessary to ensure an effective remedy for victims of the resulting contamination” (UN doc A/HRC/36/41, para.110) [↑](#footnote-ref-35)
36. On the duty to account for the use of force, see S. Krähenmann, “Positive Obligations in Human Rights Law during Armed Conflicts”, in R. Kolb and G. Gaggioli, Research Handbook on Human Rights and Humanitarian Law, 2013, p. 174. [↑](#footnote-ref-36)
37. BPUFF, Principle 11(c). [↑](#footnote-ref-37)
38. OHCHR and UNODC, Resource Book on the Use of Force and Firearms in Law Enforcement, p 66 and fn 145. “Less lethal instruments of force that bear great risk to life should be subjected to the same provisions as firearms, but with the understanding that, where possible, the use of such weapons should be exhausted before resorting to lethal force.” (Ibid. p 77). [↑](#footnote-ref-38)
39. CRPD, Art 1. [↑](#footnote-ref-39)
40. ECtHR, McKerr v. the United Kingdom, App no. 28883/95, Judgment, 4 May 2001, para. 115. [↑](#footnote-ref-40)
41. For the full list of grounds, refer to CRPD, preamb. para. p; E/C.12/GC/20. [↑](#footnote-ref-41)
42. TPNW, Art 1. [↑](#footnote-ref-42)
43. TPNW, Arts 6 and 7(4). [↑](#footnote-ref-43)
44. E.g. [Gender, Development and Nuclear Weapons](https://www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/int-priorities/humanrights/Gender-Development-and-Nuclear-Weapons.pdf), Working Paper presented by Ireland to the Preparatory Committee of the Treaty on the Non-Proliferation of Nuclear Weapons, May 2017. [↑](#footnote-ref-44)
45. 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT), Art VI; TPNW, Preamble. [↑](#footnote-ref-45)
46. 1977 Additional Protocol I to the Geneva Conventions, Art 36. [↑](#footnote-ref-46)
47. E.g. ‘Towards a “Compliance- Based” Approach to LAWS’, Informal Working Paper submitted by Switzerland, CCW Meeting of Experts on Lethal Autonomous Weapons Systems (LAWS), Geneva, 11–15 April 2016, 30 March 2016, para. 5. [↑](#footnote-ref-47)
48. M. Brehm, Defending the Boundary, Geneva Academy of International Humanitarian Law and Human Rights, 2016. [↑](#footnote-ref-48)
49. This follows from the duty to take “appropriate measures to establish the truth relating to the events leading to the deprivation of life, including revealing the reasons for targeting certain individuals …” (GC 36, para. 32). [↑](#footnote-ref-49)
50. E.g. African Commission on Human and Peoples’ Rights (AfCommHPR), General Comment no 3 on the African Charter on Human and Peoples’ Rights: The Right to Life (Article 4), 2015; See also, C. Heyns, ‘Human Rights and the Use of Autonomous Weapons Systems (AWS) During Domestic Law Enforcement’, 38 Human Rights Quarterly 2 (2016) 350–378. [↑](#footnote-ref-50)
51. Nanoweapons, neuroweapons, directed energy weapons, etc. [↑](#footnote-ref-51)
52. E.g. A/65/321, para. 48. [↑](#footnote-ref-52)
53. Reaching Critical Will, [Still Assuring Destruction Forever](http://www.reachingcriticalwill.org/resources/publications-and-research/publications/7630-still-assuring-destruction-forever), 2013. [↑](#footnote-ref-53)
54. A/RES/70/1. [↑](#footnote-ref-54)