

LETHAL IN DISGUISE 2

How Crowd-Control Weapons Impact
Health and Human Rights

New and Revised Recommendations
and the Way Forward



Section 4

NEW AND REVISED RECOMMENDATIONS AND THE WAY FORWARD

PROTESTS IN PERU'S CAPITAL, LIMA, ON JANUARY 23, 2023 BY DEMONSTRATORS DEMANDING PRESIDENT DINA BOLUARTE'S RESIGNATION AND ELECTIONS. DURING THE POLICE INTERVENTION IN REACTION TO THE PROTEST, DEMONSTRATORS SUFFERED INJURIES AND RESPIRATORY DISTRESS DUE TO THE USE OF CHEMICAL AGENTS. KLEBHER VASQUEZ | AA

Observations

The injuries inflicted by CCWs are as widespread as they are devastating. The use of KIPs, chemical irritants, water cannons, disorientation devices, acoustic weapons, and batons, among others, has produced a diverse array of negative health impacts which extend beyond the physical. Beyond individual injuries, the full toll of CCWs must include the psychological trauma they produce, the permanent disability they cause, the social cost of CCWs paid by targeted communities, and, significantly, the disproportionate impact CCWs have on certain vulnerable groups. The continued use and growing potency of CCWs since the publication of LiD1 in 2016 is particularly concerning. The potential use of inherently indiscriminate impact weapons that are new or were not emphasised in the last report, including multi-projectile KIPs, stun grenades

with shrapnel, and Venom, are cause for even more significant concern.

It is worth emphasising that the health effects described in this report may be exacerbated by factors that serve to impede access to medical care. These include CCW-related hazards to medical professionals, restricted access to medical transport, forbidding of medical assistance at protests, direct attacks on medical professionals and street medics, and the chilling effect of detaining those injured by CCWs at medical facilities, which leads people not to seek necessary medical attention. These barriers to access to timely medical care play a significant role in increasing the risk of serious injury, permanent disability, or even death from CCWs.

Around the world, awareness of the use, dangers and harms of CCWs is increasing. The past six years have produced more–

and more rigorous–evidence documenting the severe health harms from CCWs used in crowd control. The proliferation of CCWs in all aspects of policing will result in a corresponding increase in death and injury, while novel mechanisms of injury will come to the fore as new CCW technologies are developed and refined. Without effective and immediate action, these avoidable harms will increase and intensify. Therefore, there is a pressing need for states to change their perceptions regarding the role of CCWs and adopt more stringent rules for their use. There is also an urgent need to engage in further research and empirical studies to develop clear scientific standards and parameters to regulate CCWs and their use and to further develop and clarify applicable international law and standards.

In this section, we outline recommendations with respect to pre-deployment, deployment, and post-deployment of CCWs in order to minimise the risk of these weapons for occasions when they are deployed. In addition, we make recommendations on international law and standards and detail challenges to the development and implementation of these standards at the national level. These recommendations are premised on several guiding principles that should be followed for the management of assemblies and for all uses of force and expand on the existing principles and recommendations detailed in LiD1. They are based on protecting health and limiting injuries, and ensuring the full exercise of free expression and assembly.

Core principles

- › In the context of managing protests, the role of law enforcement officials is to protect the right to life and to facilitate assembly, association and free expression rights while ensuring public safety.
- › Given the duty of law enforcement to protect health and uphold rights, the most effective method to prevent violence in the context of protests is to engage in negotiations and dialogue with protesters and deploy associated de-escalation techniques.
- › The use of CCWs in protests should be an absolute last resort when dealing with genuine and imminent threats to safety, and only after all other means have been exhausted.
- › The mere fact that an assembly may be considered unlawful under domestic law does not justify dispersing the assembly or the use of CCWs.
- › Where there are people in the context of protests who either engage in or incite others to engage in acts of violence which require police intervention, the explicit goal of *any* intervention should be to de-escalate the situation and, where needed, focus on targeted interventions that do not infringe upon the rights of peaceful protesters.
- › If CCWs are deployed in the context of protests, their use should always be based on the principles of legality, precaution, necessity, proportionality, non-discrimination, and accountability, and the use of CCWs must be tested against the genuine threat faced and the legitimate aim pursued. Where any

of these principles *cannot* be satisfied, CCWs should not be deployed.

- › We note that the inherently indiscriminate nature of most CCWs renders highly unlikely their ability to meet the proportionality and necessity requirements for targeted policing interventions in the context of protest.
- › Weapons that are inherently indiscriminate are effectively dispersal agents used for forcibly terminating the entire assembly, and they restrict the ability of peaceful protesters to exercise their rights to free speech and assembly.
- › States must investigate any injuries or deaths related to the use of CCWs to ensure accountability and to better train and educate law enforcement officials on the lethal and harmful effects of CCWs.

Patterns of risk

In addition to the core principles, certain patterns of risk in the use of CCWs in protests have emerged in our research.

- › *First*, the development of new CCWs and aggressive marketing by arms companies to law enforcement institutions is, in some cases, driving demand. Not all of these newer weapons are adequately tested, and some have been specifically developed for military purposes. The marketing, trade and use of such weapons in the absence of demonstrated data on

safety and effectiveness can lead to the unregulated proliferation of CCWs.

- › *Second*, the erroneous presumption that CCWs are non-lethal has several consequences: (1) that law enforcement and security personnel are not always trained in the proper use of such weapons; (2) that they are subject to fewer controls and regulations; (3) that they resort quickly to their use without trying other de-escalation techniques first or exhausting all other means before using CCWs; and (4) that the cases of injury and death from their use are then not properly investigated.
- › *Third*, some of the CCWs that are used in the management of protests are inherently inaccurate and indiscriminate in their effects, risking serious injury and death to the people targeted, other demonstrators, bystanders, and law enforcement officers themselves.
- › *Fourth*, the capacity of CCWs to achieve the goal of safe crowd dispersal is limited. The infliction of pain and incapacitation occasioned by CCWs is unlikely to result in the safe dispersal of protesters. On the contrary, the use of CCWs for crowd dispersal is often counterproductive, as they can cause confusion and panic, resulting in additional injuries as well as an escalation of violence.
- › *Fifth*, CCWs are intentionally misused as weapons for political repression rather than for legitimate crowd-control purposes.

Recommendations

Pre-deployment of CCWs

Design and trade

1. CCWs and/or policing equipment that can be used as a CCW, intended for use in the context of protests, must be designed and produced to ensure that they meet legitimate law enforcement objectives and comply with international law and standards. This duty applies to states and their agents as well as to companies that manufacture weapons for law enforcement as recognised in the UN Guiding Principles on Business and Human Rights.⁴⁷⁶
2. Weapons designed for military purposes are inappropriate for use in protests unless they have been adapted for crowd-control purposes and independently tested for appropriateness and effectiveness.
3. Weapons' design should not be altered or modified to produce lasting and painful effects as a means of punishment.
4. The redesign of chemical irritants to extend half-life, increase resistance to the weather, and prolong the effects of chemical agents must be halted; these practices violate the objectives of safe crowd management.
5. Public and private manufacturers of CCWs and related equipment should make publicly available an assessment of specific weapons risks to law enforcement institutions, their officials, and the public. States, law enforcement agencies, and manufacturers should make freely accessible the technical specifications of weapons in use.⁴⁷⁷
6. All safety data information and any other relevant information should be provided by manufacturers and should be made publicly accessible. Publicly available data should include each weapon's design features and parameters with a view to facilitating medical treatment and public knowledge of potential hazards. Manufacturers should also periodically publish updated medical studies regarding the safety of their weapons, along with the names of experts who have contributed to safety analyses, indicating the sources of funding or compensation.⁴⁷⁸
7. International, regional and national controls should be adopted on the trade in CCWs and equipment. These should prohibit the trade in inherently abusive weapons and equipment and control the trade in CCWs that are misused to

476 United Nations Office of the High Commissioner for Human Rights, Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, (2011), accessible at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf and UN Guidance on LLWs above n 6 at para 4.1.1.

477 UN Guidance on LLWs *id* at para 4.1.2.

478 *Id.*

ensure that they are not used in human rights abuses.

Testing and legal review

8. Testing of new and existing CCWs should not rest solely in the hands of manufacturers. States should ensure that CCWs are subject to rigorous independent testing prior to making procurement decisions.⁴⁷⁹ Testing, evaluation and approval should include a multidisciplinary approach that, in addition to law enforcement, includes technical specialists, academics, policymakers, health professionals, and civil society and consultation with communities that might be most impacted by the deployment of these weapons.
9. Testing of CCWs should consider legality, level of target accuracy and precision, risk of lethality, risk of severe injury or disability, level of pain inflicted, lifespan, reliability (i.e., minimal risk of malfunction), human factors that may affect their intended use, and any other relevant factors.
10. Testing to determine safe environmental parameters for the use of CCWs should occur in conditions that are similar to protest situations and under varied scenarios. The following factors, among others, should be considered: distance of engagement, urban or rural environment, expected weather conditions, nature of space (e.g.,

enclosed v open), possible collateral effects, and participant demographics.

11. The testing process should inform domestic regulations and guidelines for the lawful use of CCWs. The results from the testing should be made publicly available.
12. Newly acquired weapons should be subject to a pilot program to allow for evaluation and assessment.
13. A legal review should be conducted prior to procurement of a CCW, and it should be conducted to determine whether the procurement and use of a CCW would, in some or all circumstances, be prohibited by any rule of international or domestic law.⁴⁸⁰ As part of the legal review, testing must—
 - 13.1. be conducted independently of the manufacturer and account for both the required and the potential capabilities and effects of the CCW;
 - 13.2. evaluate the effects of all reasonably, likely, or expected uses of the CCW;
 - 13.3. be based on impartial legal, technical, medical, and scientific expertise and evidence; and

479 General Comment No 37 above n 359 at para 81.

480 UN Guidance above n 6 at para 4.2.1.

- 13.4. consider the potential effects of use on individuals who may be especially vulnerable, including pregnant persons.⁴⁸¹

Selection and procurement

14. CCWs, and/or policing equipment that can be used as a CCW, whose “designated, expected, or intended use” does not comply with domestic and international law and standards, or which presents undue risk of loss of life or serious injury to anyone, including intended targets, bystanders, or law enforcement officials themselves, should not be authorised for procurement, deployment, or use.⁴⁸²
15. Where states and law enforcement institutions intend to procure or trade CCWs, details of the procurement and trade must be made publicly accessible *and* must be subject to a public participation process, including publicly accessible and independently verifiable human rights impact assessments on the specific CCWs in question. This includes transparent political oversight, approval, and accountability.
16. Prior to deployment, CCWs and ammunition should be clearly identified, inventoried, and stored to facilitate accountability in the post-deployment phase. When CCWs and ammunition are distributed, there should be a clear means of tracking distribution to individual law enforcement officials.

Regulations, training and planning

17. Regulations, procedures, and/or protocols on the use of CCWs should be developed for law enforcement based on applicable domestic, regional and international laws. Human rights treaty obligations and international standards should be observed and operationalized in the protocols. These protocols should also reflect the findings from independent testing. Law enforcement should never rely solely on manufacturers’ instructions when defining protocols on acceptable use.
18. Regulations, procedures, and/or protocols on the use of CCWs should be publicly accessible and include details of—
 - 18.1. when and how weapons may be used;
 - 18.2. training requirements;
 - 18.3. the risks associated with the use of these weapons, both individually and in crowd-control situations, including specific reference to vulnerable populations; and
 - 18.4. accountability measures.
19. Law enforcement officials should be trained in human rights standards, including the role of law enforcement in promoting and protecting the right to

481 *Id* at para 4.2.2.

482 *Id* at paras 4.2.3 and 6.3.2.

life, the rights to freedom of assembly and freedom of expression, the right to be free from violence and arbitrary arrest, the right to be free from torture and cruel, inhuman, and degrading treatment and punishment, and due process rights.

20. Law enforcement should be trained in the human rights-compliant use of CCWs. In addition to teaching the technical aspects of the weapon and its use, training should be contextual, including addressing the specific aspects and challenges of managing protests.
21. Training should be continuous and ongoing and should include simulations and exercises that review past cases to identify inappropriate or unlawful weapon use and consider alternative approaches.
22. Training must include information about the medical and health effects and risks of using particular CCWs, and precautions that should be taken in using particular weapons.
23. Training of projectile weapons should mirror that of formal firearms training, with emphasis placed on the recognition of unsafe firing conditions. Training should include the determination of safe firing distances, given the importance of distance in attenuating the effects of impact projectiles.
24. With chemical irritants, training must include a discussion of concentration levels and an understanding that the effects of the weapons vary depending on, among others, environmental conditions, the density of the crowd, duration of exposure, pre-existing medical conditions, and the vulnerability of specific populations.
25. Law enforcement officials who have not received the appropriate training (as described above) should not be permitted to carry or use CCWs.
26. Pre-deployment planning should always consider contextual factors, including the nature of the area where the protest is occurring, whether the protest is static or mobile, the weather conditions, access to exits, and the size and demographics of the crowd, among other factors.
27. Pre-deployment planning should also have clearly designated command roles and authorities. Authorization should come from a senior-level officer on the scene, who is able to assess the conditions where CCWs may be used and is responsible for the manner and scope of their deployment.

Use of force and deployment of CCWs

28. The use of any kind of force, including CCWs, must always comply with the principles of necessity, proportionality, legality, precaution, non-discrimination, and accountability.⁴⁸³

483 General Comment No 37 above n 359 at para 78.

29. Law enforcement officials must always aim to avoid the use of force and use non-violent tactics wherever possible.⁴⁸⁴ In exceptional circumstances and where there is an imminent and actual threat, law enforcement officials may only use the minimum force necessary to address the threat and, if possible, should take all reasonable measures to engage in de-escalation techniques.⁴⁸⁵
30. Appropriate de-escalation techniques should be used to minimise the risk of violence. Law enforcement officials should be aware that even the display of CCWs may escalate tensions and increase the potential for violent conflict during protests. Where force is proportionate and is necessary to achieve a legitimate law enforcement objective, all possible precautionary steps must be taken to avoid, or at least minimise, the risk of injury or death.⁴⁸⁶
31. When a decision is made to use force in response to acts of violence, law enforcement officials should not treat crowds as a single violent entity because of the actions of some individuals. Law enforcement officials must make every effort to identify and isolate violent individuals without unnecessarily interfering with the rights of other protesters.⁴⁸⁷ If it is decided that CCWs are an appropriate means of stopping individual acts of violence, the final decision to use CCWs must account for the likely proximity of third parties and bystanders.⁴⁸⁸
32. Law enforcement officials should avoid the use of CCWs towards those who are particularly vulnerable to the harmful consequences of the use of force in general and to the effects of specific CCWs, including children, pregnant persons, older persons, persons with disabilities, and persons with mental health conditions and impairments.⁴⁸⁹
33. Law enforcement officials must use proportional means to effect an arrest in the context of a protest when individuals are passively resisting. In such circumstances, law enforcement officials should only use targeted interventions and the minimum force necessary and must avoid resorting to any force that carries the risk of serious injury.
34. CCWs should not be used without first clear verbally warning protesters and giving them adequate and appropriate opportunity to comply with a lawful order to exit and/or find safe shelter.

484 UN Guidance on LLWs above n 6 at para 2.2.

485 General Comment No 37 above n 353 at para 78.

486 UN Guidance on LLWs above above n 359 at para 6.3.1.

487 *Id* at para 6.3.2.

488 *Id*.

489 *Id* at para 2.7.

A safe route to disperse must be guaranteed.⁴⁹⁰ CCWs with wide-area effects, such as tear gas and water cannons, have indiscriminate effects. When such weapons are used, law enforcement officials are responsible for mitigating the risk of injury through stampedes or “crowd crushes”.⁴⁹¹

The use of firearms and live ammunition

35. The use of firearms and live and/or lethal ammunition should be entirely prohibited in the context of managing crowds and facilitating protests.

Kinetic impact projectiles

36. Kinetic impact projectiles (KIPs) can cause serious injuries, permanent disability, and death. Severe injuries are more likely when KIPs are fired at close range. When launched from afar, these weapons are often inaccurate and can strike vulnerable body parts or bystanders. Therefore, the medical evidence in this report underscores that KIPs should never be fired indiscriminately into groups and are, in general, an inappropriate weapon in any protest context.

37. KIPs must be expressly prohibited for the sole purpose of crowd dispersal; they cannot be used effectively and

safely in groups of people. KIPs must never be fired at close range and should never be targeted at the head or other vital areas of the body, where impact typically causes serious injury and, in some instances, death.

38. Any KIP that fires multiple projectiles is inherently indiscriminate⁴⁹² and must be prohibited in the context of protests. It is not possible to deploy these weapons safely against crowds or individuals.

39. Pellet rounds, which fire multiple projectiles that follow uncontrollable trajectories, are both indiscriminate and dangerous. Their frequently small size and high velocity render them exceptionally hazardous. As a result, pellet rounds (birdshot, buckshot, and multiple projectile munitions) must be expressly prohibited in all protest settings; metallic pellets may never be categorised as a CCW.

40. KIPs that have a metal component as part of their composition, especially those with metal cores, are not safe for crowd management and should be expressly prohibited. These weapons, including rubber-coated metal rounds, lead pellets, small calibre rifle or pistol rounds, and bean bag rounds, impact targets with excessive energy and high velocities and have a very high potential to cause serious injury and death.⁴⁹³

490 *Id* at para 6.3.3.

491 General Comment No 37 above n 359 at para 87.

492 UN Guidance on LLWs above n 6 at para 6.3.2.

493 *Id*.

Chemical irritants

41. Chemical irritants, when deployed using canisters or grenades, are inherently indiscriminate by nature, cause severe pain and injuries and frequently escalate tensions. Therefore, extreme caution must be used before and during deployment that considers the presence of bystanders and the existence of areas of egress and airflow to minimise any risk of overexposure due to the serious risk of injury.
42. Chemical irritants that should be expressly prohibited in the context of protests due to the risk of death and serious injury include:
 - 42.1. Launchers that fire multiple chemical irritant canisters, such as the Venom system.
 - 42.2. “Barrier-penetrating,” “barrier-blind,” “barricade,” tear gas rounds, or any round designed to defeat physical barriers or that are excessively dense or considered “military grade”.
 - 42.3. Chemical irritants with components that are determined to be hazardous or in quantities, proportions, concentrations, or admixtures that may be considered toxic.
 - 42.4. Chemical irritants that have passed their expiration date or are otherwise in disrepair.
43. Specific methods and patterns of chemical irritant deployment are associated with an elevated risk of serious injury or death. Use of chemical irritants in the following circumstances constitutes reckless and dangerous use of these weapons and must be prohibited:
 - 43.1. In confined spaces or in spaces where a crowd cannot safely disperse (including sports stadiums, prisons, and other high-density enclosed spaces with limited egress capacity) - this significantly increases the risk of death or serious injury from crowd crush and stampedes.⁴⁹⁴
 - 43.2. Firing chemical irritant canisters or throwing grenades directly at individuals or groups, particularly when they strike the head or sensitive body parts, as they can result in blunt trauma, burns and severe or permanent disability and death.
 - 43.3. Exposing children, older persons or other vulnerable groups to chemical irritants indiscriminately.
 - 43.4. In situations of purely passive resistance. (In accordance with the principle of necessity, once a person is already under the control of a law enforcement

494 *Id* at para 7.2.7.

official, no use of a chemical irritant will be lawful.)

- 43.5. Repeated or prolonged exposure for demonstrators or for residents who may be exposed in their homes, workplaces, and communities.
- 43.6. After exposure, restraining a suspect by placing them in the prone position (i.e., where the person is lying flat with the chest down and back up). If an individual suffering from the effects of a chemical irritant is restrained, his or her breathing must be monitored constantly. Any unexpected or long-lasting effects should be referred for medical assessment and treatment.”⁴⁹⁵

Water cannons

44. The use of water cannons against individuals at short ranges should be prohibited, owing to the risk of injury from the water jet itself or from injuries due to slips, trips, and falls secondary to the impact of a water cannon.⁴⁹⁶
45. The decision to deploy water cannons must consider potential environmental hazards that may heighten the risk of injury resulting from their use. Water cannons should not be used against

persons in elevated positions or in any situation wherein the force of the water jet can push targets into dangerous objects. Water cannons should not be used in cold weather due to the risks of hypothermia and cold-water shock.⁴⁹⁷

46. Water cannons should never be used against restrained persons or persons otherwise unable to move or escape a specific situation.⁴⁹⁸
47. Alterations to the properties of water designed to provoke pain, such as heating or the addition of chemical irritants, must be prohibited.
48. Other water cannon additives—such as chemicals that emit foul odours or coloured dye—must be prohibited. The primary purpose of these weapons appears to be excessive or collective punishment and humiliation, which are unlawful and do not constitute legitimate policing tactics.

Disorientation devices

49. Disorientation devices can cause significant injuries, and they are difficult to deploy in a manner that ensures only isolated targets are affected without the risk of injury to bystanders. As a result, these indiscriminate weapons (including stun grenades, flash bangs and other disorientation devices)

495 *Id* at para 7.2.4.

496 *Id* at para 7.7.4.

497 *Id* at para 7.7.3

498 *Id* at para 7.7.4.

should not be used in protest contexts or crowd settings.

50. Explosive stun grenades that have been engineered to fragment or disperse projectiles behave similarly to multiple projectile KIPs in that the user cannot control the trajectory of each fragment to ensure bystanders or vital parts of the body are not affected. As a result, they are inherently indiscriminate and have no legitimate law enforcement role.

Acoustic weapons

51. The use of acoustic weapons or signalling devices at any distance and exposure time at which the decibel output is likely to cause permanent threshold shift (permanent hearing damage) should be prohibited.⁴⁹⁹
52. The use of acoustic weapons or hailing devices to dissuade or deter individuals should only be limited to cases in which it is unlikely other individuals may be subject to the potentially hazardous effects of focused sound.
53. Acoustic weapons may cause hearing damage if thresholds of sound intensity and duration are exceeded. These thresholds may vary from weapon to weapon. Accordingly, rigorous testing should be conducted to identify

prudent maximum sound intensities, determine minimum distances of use, and establish limits on the duration of continuous operation.

Blunt force weapons

54. Batons should only be used in exceptional circumstances and only against violent individuals posing significant risks to themselves or others:⁵⁰⁰
- 54.1. Batons should never be used against a person who is neither engaged in or threatening violent behaviour; such use is likely to amount to cruel, inhuman, or degrading treatment or torture.⁵⁰¹
- 54.2. Batons should never be used against persons in restraints or persons otherwise unable to move or escape a specific situation.⁵⁰²
55. Batons should not be used to cause considerable injury and excessive pain, such as strikes to the knees, elbows, wrists, and groin areas:⁵⁰³
- 55.1. Jabs or driving strikes with a baton at the thorax, neck or head should be avoided

499 *Id* at para 7.8.5.

500 *Id* at 7.1.3.

501 *Id*.

502 *Id* at para 7.7.4.

503 See Amnesty International, "Blunt force: Investigating the misuse of police batons and related equipment, accessible at: <https://www.amnesty.org/en/latest/research/2021/09/blunt-force/>.

because of the risk of injury to and damage to vital organs.⁵⁰⁴

55.2. Batons should never be used in neck or choke holds.⁵⁰⁵

56. Some blunt force weapons, such as whips, direct contact electric shock weapons and weighted or spiked batons, have no legitimate law enforcement role that cannot be fulfilled through less harmful means. Their use by law enforcement should be prohibited.

New frontiers

57. New technologies being developed for crowd control should aim to be less prejudicial and less dangerous to the physical integrity of people. These new technologies should be tested for compliance with human rights standards and existing guidelines before procurement and use. They should also be tested to ensure their use complies with the principles of necessity, proportionality, legality, and accountability.

58. Recommendations on new or envisaged weapons are based on precaution and existing operational data:

58.1. As the use of armed drones has a risk of causing significant head injuries, a moratorium on the use of remotely operated armed drones in protest

contexts should be issued until further evidence on the impacts of armed drones in protest contexts has been collected and their lawful use has been established.

58.2. Fully autonomous weapons systems must never be used by law enforcement during a protest.⁵⁰⁶

58.3. Direct contact electric shock weapons—such as stun guns and stun shields, for example, as well as projectile electric shock weapons in a direct contact mode—are designed to cause compliance through pain and deliver an electric shock through contact between the weapon and the target individual. These weapons carry an unacceptable risk of arbitrary force, and their use fulfils no legitimate law enforcement purpose that cannot be achieved through less harmful means. As such, the use of direct contact electric shock weapons by law enforcement should be prohibited.

58.4. Because directed energy devices (DEDs) are not commonly used in law enforcement, and there is no

504 UN Guidance on LLWs above n 6 at paras 7.1.4 and 7.1.5.

505 *Id* at para 7.1.5.

506 General Comment No 37 above n 359 at para 95.

sufficient understanding of their safety in crowd control settings, such weapons should not be used for crowd management. There are serious concerns about prolonged exposure, the risk of cellular damage and high-degree burns, and the potential for abuse. If these concerns are confirmed, the development and sale of these weapons for law enforcement purposes and especially for crowd control must be halted, as the use of these weapons will be disproportionate by design.

Post-deployment of CCWs and medical assistance

Medical assistance

59. Law enforcement must ensure that proper medical assistance is available to protesters and provide prompt access to aid when CCWs are deployed. Identities of those seeking care should not be released to law enforcement officials.
60. Medical care for the sick and wounded must not be restricted or interfered with. Medical workers should never be targeted, blocked, attacked, arrested or interfered with for fulfilling their obligations.
61. Medical objects, such as ambulances and clinics, should not be used for any law enforcement purposes.

Accountability

62. Law enforcement officials should record and report any use of CCWs, including specific models of CCWs deployed, the distances from the targeted individuals/bystanders and the duration of deployment, the number of each type of CCW used, and the specific of any injuries caused by CCWs. Review of this reporting must confirm that the reporting is accurate, and that the use of CCWs was proportionate, necessary, and lawful.
63. Law enforcement officials should wear visible identification whenever CCWs are used, in order to facilitate accountability.
64. There should be a clear chain of command, responsibility, and accountability. All decisions taken should be traceable, and those who have taken the decisions must be held accountable for them.
65. All deaths, injuries and suspected misuses of CCWs should be thoroughly investigated by a body independent of the implicated officials, with a view to establishing responsibilities and accountability of the officials involved, including the various levels of the command structure in charge during the incident. Where there is evidence of unlawful conduct, commanders and responsible officers should face administrative disciplinary measures and/or criminal prosecution, as appropriate.

66. Police officers under investigation for the misuse of CCWs or for any other abuse of force should be removed from active frontline duty or suspended until their case is resolved.
67. Legal provisions should ensure that victims can obtain redress, even in the absence of a criminal conviction of the perpetrator(s), as well as fair and adequate compensation, including the means for the fullest rehabilitation possible.

Next steps

Since INCLO and PHR started researching CCWs, progress has been made at the international, regional and national levels. There has been substantive progress since the approval of the UN Basic Principles and, more recently, General Comment No 37 and the UN Guidance on LLWs, both issued in 2020, have shown notable advances in standard setting regarding the regulation of CCWs and outlining specific recommendations. There has also been increased media coverage of protests worldwide and more nuance in the coverage that speaks of the use of “less-lethal” as opposed to “non-lethal” weapons, an important conceptual distinction. Most importantly, we have seen law reform in different jurisdictions aiming to regulate the use of CCWs.⁵⁰⁷

However, further development is needed. There is a pressing need for the introduction of these standards into domestic legal frameworks and police protocols. International and regional organisations have a role in promoting these tools and advising states on operational ways of strengthening their protections. However, in addition to the implementation and proper application of international laws and standards, other changes are necessary. Around the world, national-level laws, policing practices, police culture, transparency, and accountability measures often fall short of international standards. This gap risks rendering international law and standards as toothless “paper rights” overridden by more restrictive national and local laws. Much more must be done to bring national and local laws in line with more progressive international laws and standards.

We hope that the recommendations in this report can inform processes at the UN and other regional fora to adopt stronger and more evidence-based standards on the use of CCWs. Additionally, General Comment No 37 and the UN Guidance on LLWs, both issued early in the global COVID-19 pandemic, have not been properly promoted to States. It is of utmost importance that these standards reach law enforcement and security institutions and that their provisions are adopted and operationalized by internal

507 In Canada, a motion was presented at the City Council to withdraw tear gas from the SPVM (Service de Police de la Ville de Montréal) arsenal, which was supported by a coalition of 30 organizations. The final motion adopted by the City Council on 15 December 2020, asked the Public Health authority to provide an opinion as to the effect exposure to tear gas has on health and instructed Montreal’s Public Security Commission to consider that finding as well as to examine the impact of tear gas on civil liberties. In Chile, in September 2020, a bill to modify the law on Arms Control (Law N° 17.798) was introduced in the House Chamber to regulate the use of CCWs. The bill did not pass, but the precedent is significant. See <https://www.diarioconstitucional.cl/wp-content/uploads/5010/2024/1597418972.pdf>. In the US, a 2020 document (from the Safe Coalition, North Carolina) calls on Charlotte City Council to build upon the protections stated in the 2015 Civil Liberties Resolution including analysis and recommendations regarding the proper use of CCWs. See: <https://charlottenc.gov/CityCouncil/Committees/Safe%20Communities/Sept%2015%202020%20Safe%20Communities%20meeting%20materials.pdf>.

protocols. We also want to see regional fora adopt regional standards on these issues, in line with the UN. Lastly, more research on and testing of these weapons is needed. This testing should inform processes to develop more standards, especially around new technologies and trade.

Below we outline specific calls:

United Nations

1. The Office of the High Commissioner for Human Rights and/or the Special Rapporteur on Freedom of Assembly and of Association should be directed to prepare reports on:
 - 1.1. The health consequences of the use of CCWs.
 - 1.2. The current domestic regulatory regimes applicable to CCWs in States Parties, including the preparation of a draft model law on the pre-deployment, deployment, and post-deployment of CCWs in policing contexts.
 - 1.3. The application of the UN Guiding Principles on Business and Human Rights⁵⁰⁸ to manufacturers of CCWs.
1. The UN Human Rights Committee should direct States Parties to report on current domestic regulatory regimes in relation to CCWs in their periodic country reports.
2. The UN Guidance on LLWs must be reviewed in 2025, and civil society should be invited to participate in that process.
3. During the next review of the UN Guidance on LLWs,⁵⁰⁹ the group of experts should:
 - 3.1. Detail which weapons are expressly prohibited in protest contexts.
 - 3.2. Provide detailed guidance on the lawful use of drones in the context of protests and highlight instances in which the use of drones is unlawful.
 - 3.3. Provide detailed guidance on the lawful use of autonomous weapons systems, including if their deployment can ever be lawful, and highlight instances in which the use of autonomous systems is unlawful.
4. States should engage with and support international- and regional-level processes to develop trade controls, including the UN process towards a Torture-Free Trade Treaty.⁵¹⁰

508 See above n 476.

509 UN Guidance on LLWs above n 6 at para 8.1.

510 See <https://storymaps.arcgis.com/stories/2d9b2865e511428aa6b74cce84e984c5>.

African Commission on Human and Peoples' Rights

1. The African Commission should conduct a review of domestic regulations, protocols, and standing orders in States Parties which pertain to the trade⁵¹¹ and use of CCWs and prepare a report on the compliance of State Parties' regulations, protocols, and standing orders with international law and standards.
2. The African Commission should create a working group to investigate and report on the misuse of CCWs in Africa and to suggest appropriate revisions to the 2017 Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa.

Inter-American Commission on Human Rights

1. The IACHR should conduct a review of domestic regulations, protocols, and standing orders in States Parties which pertain to the use of CCWs. Particular attention should be paid to the policing practices in the management of assemblies, dispersal techniques, and the recent cases of misuse of CCWs, particularly in relation to the hundreds of eye injuries produced by KIPs.
2. The IACHR should promote further controls on the manufacture and trade of CCWs in the region. For example, it should issue a resolution with the view to prohibiting and preventing the use, production, export, and trade of equipment designed to inflict torture or ill-treatment and the abuse of any other equipment or substance to these ends in accordance with ongoing processes at the UN and other regional mechanisms⁵¹².

511 See African Commission, 472 Resolution on the prohibition of the use, production, export and trade of tools used for torture. ACHPR/Res.472 (LXVII) 2020, accessible at: <https://www.achpr.org/sessions/resolutions?id=497>.

512 *Id.*