**Submission on the Draft UN Human Rights Committee’s General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life.**

**Dr. Abi Dymond [[1]](#endnote-1).**

Thank you for the opportunity to comment on a draft of the General Comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life. This submission is focused solely on aspects of the right to life pertaining to the use and trade of less lethal weapon and restraints, as well as goods used for capital punishment, and is structured so as to discuss particular paragraphs sequentially, and to provide suggestions for textual amendments where appropriate, with changes highlighted in bold.

Comments on Paragraph 12.

*12. States parties engaged in the use of existing weapons and in the study, development, acquisition or adoption of new weapons, and means or methods of warfare must always consider their impact on the right to life. For example, the development for use in military operations of new lethal autonomous robotics lacking in human compassion and judgement, raises difficult legal and ethical questions concerning the right to life, including questions relating to legal responsibility for their use. [The Committee is therefore of the view that such weapon systems 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].*

Points pursuant to paragraph 12:

* The emphasis on the need to consider the ‘impact on the right to life’ of new and existing weapons is an important point, and one that should be interpreted broadly, in at least two ways. First, the need to review the impact of weapons on the right to life should not be limited solely to those weapons which constitute ‘means or methods of warfare’ (as enshrined in Article 36 of Protocol I Additional to the 1949 Geneva Conventions), but should also be expanded so as to encompass weapons that may be adopted for law enforcement purposes. Second, and relatedly, reviews should not just focus on weapons that are intended to be lethal, but should also cover ‘less lethal’ weapons and restraints, given the potential of these weapons to be associated with lethal outcomes [[2]](#endnote-2). Indeed, the importance of conducting ‘systematic legal reviews’ of ‘less lethal weapons’ has been noted by a range of authors [[3]](#endnote-3), including most recently by the UN Special Rapporteur on Torture [[4]](#endnote-4). Whilst appreciating the existing legal basis for the wording of this paragraph, alternative wordings may thus be worthy of consideration.
* The example given is currently around the use of ‘new lethal autonomous robots’ in military operations. Whilst questions around ‘human compassion and judgement’ (or the lack thereof) and legal responsibility for use are, perhaps, most pronounced for in situations where lethal weapons are deployed, the use of less lethal weapons by autonomous robotics may also raise a range of similar concerns.
* A further concern is that, in some circumstances, what constitutes a weapon is not always clear cut [[5]](#endnote-5). Certain technologies can provide a range of benign and less benign functions with, for example, certain types of acoustic technologies providing (in the manufacturer’s words) ‘warning tones’ [[6]](#endnote-6) as well as long range communications capacity). Similarly, certain technologies may blur the line between a weapon and restraint (for example, Electric-Shock (hand) cuffs [[7]](#endnote-7)). To ensure that all relevant technologies are included, the Committee may wish to consider providing an appropriately wide-ranging definition of the kinds of technologies covered by this paragraph.

Suggested amendment:

12. States parties engaged in the use of existing **technologies with lethal, less lethal and / or restraint applications to humans,**  and in the study, development, acquisition or adoption of new **technologies of this nature**, and means or methods of warfare, **law enforcement or other state sanctioned activities** must always consider their impact on the right to life.

Comments on Paragraph 14.

*14. States parties should monitor the impact on the right to life of less-lethal weapons which are designed for use by law-enforcement agents and soldiers charged with law-enforcement missions, including electro-muscular disruption devices (Tasers), rubber-coated metal bullets, and attenuating energy projectiles. The use of such weapons must be restricted only to law-enforcement agents who have undergone appropriate training, and must be strictly regulated in accordance with international protocols for their use. Furthermore, such less-lethal weapons can only be employed, subject to requirements of necessity and proportionality, in situations of exceptional nature in which other less harmful measures have proven to be, or clearly are inadequate. For example, States parties should not resort to them in routine situations of crowd control and demonstrations.*

Points pursuant to paragraph 14:

* The recognition that state parties should monitor the impact of less lethal weapons on the right to life (and, although outside the scope of this comment, the impact on a range of other human rights, including the prohibition from torture and ill-treatment) is timely and important. The notion that such monitoring should be systematic, ongoing and should be capable of leading, in a timely fashion, to changes in laws, policies and practices – where these are shown by such monitoring to be necessary – is an important one and could, perhaps, be spelt out a little more explicitly. Indeed, studies have shown that the impact associated with the introduction of a particular technology or weapon depends not just on the so-called ‘technical features’ of the weapon, but on a range of complex socio-technical interactions with, for example, the officers carrying the weapon and the people potentially subjected to it, as well as the broader regulatory regime surrounding the weapon. As such, the impact of particular weapons—be they, for example, firearms [[8]](#endnote-8), projectile electric-shock weapons [[9]](#endnote-9) or irritant sprays [[10]](#endnote-10)--on a range of human rights, including the right to life, is not something that can be anticipated in advance. It instead requires sustained, systematic monitoring and evaluation initiatives—including, but not limited to, systematic reporting of a wide range of use of force options [[11]](#endnote-11)—which allow for the identification and tackling of issues at the earliest opportunity.
* Given the ever-evolving range of less lethal technologies available, and others that are in the process of development, it is important that the list of weapons given here is seen as an illustrative example of the kinds of technologies covered by the clause, and not as a finite, restrictive document. Similarly, it is important that robust monitoring of the impact of less lethal weapons on the right to life occurs for all electric-shock (and other less-lethal) technologies, not just for Tasers (the brand name of products manufactured by the American company Axon, previously called Taser International).
* As evidence suggests that the use of restraint technologies can be associated with lethal outcomes [[12]](#endnote-12), it is also important that the impact that restraints may have on the right to life is also monitored, appropriately trained, regulated and controlled.
* As evidence suggests that less lethal weapons, including Taser, are often used in conjunction with other use of force options [[13]](#endnote-13) , it is important to look at the impact that multiple use of force options, used in combination, may have on the right to life, instead of looking at particular technologies in isolation.
* ‘Attenuating energy projectiles’ is not a widely-used term, and can also be used to refer to a particular type of kinetic impact projectile, as opposed to weapons in this class more broadly. A term such as ‘launched projectiles’ or ‘kinetic impact projectiles’ might avoid confusion here, and helpfully broaden out the range of technologies covered by this article.
* The paragraph refers to rubber-coated metal bullets, but concerns have been expressed that these rounds impact with excessive energy and cannot be used safely [[14]](#endnote-14) – and are also a more injurious, and potentially more lethal alternative, than other forms of kinetic impact rounds available . As a result, there have been calls for their use to be prohibited [[15]](#endnote-15). The Committee may wish to consider either removing reference to these bullets from the paragraph or, more helpfully, introducing a sentence recommending their prohibition.
* At present, the draft wording doesn’t explicitly take into account the use of less lethal weapons by private individuals and entities engaged in law enforcement activities. The Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials state that the “definition of law enforcement officials shall be given the widest possible interpretation”. In its explanatory paragraph on “law enforcement official”, the UNODC Resource Book sets out that “States should also ensure their laws address the use of force by private security providers, who are engaged by the authorities to carry out law enforcement functions, and hold them equally accountable.” The Committee may wish to reflect this in its formulation.
* The term ‘designed for use by law enforcement agents’ may risk excluding military technologies which are subsequently transferred to police departments.
* The emphasis on the need for appropriate regulation, training and on-going monitoring is welcome, and could usefully be complemented by further reference to the testing and selection process by which weapons and restraints are chosen; that is, the processes that occur prior to their (potential) introduction. Such processes are crucial if the adoption of weapons and restraints presenting a risk of unwarranted injury (up to and including death) and / or arbitrary deprivation of life is to be prevented. Robust testing and selection procedures can also help to ensure that the technologies adopted are capable of ‘increasingly restraining the application of means capable of causing death or injury to persons’, as set out in the UN Basic Principles on the Use of Force and Firearms, and indeed the Basic Principles also note the importance of the careful evaluation of the ‘development and deployment’ of less-lethal weapons.
* The Human Rights Committee may also wish to consider endorsing recent calls by the former UN Special Rapporteur on extrajudicial, summary or arbitrary executions for the formation of an ‘expert group to examine the application of the international human rights framework to less-lethal weapons’ [[16]](#endnote-16), and by the UN Human Rights Council for States to pursue ‘international efforts to regulate and establish protocols for the training and use of non-lethal weapons’ [[17]](#endnote-17). At present the human rights issues posed by less-lethal weapons, the need for strict regulation and training protocols remains under-recognised in some quarters whilst, at the same time, there are few common, detailed standards that could be said to apply to such weapons [[18]](#endnote-18).

Suggested amendment:

14. States parties should monitor, **on a systematic, ongoing basis**, the impact on the right to life of **all** less-lethal weapons **and restraints** which are designed for use **or otherwise used**  by law-enforcement agents, soldiers charged with law-enforcement missions, **and private security providers who are engaged by the authorities to carry out law enforcement functions. This includes, but is not limited to,** electro-muscular disruption devices (**including** Tasers) and **kinetic impact projectiles**, **both when used alone, and in conjunction with other use of force options.**  **Such monitoring should be used to formulate and enact appropriate and timely measures, such as changes to laws, policies and practices, in response to issues identified.**

**Such weapons must be subject to rigorous, independent testing and selection processes so as to ensure that they are capable of increasingly restraining the application of means capable of causing death or injury to persons. If subsequently authorised,** the use of such weapons must be restricted only to law-enforcement agents who have undergone appropriate training, and must be strictly regulated in accordance with international protocols for their use.

**State parties should establish an Expert Group to examine the application of the international human rights framework to less-lethal weapons and pursee international efforts to regulate and establish protocols for the training and use of less-lethal weapons.**

Comment on Paragraph 19:

*19. States parties are expected to take all necessary measures intended to prevent arbitrary deprivations of life by their law-enforcement organs. These measures include appropriate legislation controlling the use of lethal force by law enforcement officials, procedures designed to ensure that law-enforcement actions are adequately planned in a manner consistent with the need to minimize the risk they pose to human life mandatory reporting and investigation of lethal incidents, and the equipping of police forces responsible for crowd control with effective non-lethal means and adequate protective gear in order to obviate their need to resort to lethal force.*

Points pursuant to paragraph 19:

* Given the points mentioned above, it is crucial that, if police forces are to be equipped with ‘non-lethal means’, they are trained appropriately in these options, including in the risk of lethality posed by such weapons. Given this risk, the use of the term ‘non-lethal’ is not recommended.
* As any use of force by law enforcement officials, whether lethal or less-lethal should be adequately planned in order to minimise the risks posed to human life, the Committee may wish to consider removing reference to ‘lethal’ force in the second sentence.

Suggested amendment:

19. States parties are expected to take all necessary measures intended to prevent arbitrary deprivations of life by their law-enforcement organs. These measures include appropriate legislation controlling the use of force by law enforcement officials, …. (including) the equipping of police forces responsible for crowd control with effective **less lethal** means and adequate protective gear in order to obviate their need to resort to lethal force**, under the provisions detailed in paragraph 14.**

Comment on Paragraph 20:

20…. *Procedures regulating activity that may result in deprivation of life, such as conditions for use of lethal weapons by the police or protocols for new drug treatment, must be established by law, accompanied by effective institutional safeguards designed to prevent arbitrary deprivations of life, and be compatible with other provisions of the Covenant.*

Points pursuant to paragraph 20:

* Given the lethal potential of many less lethal weapons and restraints, I suggest amending the example so that it reads; ‘conditions for use of lethal weapons, less lethal weapons and restraints’.

Comment on Paragraph 25:

*25. “…States parties are thus under a due diligence obligation to undertake reasonable positive measures, which do not impose on them impossible or disproportionate burdens, in response to foreseeable threats to life originating from private persons and entities, whose conduct is not attributable to the State…”*

Points pursuant to paragraph 25:

* This paragraph could be further developed to clarify that these ‘reasonable positive measures’ should include a duty to refrain from transferring conventional arms, ammunition or other police and security equipment if there is a ‘foreseeable threat to life’, or an overriding risk that the goods could be used to commit or facilitate a violation of the right to life.
* In this context, Article 7 of the Arms Trade Treaty notes that State parties shall refrain from authorising exports where there is an ‘over-riding risk’ that the conventional arms or items could be used to ‘commit or facilitate a serious violation of international human rights law’.

Suggested amendment:

25. “…States parties are thus under a due diligence obligation to undertake reasonable positive measures, which do not impose on them impossible or disproportionate burdens, in response to foreseeable threats to life originating from private persons and entities, whose conduct is not attributable to the State… **For example, States shall not authorise an export where there is an over-riding risk of the items being used to commit or facilitate a serious violation of international human rights law, including the right to life.**

Comment on Paragraph 38:

*38. “The obligation not to reintroduce the death penalty for any specific crime requires States parties not to extradite or deport an individual to a country in which he or she is expected to stand trial for a capital offence, if the same offence does not carry the death penalty in the removing State, unless credible and effective assurances against exposing the individual to the death penalty have been obtained.”*

Points pursuant to paragraph 38:

* In a similar vein, States should have a requirement to refrain from exporting dual-use goods that could be used for the death penalty in recipient States unless effective assurances have been received as to their intended purpose. Similarly, States should prohibit the export of goods specially designed for capital punishment. EC Regulation EC Regulation 1236/2005, and amendments, already sets out a list of such goods, and prohibits their export from EU member states.

Suggested amendment:

38. “The obligation not to reintroduce the death penalty for any specific crime requires States parties not to extradite or deport an individual to a country in which he or she is expected to stand trial for a capital offence, if the same offence does not carry the death penalty in the removing State, **nor to supply dual use goods that could be used for capital punishment** unless credible and effective assurances against exposing the individual to, **or using these goods for** **the** **purposes of, the** death penalty have been obtained. **The export of goods specially designed for capital punishment should be prohibited.**

1. **Endnotes.**

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2. ##  See, for example, [Contargyris C](http://europepmc.org/search;jsessionid=1EE629E2D8B814630C48E5065E0A9834?query=AUTH:%22Contargyris+C%22&page=1) and [Peytel E](http://europepmc.org/search;jsessionid=1EE629E2D8B814630C48E5065E0A9834?query=AUTH:%22Peytel+E%22&page=1) (2012) ‘Sudden death caused by a less lethal weapon chest-wall injury (Commotio cordis)’ [Annales Francaises D'anesthesie et de Reanimation](http://europepmc.org/search;jsessionid=1EE629E2D8B814630C48E5065E0A9834?query=JOURNAL:%22Ann+Fr+Anesth+Reanim%22&page=1) 31(5):469-471; Kroll, M; Adamec, J; Wetli, C and Williams, H (2016) ‘Fatal traumatic brain injury with electrical weapon falls’ [Journal of Forensic and Legal Medicine](http://www.sciencedirect.com/science/journal/1752928X) 43; 12-19; Zipes, D., (2014) ‘Can TASER Electronic Control Devices Cause Cardiac Arrest? TASER Electronic Control Devices Can Cause Cardiac Arrest in Humans’ Circulation 129 (1): 101–111.

 [↑](#endnote-ref-2)
3. Casey-Maslen, S:Corney, N and Dymond-Bass, A (2014) ‘The review of weapons under international humanitarian law and human rights law’, in Casey-Maslen (ed.), *Weapons Under International Human Rights Law*Cambridge University Press. [↑](#endnote-ref-3)
4. United Nations General Assembly (2017) *Seventy-second session Item 73 (b) of the provisional agenda Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedom.s Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment* Para 67 [↑](#endnote-ref-4)
5. See Corp of the Canadian Civil Liberties Assn. v. Toronto (City) Police Service [2010] O.J. No. 2715 2010 ONSC 3525 Court File No. CV 10 – 404640; and Hambling, D (2008) ‘Loudhailer or Weapon’ New Scientist, May 13th edition. Available online at <https://www.newscientist.com/blog/technology/2008/05/loudhailer-or-weapon.html> . [↑](#endnote-ref-5)
6. Lrad Corporation (2017) Law Enforcement: Elevated Risk Operations <https://www.lradx.com/application/law-enforcement/elevated-risk-operations/> [↑](#endnote-ref-6)
7. Product detailed in Omega Research Foundation archives, accessed 05/10/2017. [↑](#endnote-ref-7)
8. Latour, B., (1994) ‘On Technical Mediation: Philosophy, Sociology, Geneology’ *Common Knowledge* 3 (2): 29-64; Berkowitz, L., and LePage, A., (1967) ‘Weapons as Aggression-Eliciting Stimuli’ *Journal of Personality and Social Psychology* 7 :202-07; Brennan, I. and Moore, S., (2009) Weapons and violence: A review of theory and research *Aggression and Violent Behavior* 14: 215–225; Klinesmith, J., Kasser, T. and McAndrew, F., (2006) ‘Guns, Testosterone, and Aggression: An Experimental Test of a Mediational Hypothesis’ *Psychological Science* 17 (7): 568–571. ; [↑](#endnote-ref-8)
9. Dymond, A (2017) *Police use of Taser in England and Wales 2004 – 2014;* unpublished PhD thesis. [↑](#endnote-ref-9)
10. Rappert, B (2003) ‘Health and safety in policing:lessons from the regulation of CS sprays in the UK’ *Social Science & Medicine* 56: 1269–1278 [↑](#endnote-ref-10)
11. For further details on use of force reporting systems, see Dymond, A., (2016) *Use of Force Reporting Practices: Findings from a survey of UK Police Forces* National Police Chief’s Council, London. Available at http://www.npcc.police.uk/documents/uniformed/2016/Use%20of%20Force%20Data%20Report%20Appendix%20A.pdf (accesed 12th August 2016). [↑](#endnote-ref-11)
12. See, for restraint related deaths in a range of settings, Balko, D (2017) ‘Death by the Devil’s Chair’ *The Washington Post.* Available online at; <https://www.washingtonpost.com/news/the-watch/wp/2017/08/25/death-by-the-devils-chair/?utm_term=.de012f1f7733>; Emson, H (1994) ‘Death in a restraint jacket from mechanical asphyxia’ *Canadian Medical Association Journal* 151 (7): 985 – 987;

 Rubin, B; Dube, A Mitchell, E (1993) ‘Asphyxial Deaths due to Physical Restraint A Case Series’ *Arch Fam Med* 2:405-408 [↑](#endnote-ref-12)
13. Dymond, A (2017) *Police use of Taser in England and Wales 2004 – 2014;* unpublished PhD thesis. [↑](#endnote-ref-13)
14. Amnesty International and the Omega Research Foundation (2015) *The human rights impact of less lethal weapons and other law enforcement equipment;* Amnesty International, London. [↑](#endnote-ref-14)
15. Amnesty International and the Omega Research Foundation (2015) *The human rights impact of less lethal weapons and other law enforcement equipment;* Amnesty International, London. [↑](#endnote-ref-15)
16. Heyns, C and Kiai, M (2016) Joint Statement by Christof Heyns, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and Maina Kiai, Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association. 31st session of the Human Rights Council. [↑](#endnote-ref-16)
17. UN Human Rights Council (2014) Resolution 25/38; Adopted April 2014 [↑](#endnote-ref-17)
18. United Nations Office of Drugs and Crime and United Nations Human Rights Office of the High Commissioner (2017) *Resource book on the Use of Force and Firearms in Law Enforcement* United Nations, New York. Available online at [http://www.ohchr.org/Documents/ProfessionalInterest/UseOfForceAndFirearms.pdf](https://www.ohchr.org/Documents/ProfessionalInterest/UseOfForceAndFirearms.pdf) [↑](#endnote-ref-18)