Women’s International League for Peace and Freedom

Ligue Internationale de Femmes pour la Paix et la Liberté

Liga Internacional de Mujeres por la Paz y la Libertad

*Consultative Status with UN ECOSOC, UNCTAD and UNESCO; Special Consultative Relations with FAO, ILO, and UNICEF*

**Written submissions relating to the Draft General Comment on Article 6 of the International Covenant on Civil and Political Rights – Right to life**

6 October 2017

The Women’s International League for Peace and Freedom (WILPF) welcomes the Human Rights Committee’s call for proposals for this Draft General Comment on article 6 of the ICCPR.

This submission focuses on three areas:

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# 1) Weapons of mass destruction

We welcome that the Committee has recognized the threat of weapons of mass destruction to the right to life in paragraph 14 of the current draft general comment. To prevent any further proliferation of weapons of mass destruction, it is imperative for states to ratify the Treaty on the Prohibition of Nuclear Weapons that opened for signature on 20 September 2017.

## Recommended language

Thus we suggest that paragraph 13 state: **“The threat or use of weapons of mass destruction, including nuclear weapons, is prima facie incompatible with respect for the right to life. States parties must support the Treaty on the Prohibition of Nuclear Weapons, which was adopted in the UN General Assembly on 7 July 2017 and opened for signature on 20 September 2017. Current nuclear-armed states must ensure the elimination of their nuclear arsenals and means of delivery and in the meantime cease the modernisation of nuclear weapons or development of new nuclear weapons.”**

# 2) Impact of arms transfers on human rights

We reiterate the importance of including language on arms transfers in this General Comment.

As the Human Rights Committee has recognised, States’ duty to protect human rights is not limited to their territory, but also to their actions that violate human rights extraterritorially. The extraterritorial due diligence obligation of states regarding the international arms trade has now wide recognition since the adoption of the Arms Trade Treaty (ATT) in 2013. Article 6 of ATT prohibits arms transfers if a state has knowledge at the time of authorization that the arms would be used “in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such.” Further, article 7 obligates the exporting state to undertake an assessment prior to any arms export to establish the risk that the arms might be used to “commit or facilitate a serious violation of international human rights law;” in which case arms exports are not to be authorised. In particular, Article 7 (4) of the ATT requires that States shall, prior to authorization of the export of arms under its jurisdiction, in an objective and non- discriminatory manner, take into account the risk of conventional arms being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women.

With respect to the Arms Trade Treaty, it is important to underscore that risk assessments assess just that – the *risk* that the arms in question will be used in any of the ways prohibited by the Treaty. It is not necessary to establish the direct presence of a transferred item as having been used in a specific act in order to prevent future transfers of the same item. If the risk alone is high enough, the transfer must be denied.[[1]](#footnote-1)

Various human rights bodies have addressed the threat of arms transfers on individuals’ human rights, and specifically on women, in recipient countries. In its resolutions, the Human Rights Council expressed its ‘deep concern at the fact that arms transfers to those involved in armed conflicts may seriously undermine the human rights of civilians, especially women […]’ and that ‘arms transfers can have serious seriously negative impact on the human rights of women and girls, who may be disproportionately affected by the widespread availability of arms, as it may increase the risk of sexual and gender-based violence [...]’.[[2]](#footnote-2) Furthermore, in a May 2017 report to the Human Rights Council, the High Commissioner emphasised the direct negative impact of arms transfers on human rights, and particularly on women.[[3]](#footnote-3) He recommended carrying out human rights risk assessments ‘on a case-by-case basis and [to] take full account of the gender dimension of arms transfers’.[[4]](#footnote-4)

The Committee on Economic, Social and Cultural Rights (CESCR) has reminded the UK of, by recommending that the UK ‘conduct thorough risk assessments prior to granting licences for arms exports and refuse or suspend such licences when there is a risk that arms could be used to violate human rights, including economic, social and cultural rights’.[[5]](#footnote-5)

The Committee on the Convention for the Elimination of Discrimination Against Women (CEDAW Committee) looked into the extraterritorial obligation of due diligence in relation to arms exports in its General Recommendation 30: ‘Address the gendered impact of international transfers of arms, especially small and illicit arms, including through the ratification and implementation of the Arms Trade Treaty.’ In its recently adopted General Recommendation 35 the CEDAW Committee has recognized that accessibility and availability of firearms, including their exportation, as evidenced in militarisation, heighten women’s risk of exposure to serious forms of gender-based violence.[[6]](#footnote-6)

The CEDAW Committee also recommended, for example, to Sweden to ‘ensure that the new legislation to regulate the export of arms includes a strong and robust gender-specific perspective;’[[7]](#footnote-7) to France to integrate “a gender dimension in its strategic dialogues with the countries purchasing French arms and continue conducting rigorous, transparent and gender sensitive risk assessments, in accordance with the Arms Trade Treaty (2013); ”[[8]](#footnote-8) to Germany that, ‘before export licenses are granted, comprehensive and transparent assessments should be conducted on the impact that the misuse of small arms and light weapons have on women, including in conflict zones’.[[9]](#footnote-9)

Moreover, in addressing gender-based acts of violence and killing, the Special Rapporteur on extrajudicial, summary or arbitrary executions has recently recommended that states ‘develop mechanisms to analyse whether any arms being assessed for approval for transfer, as well as the granting of licenses on production, will facilitate or contribute to gender-based violence or violence against women by the recipient, in accordance with the obligation on risk assessment processes of the Arms Trade Treaty’.[[10]](#footnote-10)

## Recommended language

Thus, we suggest that the General Comment include language stating that: **“The use and proliferation of conventional weapons causes grave harm to civilians inside and outside of armed conflict, undermining the right to life. International exports of arms and arms licences can give rise to an extraterritorial responsibility for human rights violations. If such violations could have been foreseen, the exporting state has an obligation to refuse the arms export or granting of an arms licence. States must conduct thorough and transparent risk assessments, including gender risk assessments, prior to granting permits for arms exports and refuse arms exports when there is risk that they could be used to violate international human rights law, as mandated by the Arms Trade Treaty.”**

# 3) Use of explosive weapons in populated areas

In our suggestions for the previous draft, we recommended to include language on the use of explosive weapons in populated areas. We reiterate the importance of doing so in this General Comment.

Explosive weapons use blast and fragmentation to kill and injure people in the area where they detonate, as well as to damage objects, buildings, and infrastructure. When used in populated areas they tend to cause high levels of harm to individuals, communities, and infrastructure. Destruction of infrastructure vital to the civilian population, including water and sanitation, housing, schools, and hospitals, will likely prevent the enjoyment of the right to life. Victims and survivors of explosive weapons can face long-term challenges of disability, psychological harm, and social and economic exclusion. Furthermore, the use of weapons of indiscriminate effect, such as explosives, may have particular implications for women who may be affected by the destruction of infrastructure or the burden of caring for the wounded, particularly in a context of inequality.

In September 2015, a group of governments, UN agencies, and civil society organisations affiliated with the International Network on Explosive Weapons (INEW) indicated support for developing a political commitment on preventing harm from the use of explosive weapons in populated areas.[[11]](#footnote-11) This process extended from concern expressed by over 40 governments in UN Security Council debates on the protection of civilians in armed conflict and on children and armed conflict, at which the UN Secretary-General has also urged international action on this issue.[[12]](#footnote-12)

This topic has also been taken on by the former UN Secretary-General Ban Ki-moon and International Committee of the Red Cross (ICRC) President Peter in their six-point call including a demand for states to stop the use of ‘heavy explosive weapons in populated areas.’[[13]](#footnote-13) The World Humanitarian Summit included as one of its Core Commitments the promotion and enhancement of ‘the protection of civilians and civilian objects, especially in the conduct of hostilities, for instance by working to prevent civilian harm resulting from the use of wide-area explosive weapons in populated areas, and by sparing civilian infrastructure from military use in the conduct of military operations.’[[14]](#footnote-14) The UN Commission of Inquiry on Gaza has also included analysis of the human rights violated by explosive weapon use in populated areas.[[15]](#footnote-15) A number of UN agencies and INEW partner organisations have issued advocacy and policy briefs on this issue over the last several years and have reported on a variety of meetings.[[16]](#footnote-16)

Most recently, the Special Rapporteur on extrajudicial, summary or arbitrary executions has pointed at the fact that ‘patterns of harm from the use of explosive weapons in populated areas are shaped by issues of gender and age’.[[17]](#footnote-17) The Special Rapporteur urged states to facilitate or undertake increased research on the gendered effects of the use of explosive weapons in populated areas, and support international efforts to develop a political commitment to end such use.

## Recommended language

Thus WILPF suggests the General Comment include language stating: **“The use of explosive weapons in populated areas poses grave humanitarian harm to civilians and civilian infrastructure and threatens the right to life. States parties should stop using explosive weapons with wide-area effects in populated areas and support the development of an international commitment to this end.”**

1. The ATT Monitor Report, 2016 [http://armstreatymonitor.org/en/wp-content/uploads/2016/08/ATT- ENGLISH-Monitor\_16\_CHAPTER-2.1.pdf](http://armstreatymonitor.org/en/wp-content/uploads/2016/08/ATT-%20ENGLISH-Monitor_16_CHAPTER-2.1.pdf). [↑](#footnote-ref-1)
2. UN Index A/HRC/RES/24/35 (2013): ‘Impact of arms transfers on human rights in armed conflicts’, paragraphs 1 and 2. See also UN Index A/HRC/RES/32/12 (2016): ‘Impact of arms transfers on human rights’. [↑](#footnote-ref-2)
3. UN Index A/HRC/35/8 (3 May 2017), Report the 35th regular session of the Human Rights Council, requested by the Human Rights Council with resolution 31/12 (1 July 2016). [↑](#footnote-ref-3)
4. *Ibid.* paragraph 49. [↑](#footnote-ref-4)
5. E/C.12/GBR/CO/6, paragraph 12 (c ). [↑](#footnote-ref-5)
6. UN Index CEDAW/C/GC/35General Recommendation 35, paragraph 42. [↑](#footnote-ref-6)
7. UN Index CEDAW/SWE/CO/8-9 (10 March 2016), paragraph 26 (h). [↑](#footnote-ref-7)
8. Concluding observations on France, CEDAW/C/FRA/CO/7-8, paragraph 22. [↑](#footnote-ref-8)
9. UN Index CEDAW/C/DEU/CO/7-8 (3 March 2017), paragraph 28. [↑](#footnote-ref-9)
10. UN Index A/HRC/35/8 (3 May 2017), Report the 35th regular session of the Human Rights Council, requested by the Human Rights Council with resolution 31/12, 1 July 2016, paragraph 49. [↑](#footnote-ref-10)
11. 'States move to stop bombing and bombardment in towns and cities,” 24 September 2015, Reaching Critical Will, <http://www.reachingcriticalwill.org/news/latest-news/10182-states-move-to-stop-bombing-and-bombardment-in-towns-and-cities> and <http://www.icip-perlapau.cat/numero26/pdf-eng/Per-la-Pau-n26-ac-1.pdf> [↑](#footnote-ref-11)
12. Ray Acheson, Political action to end the use of explosive weapons in populated areas,” Peace in Progress No. 26, February 2016, http://www.icip-perlapau.cat/numero26/articles\_centrals/article\_central\_1/; also see references at http://www.inew.org/acknowledgements. [↑](#footnote-ref-12)
13. “Ban Ki-moon, ICRC call for curb on explosive weapons use, states move towards commitment,” 31 October 2015, http://www.article36.org/explosive-weapons/1st-com-2015. [↑](#footnote-ref-13)
14. “Uphold the Norms that Safeguard Humanity: Core Responsibility Two of the Agenda for Humanity,” World Humanitarian Summit, Istanbul, 23–24 May 2016. [↑](#footnote-ref-14)
15. “Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1,” Human Rights Council, A/HRC/29/CRP.4, 22 June 2015, http://www.inew.org/site/wp-content/uploads/2015/06/A\_HRC\_CRP\_41.pdf. [↑](#footnote-ref-15)
16. Please see http://www.inew.org/news. [↑](#footnote-ref-16)
17. UN Index A/HRC/35/23 (6 June 2017), Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings, paragraph 48. [↑](#footnote-ref-17)