

# USE OF FORCE

GUIDELINES FOR IMPLEMENTATION OF THE UN BASIC PRINCIPLES ON  
THE USE OF FORCE AND FIREARMS BY LAW ENFORCEMENT OFFICIALS

AMNESTY  
INTERNATIONAL



August 2015  
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Printed in the Netherlands

ISBN 978-90-6463-368-3

# ACKNOWLEDGEMENTS

These Guidelines could not have been produced without the help of the many people who gave their time and expertise to assist Amnesty International in its preparation.

The main work was carried out by a project team of three people: Anja Bienert (drafting), Maggie Maloney and Sarah Masters (legal and equipment related input, editing and proof reading). Furthermore, Daniela Grosche carried out extensive research and established an impressive database of examples from various countries. Liana Rodrigues did an amazing amount of work in carrying out additional research, checking upon the validity of documents, and proof reading. Carline Westervelt supported the team in the most valuable manner in organizational and other matters.

The following experts shared their great expertise, and provided valuable input and feedback during several review phases: Ian Chappell, Anita Danka, Kathleen Hardy, John-Erik Jensen, Jan Swaan, and Gary White.

There were many other people who contributed by giving feedback, input on specific questions or by sharing examples and reference documents.

From Amnesty International these were: Lawrence Amesu, Ulrike Beck, Covadonga de la Campa, Ahmed Elzobier, Rebecca Emery, Aymeric Elluin, Sofia García, Audrey Gaughran, Avner Gidron, Abdullahi Halakhe, Paul Heath, Papang Hidayat, Mariana Labastie, Cesar Marín, Marek Marczyński, Sabrina Mathani, Justin Mazzola, Maya Pastakia, Ana Piquer, Rasha Abdul Rahmin, Mary Rayner, Oliver Sprague, Rachel Ward, Jan Wetzels, Patrick Wilcken, Rosalia Vega, Katie Wood, Carlos Zazueta (and many others who contributed anonymously).

Outside Amnesty International, we are particularly grateful to Otto Adang, Martin Herrnkind, Christof Heyns, Andre Konze, Luciana Pol, Manuel da Silva, and Omega Research Foundation for their input, feedback and advice. Finally, we received excellent support by the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE) helping us to find and translate country legislation, operational procedures and manuals and to check on their validity.



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# INTRODUCTION

“The means may be likened to a seed, the end to a tree; and there is just the same inviolable connection between the means and the end as there is between the seed and the tree.

We reap exactly as we sow.”

[M. K. Gandhi, Hind Swaraj. Chap. XVI]

## I. Background of these Guidelines

### *Universal Declaration of Human Rights*

#### **Article 3**

“Everyone has the right to life, liberty and security of person.”

### *International Covenant on Civil and Political Rights*

#### **Article 6**

“1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

#### **Article 9**

“1. Everyone has the right to liberty and security of person.”

In order to be able to fulfil their responsibilities of maintaining law, safety and public order and preventing and detecting crime, law enforcement officials are granted a number of powers, including the power to use force and firearms.



**Explanatory note:** The term law enforcement official includes any security forces, including military forces, who exercise police powers, especially the power of arrest and detention. For reasons of readability, the term ‘police’ is sometimes used, however still in the broader sense to include other law enforcement personnel exercising police powers. See also: Commentary a) and b) to Art. 1 Code of Conduct for Law Enforcement Officials.

This power is often referred to as the state’s “monopoly of force”, that is, in so far as law enforcement officials are given the power to use force and firearms, this power is granted to them for the fulfilment of their duties to enforce the law. This power therefore comes with obligations and responsibilities, in particular with regard to the human rights that may be affected by the use of these powers and which the state and its agents are obliged to respect and protect. In the end, the legitimacy of and public trust in the law enforcement authority and the state as a whole are at risk when force and firearms are used in an excessive, arbitrary, abusive or otherwise unlawful manner. Human rights must be upheld whenever law enforcement agents exercise their power to use force and firearms.

In this regard, it is important to keep in mind the extremely challenging nature of the law enforcement profession: in their daily duties, law enforcement officials face a wide variety of situations, which sometimes require instantaneous decisions, with difficult judgements to be made about the appropriate response to the situation, often in highly stressful and even dangerous circumstances. In such situations they need to be guided, instructed and supported by a legal and operational framework that enables them to make the best possible decisions.

This framework should therefore be perceived as a source of support (and not as a burden) in the difficult situations law enforcement officials face, in providing:

- a firm legal ground on which to operate,
- operational instructions and guidance helping to make appropriate decisions, and
- adequate equipment and training to enable law enforcement officials to put these instructions into practice.

The creation of such a framework is ultimately the responsibility of the government and the command leadership of the law enforcement agency. They must ensure effective, lawful and human rights compliant policing. Moreover, it is an essential element of the state's obligation to guarantee the right to life and to physical integrity of every person.

***Nadege Dorzema et al. v. Dominican Republic (Series C No. 251), Inter-American Court of Human Rights (2012)***

“80. This Court has previously established that the State has an obligation to adapt its domestic legislation and ‘to ensure that its security forces, which are entitled to use legitimate force, respect the right to life of those who are under its jurisdiction.’ The State must be clear when defining domestic policies on the use of force and pursue strategies to implement the Principles on the Use of Force and the Code of Conduct. Thus, agents should be provided with different types of weapons, ammunition, and protective equipment that enable them to adapt the elements used in their reaction proportionately to the incidents in which they have to intervene, restricting the use of lethal weapons that can cause injury or death as much as possible.

81. The State must also train its agents to ensure that they know the legal provisions that permit the use of firearms and are properly trained so that if they have to decide on their use, they have the relevant criteria do so.”

## **II. The purpose of these Guidelines**

The legal and operational framework to be established must ensure that due regard is given to the rule of law and human rights in the exercise of the police power to use force and firearms. These Guidelines aim to provide a comprehensive overview of the considerations national authorities should take into account when establishing such a framework – covering both the indispensable legal base to be established domestically and the broad range of operational instructions and practical measures to be taken by law enforcement agencies to ensure that daily law enforcement practice is carried out in a lawful, human rights compliant and professional manner.

They were developed on the basis of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (named: “Basic Principles” hereafter). These Basic Principles were prepared by a range of experts from the area of law enforcement, including police officials, and were discussed in a series of preparatory meetings and consultations between 1987 and 1990 before finally being adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba (27 August to 7 September 1990). The General Assembly of the United Nations welcomed the Basic Principles in its resolution 45/121 of 14 December 1990.

Since then, the Basic Principles have become a fundamental reference and guide for those aiming to ensure human rights compliant use of force and firearms by law enforcements officials, in particular with due attention to the protection of the rights to life and security of person, as expressed in the preamble:

### Preamble

“[...]Whereas a threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole, [...]

[...]Whereas the Seventh Congress, in its resolution 14, inter alia, emphasizes that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights, [...]

[...]Whereas it is appropriate that, with due regard to their personal safety, consideration be given to the role of law enforcement officials in relation to the administration of justice, to the protection of the right to life, liberty and security of the person, to their responsibility to maintain public safety and social peace and to the importance of their qualifications, training and conduct,

The basic principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by Governments within the framework of their national legislation and practice, [...].”

Today, the Basic Principles are an invaluable tool for guidance and assessment of police work and are widely accepted as an authoritative statement of the law.<sup>1</sup> They are frequently used as a reference by international courts and other human rights bodies, international institutions and human rights organizations. Amnesty International regularly refers to the Basic Principles in its statements, reports and recommendations. Unfortunately, these reports usually have to emphasize the weaknesses in, or lack of, implementation of the Basic Principles.

These deficiencies can be found at various levels:

- Inadequate domestic legislation.
- Lack of an appropriate operational framework: non-existing or deficient procedures; insufficient planning and consideration for precautions; lack of training and appropriate equipment; insufficient supervision, control and corrective measures; in some (wealthier) countries, there also seems to be a tendency of over-reliance on new law enforcement tools and technical equipment, which are used without sufficient consideration for the standards and requirements established in the Basic Principles, and often their use is only reviewed when major damage has already occurred.<sup>2</sup>
- Impunity because of the failure to investigate, prosecute and punish excessive, arbitrary, abusive or otherwise unlawful use of force. In fact, a weak system of accountability contributes to a lack of respect for and effective implementation of the Basic Principles: in the absence of adequate control and oversight over the lawfulness and human rights compliance of law enforcement actions, law enforcement officials may actually carry out their work as they see fit without fear of being held accountable for their behaviour.
- In some contexts, authorities might simply lack the willingness to effectively implement the Basic Principles. This can be linked to open hostility to the concept of human rights and/or the deliberate intent to use the police as a means of repression.
- In other situations, there also seems to be a subtle tendency to weaken the standards established in the Basic Principles in the light of a real or perceived increase in threats such as terrorism or other forms of organized crime, or in areas where violent crime is prevalent. Authorities try to find “escape routes” by blurring the lines between military and law enforcement operations and the applicable legal standards,<sup>3</sup> or by bending/interpreting the Basic Principles and other human rights standards in a way that does not comply with human rights, e.g. with regards to the thresholds established for the use of lethal force.

<sup>1</sup> Report of the Special Rapporteur on extrajudicial executions, UN Doc. A/HRC/26/36 (2014), §44.

<sup>2</sup> For instance, in April 2014, the Catalanian Parliament in Spain decided to prohibit the use of rubber balls after several people have lost an eye or suffered from other serious consequences as a result of the use of rubber balls during demonstrations: <http://www.parlament.cat/activitat/bopc/10b222.pdf#page=19>, §24.

<sup>3</sup> The use of the term “*war on terror*” (particularly prevalent in the years following the attacks in the United States in September 2001) was actually an indication of such tendencies. The term seemed to imply that an international armed conflict was going on to which international humanitarian law would apply, while most anti-terrorism activities are actually law enforcement activities and thus subject to domestic and international human rights law and not to international humanitarian law. [For more on this see **Chapter 2.3.2 below**]. There are similar terms of “martial language” such as “*war on drugs*” which may have equally problematic implications for the overall approach of security agencies.

On the other hand, there are also numerous examples from across the world in which the concepts and the considerations as expressed in the Basic Principles are effectively translated into legal provisions and the operational set up of law enforcement agencies.

The present Guidelines were developed based on the analysis of a large number of examples of existing laws, regulations, codes of conduct, operational policies, rules or training documents relating to the use of force, which were deliberately taken from as many countries as possible, without any preference for any specific model or system. Problematic examples serve to demonstrate failures; other examples show how government authorities and law enforcement agencies can effectively give due consideration to the Basic Principles and take adequate and appropriate measures to implement the standards set out in the Basic Principles.

Drawing from these examples of domestic legislation and operational policies and regulations, the present Guidelines were developed. They outline what steps need to be taken by authorities to ensure the effective implementation of the Basic Principles in daily practice.

**However, it must be stressed that these examples are deliberately called “illustrative country examples”. This document does in no way suggest “copy-paste”-exercises as the environment in which the law enforcement task is carried out differs too much from one country to another, e.g. with regard to:**

- the political, legal and administrative set up,
- the overall security situation,
- the size of the country,
- economic, logistic and cultural issues.

**It is incumbent upon the authorities of each country to adopt the necessary legislative and operational measures suitable to the prevailing situation in the country. Nevertheless, the overall purpose should be to ensure that the legal and operational framework on the use of force and firearms is established in compliance with international human rights law and standards in general and, in particular, the Basic Principles.**

**It is to support authorities in that endeavour that the present Guidelines have been developed.**

### **III. The structure of this document**

**Part one** of this document contains the actual “Guidelines for Implementation of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials” (named: “Guidelines” hereafter), i.e. a summary of legislative, institutional and practical measures to be taken by governments and law enforcement agencies in order to comply with the international human rights standards set out in the Basic Principles.

**Part two** is the **Explanatory Text**, in which more in-depth information is provided with the considerations and reflections that culminated in the formulation of the present Guidelines. It is divided into two parts:

- **Section A** deals with domestic legislation and the minimum aspects that should be regulated by law and not be left to the operational decisions of a law enforcement agency – not only in relation to the use of force and firearms itself, but also and in particular to ensure effective accountability for such use.
- **Section B** deals with the operational framework which any law enforcement agency should establish in order to instruct, guide and assist law enforcement officials in the fulfilment of their duties. Such a framework is not achieved merely by drafting a human rights manual or including a few hours of human rights education in training curricula, but requires a set of concrete measures to be taken by the law enforcement agency. The term operational framework is therefore to be understood broadly, as encompassing the development of operational procedures and instructions (including standing orders), the provision of adequate law enforcement equipment and appropriate training as well as effective supervision and control.



**Each chapter is structured in the same way:**

- The chapter outline.
- The provisions of the Basic Principles that are relevant for the chapter.
- The Guidelines for implementation of these Basic Principles that are further explained in the chapter.
- The Explanatory Text itself with country examples and relevant international human rights law and standards (including reference documents from international bodies).

Frequent cross references **[to other Chapters]** serve to facilitate the navigation through this document.

**It is important to stress that where reference is made to domestic legislation, operational documents, training manuals or other documents, as a good or rather problematic example, this does not represent a judgement of (or an appreciation for) the overall quality of policing in that country (neither in general, nor in relation to the use of force and firearms in particular); nor does it imply that the rules or regulations quoted are effectively applied in practice. Unless something to the contrary is explicitly mentioned, the present document merely seeks to analyse these texts in the light of the standards set by the Basic Principles – independently of the situation in practice.**

In fact, all too often there is a considerable gap between the legal framework and other domestic regulations (i.e. internal regulations, training manuals), in particular those which are in compliance with international human rights standards, and the reality of the respect they receive and their implementation in daily law enforcement practice. To a large extent, this is due to the lack of effective enforcement of the rules set down in these texts by the command leadership of law enforcement agencies, government authorities, oversight institutions and the judiciary – a problem that will particularly be discussed in more detail in **[Chapter 3 and 10]**. Nevertheless, we decided to present all relevant examples – even from countries where these documents are not necessarily respected in daily practice – to highlight the available options for developing a human rights compliant legal and operational framework, and all authorities at every relevant level are called upon to enforce the respect for the rules they have established.

**And finally, any reference made to selected rules or regulations does not imply any general conclusion on the entire document as a positive or negative example of implementation of the Basic Principles.**

Our aim to present a geographically representative selection of country examples in this document has not been fully achieved – not only because of language barriers,<sup>4</sup> but more importantly, also as a result of inaccessibility of documents. While it was relatively easy to access legal provisions, this was much more difficult in the case of operational procedures, internal regulations or training material of law enforcement agencies. While some countries show great transparency with regard to their internal rules and regulations – which explains why their documents are so frequently referred to in these Guidelines – other countries seem to qualify them as protected documents that should not be accessible to the public. It should be noted, however, that transparency and openness are important means to ensure effective accountability of the agency and its members and to inspire public confidence and trust, which will ultimately contribute to improving the relationship between the public and the law enforcement agency<sup>5</sup> – and this includes transparency with regard to its rules and regulations.<sup>6</sup>

4 The examples provided here were either officially available in English, available in English translation on other websites (e.g. [www.legislationline.org](http://www.legislationline.org), <http://www.icla.up.ac.za/un/use-of-force>), or were translated by Amnesty International.

5 This is also one of the recommendations in **United States**, “The President’s Task Force on 21st Century Policing”, Final Report, May 2015: “1.3.1. Action Item: To embrace a culture of transparency, law enforcement agencies should make all department policies available for public review and regularly post on the department’s website information about stops, summonses, arrests, reported crime, and other law enforcement data, aggregated by demographics.”

6 A particularly frequently cited reference in this document is the website of the police college of the United Kingdom (<https://www.app.college.police.uk/>), that has pulled together in a publicly available manner a great number of documents governing policing practice as “Authorized professional practice”. This should in no way be understood as promoting the overall policing approach in the United Kingdom. To the contrary, it would certainly have enriched the present document if more countries would allow to access its policies and standards in a similar way.

The analysed documents were checked on their validity until the date of 1 July 2015. Later developments have not been taken into account. However, mistakes in relation to the translation or validity of documents cannot be completely ruled out. Information on necessary corrections (e.g. when documents have changed, were derogated, or newly created, or any inaccuracy in translation) is most welcomed and can be sent to [phrp@amnesty.nl](mailto:phrp@amnesty.nl).

**Amnesty International calls on all governments to implement these Guidelines and invites concerned individuals and organizations working on policing to ensure that they do so. Amnesty International believes that the implementation of these Guidelines is a positive indication of a government's commitment to effective, lawful and human rights compliant policing.**

#### IV. Scope of these Guidelines

- The Basic Principles apply to all law enforcement personnel. This includes – in accordance with commentary b) on Article 1 of the UN Code of Conduct for Law Enforcements Officials – any security forces, including military forces,<sup>7</sup> who exercise police powers, especially the power of arrest and detention (including staff members working inside detention facilities). In countries where the state engages private security companies to carry out law enforcement functions, these Guidelines also cover private security personnel acting on behalf of the state.<sup>8</sup>
- The Basic Principles do not contain an explicit definition of what is considered force in the context of law enforcement. However, the following elements clearly indicate what is to be considered “force” in the sense of the Basic Principles: the Basic Principles require law enforcement officials to apply non-violent means prior to resorting to force whenever possible (Basic Principle No. 4). Particular emphasis is also put on **“alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation” (Basic Principle No. 20)**. From this clearly follows that any means or methods that go beyond these alternatives – which are basically various forms of communication – have to be considered as the use of force and analysed in the light of the Basic Principles.



**Accordingly, “force” is to be understood as *any* physical means deployed against a person in order to achieve a law enforcement purpose, in particular to obtain compliance with an order.**

In this regard, force is to be understood broadly, starting from simply touching a person to the (potentially and even intentionally lethal) use of firearms and also including the use of means of restraints.<sup>9/10</sup>

This does not mean that the verbal warning to use force if a person does not comply with the order of a law enforcement official falls outside the scope of international or domestic human rights regulation. Even the threat or warning by a law enforcement official to use force can be very intimidating and can generate serious feelings of stress and fear. Therefore, it will have to conform to the legal framework, particularly to the rules governing the exercise of police powers, including obligations to report and control. Thus, there should be domestic regulations for the exercise of police powers in general and these should also cover verbal warnings to

<sup>7</sup> On the challenges related to the deployment of military forces for law enforcement tasks [see Chapter 7.4.4].

<sup>8</sup> However, the Basic Principles and thus the present Guidelines do not apply to the personnel of private security companies, who do not have law enforcement powers, unless they have – exceptionally and explicitly – received such powers from the competent authorities of the country they are working in. In particular, they do not apply to private security personnel working for private companies since they are not carrying out state functions.

<sup>9</sup> The applicability of the Basic Principles on means of restraint is also indirectly confirmed by the reference to the Rules No. 33, 34 and 54 of the Standard Minimum Rules for the Treatment of Prisoners (SMR) in Basic Principle No. 17 – a reference that would have been unnecessary if instruments of restraint were not considered to be covered by the Basic Principles. (These rules are now – slightly reformulated – Rules No. 43, 47, 48 and 82 in the Mandela Rules (i.e. the revised SMR), E/CN.15/2015/L.6/Rev.1).

<sup>10</sup> When assessing the situation in specific contexts, one should bear in mind linguistic differences: In some countries, there is no equivalent to the term “force” in the sense of the Basic Principles; instead two different terms are used: “coercion” and “violence”, the latter being understood as a type of force that may cause injury, the former considering mainly instruments of restraint (as long as they are not causing any sort of injury). However, with what was explained above, the term “force” as used in the Basic Principles applies to both notions equally and there is no need to attempt any delimitation between the two.

exercise such powers. However, such a verbal warning is considered to be one step below the actual use of physical force and will therefore not be held up to the Basic Principles (except in the case of firearms [see **Chapter 2.6**]).

- The Basic Principles only apply to the use of force against persons (see Basic Principle No. 1); however, certain ways of using force against objects may be subject to similar considerations as the use of force against persons. It is important to bear in mind that the use of force against objects may have serious consequences for persons as well: it may not only have an impact on people's personal property or their privacy but, depending on the object and the way force is used, it may even have consequences for the physical and mental well-being of a person: there may also be immediate physical consequences if an object is of vital importance for a person, e.g. medication, protective clothing in severe weather conditions, or glasses for a person who can hardly see anything without them. The affected person may also suffer from trauma and physical health problems as a result of the stress and fear he or she has experienced: a squad of police officers in full protective gear breaking into a house in the middle of the night to carry out an arrest, violent search operations turning everything upside down in a house or a place of religious worship, or the destruction of an object of particular value to the person may even be perceived as worse than the direct use of force against the person. These examples illustrate the importance of regulating any use of force by law enforcement officials – be it against persons or against objects – by law and in operational procedures. In this sense, many of the underlying legal considerations presented below also apply to the use of force against objects. Still, in line with the scope defined by the Basic Principles, the present document will concentrate solely on the use of force against persons.





# INTERNATIONAL HUMAN RIGHTS PRINCIPLES GOVERNING THE USE OF FORCE AND FIREARMS

Law enforcement officials face a large variety of situations in their daily work, each requiring a different response, based on the overall situation and circumstances, the threat assessment, skills, equipment, etc. Thus, there is little room for ready-made answers in law enforcement and there is an inherent necessity for personal discretion on the part of the law enforcement official in deciding on the appropriate response in a given situation.<sup>11</sup> However, it goes without saying that there needs to be a clear legal framework governing the work of law enforcement officials within which such discretion can be exercised – in particular when it comes to the use of force.

The use of force must only be resorted to with the utmost respect for the law and with due consideration for the serious impact it can have on a range of human rights: the right to life, to physical and mental integrity, to human dignity, to privacy, and to freedom of movement – to name just the ones most frequently affected. The general principles that must govern any use of force have been set out very clearly by the UN Special Rapporteur on extrajudicial executions,<sup>12</sup> and can be summarized as set out below:

## I. Legality (legal basis)

### **Basic Principle 1**

“Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials.”

The police power to use force needs to be sufficiently based in domestic legislation.<sup>13</sup> Particularly the use of force needs to serve a legitimate objective as established by law (i.e. the principle of legality in the strict sense; not to be understood in the sense of the overall qualification of an action as (il)legal or (un)lawful). In fact, a precondition for an act to be evaluated in the light of the Basic Principles is that force is used for a lawful law enforcement purpose. When the use of force is not aimed at achieving a legitimate objective as established in domestic legislation (e.g. punishment, use of physical means to obtain a confession), it is unlawful *per se* and does not fall within the scope of these Guidelines.

Obviously, the domestic legislation itself must be in line with international human rights law and standards. An important aspect in this regard is a state’s duty not to discriminate. Domestic legislation must affirm that the use of law enforcement powers – including the use of force and firearms – must be carried out without any discriminatory bias, e.g. on the grounds of race, ethnicity, religion, gender identity or political affiliation. The

<sup>11</sup> It is important to emphasize that the personal discretion of individual officers when carrying out law enforcement duties does not exempt the command leadership from ensuring and exercising proper command and control [see below Chapter 3 and 10].

<sup>12</sup> Special Rapporteur on extrajudicial executions, UN Doc. A/HRC/26/36 (2014).

<sup>13</sup> *Ibid.* §§ 56-58.

legislation itself must also be formulated in such a way that it does not de facto negatively affect a specific group of people more than the rest of the population.<sup>14</sup>

## II. Necessity

The principle of necessity serves to determine whether force should be used at all and, if so, how much force.

### Basic Principle 4

“Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”

The principle of necessity has three components:<sup>15</sup>

- **Qualitative:** Is force necessary at all or is it possible to achieve the legitimate objective without resorting to force?
- **Quantitative:** How much force is needed to achieve the objective? The level of force used should be the minimum that can still be considered effective.
- **Temporary:** The use of force must stop once the objective has been achieved or is no longer achievable.

## III. Proportionality

The principle of proportionality serves to determine whether there is a balance between the benefits of the use of force and the possible consequences and harm caused by its use.

### Basic Principle 5

“Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:  
(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; [...].”

The principle of proportionality prohibits the use of such force where the harm inflicted outweighs the benefits of the use of force, i.e. the achievement of a legitimate objective. As such it requires law enforcement officials to refrain from using such force and – ultimately – to accept that the legitimate objective may not be achieved. It expresses the principle that the end does not justify all means. This becomes particularly important when it comes to the right to life.

To put it briefly, the principle of proportionality means that law enforcement officials are only allowed to put life at risk if it is for the purpose of saving/protecting another life.<sup>16</sup>

14 Cf. for instance the Working Group on Discrimination against Women, <http://www.ohchr.org/EN/Issues/Women/WGWomen/Pages/SubmissionInformation.aspx>: “Direct and indirect discrimination: The definition of discrimination against women is broad and not only covers the direct types of discrimination no matter whether intended or not, but also other forms, which result from laws, policies and/or practices that are formally gender neutral but that, in practice, have a disproportionately negative impact on women (indirect discrimination).”

15 Special Rapporteur on extrajudicial executions, UN Doc. A/HRC/26/36 (2014), §§ 59-62.

16 See also Report of the Special Rapporteur on extrajudicial arbitrary executions, in: UN Doc. A/61/311 (2006), §§ 42, 44: “42. [...] The general standard for proportionality is that the use of force must be ‘in proportion to the seriousness of the offence and the legitimate objective to be achieved’. [...] The Basic Principles permit the intentional lethal use of force only ‘in order to protect life’. [...] 44. [...] The fundamental question is of proportionality between the objectively anticipatable likelihood that the use of force will result in death and the comparable anticipatable likelihood that failing to incapacitate the individual would result in the death of others. It must also be remembered that proportionality is a requirement additional to necessity. The principle of necessity will, thus, never justify the use of disproportionate force. If all proportionate measures have proved insufficient to apprehend a suspect, he or she must be permitted to escape.”

### Report of the Special Rapporteur on extrajudicial executions, UN Doc. A/HRC/26/36 (2014)

“65. [...] In general terms, when any right is limited, proportionality requires that the good that is done must be compared with the threat posed. The interest harmed by the use of force is measured against the interest protected; where force is used, whether lethal or not, the same norm applies. According to the Basic Principles: ‘Whenever the lawful use of force and firearms is unavoidable, law enforcement officers shall... exercise restraint and act in proportion to the seriousness of the offence and legitimate objective to be achieved.’

66. Proportionality sets a maximum on the force that might be used to achieve a specific legitimate objective. It thus determines at what point the escalation of force that is necessary to achieve that objective must stop. If necessity can be visualized as a ladder, proportionality is a scale that determines how high up the ladder of force one is allowed to go. The force used may not go above that ceiling, even if it might otherwise be deemed ‘necessary’ to achieve the legitimate aim. [...]

72. The ‘protect life’ principle demands that lethal force may not be used intentionally merely to protect law and order or to serve other similar interests (for example, it may not be used only to disperse protests, to arrest a suspected criminal, or to safeguard other interests such as property). The primary aim must be to save life. In practice, this means that only the protection of life can meet the proportionality requirement where lethal force is used intentionally, and the protection of life can be the only legitimate objective for the use of such force. A fleeing thief who poses no immediate danger may not be killed, even if it means that the thief will escape.” [emphasis added]

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**Explanatory note:** It should be noted that terminology across legislative systems and operational frameworks varies a lot. In particular, the terms necessity and proportionality are often used in a different way compared to how they are presented here. Sometimes, the term “proportionality” is used to evaluate whether the amount of force used was justified (‘proportionate to the resistance met’, i.e. what is presented here under quantitative necessity). The term “necessity” as it is used in some contexts includes a balancing element (which corresponds to the principle of proportionality as it is presented here), in particular when there is a requirement of “absolute necessity”. In some legal systems the term “proportionality” has a broader meaning, covering all elements of necessity as well as the balancing element of proportionality as it is presented here. One can certainly not claim that one terminology is more appropriate than the other. However, it is crucial that – irrespective of the terms used – all elements as presented here are covered in the legislative and operational framework in one way or the other: the question whether force is necessary at all (qualitative element), whether the objective can be achieved with a lower degree of force (quantitative element), whether the force was still needed to achieve the objective at the moment of its use (temporal element) and whether in absolute terms the “costs” in terms of harm caused by the use of force outweigh (or not) the legitimate objective (balancing element). For the purpose of these Guidelines, the definitions as provided for by the Special Rapporteur on extrajudicial executions will be used.

## IV. Accountability

The great importance of their responsibility and duty to society, as well as the wide powers granted to them, requires that law enforcement agencies are held accountable for the fulfilment of their duties and their compliance with the legal and operational framework. This means that not only the individual law enforcement official must be held accountable for his/her actions and omissions, but also all superiors who give orders to, supervise or otherwise command and control law enforcement officials, or who are responsible for the planning and preparation of law enforcement operations, as well as the agency as a whole.

Accountability can only be ensured if appropriate measures are implemented at various levels and stages:

- The law enforcement institution itself is accountable for having proper policies and procedures in place in relation to the use of force and firearms. This includes a supervision and control set-up that ensures the effective application of these policies and procedures in daily law enforcement practice.
- The institution must also be accountable for a proper lessons learned process to ensure that policies, procedures, training and equipment are continually reviewed to prevent repetition of mistakes or otherwise undesirable results of law enforcement actions.
- It is furthermore part of the institutional responsibility that law enforcement officials are given adequate training to develop the professional skills required for the fulfilment of their tasks. Such training must also be continually evaluated as to its effectiveness in ensuring the law enforcement agency is actually staffed with professional officials who meet the high standards required.
- Accountability can only be ensured through the existence of a clear chain of command, where responsibilities are clearly established for each and every level within the hierarchy; and each official within the law enforcement agency must be held accountable for any failures to effectively fulfil the responsibility applicable to his or her level.

Effective accountability can only be achieved through a system of checks and balances allowing for the evaluation of any law enforcement action with regard to its compliance with the law, including human rights, as well as with internal regulations and operational procedures; and this system should also enable an assessment of the effectiveness of the action in terms of fulfilling law enforcement responsibilities and duties. Accountability therefore requires a range of mechanisms, involving the judiciary, the legislature, the executive and the public. They all together should contribute to achieve the following aims:

- to hold accountable those responsible for violations of the law, including violations of human rights, and to provide for redress and compensation for victims of such violations;
- to prevent future violations; and
- to improve the work of the law enforcement agency as a whole through an effective lessons learned process leading to corrective measures.

## **V. Conclusion**

The present document aims to provide guidance on how the four principles (legality, necessity, proportionality and accountability) and the underlying legal considerations need to be put into practice by states and law enforcement agencies when it comes to the use of force against persons. It is worth noting, however, that these four principles must govern any state action that impacts on the human rights of a person; particularly any use of police powers by law enforcement officials must be in compliance with these principles, e.g. when carrying out an arrest or a stop-and-search activity or when using force against an object.

# DEFINITION OF TERMS

<b>Arbitrary use of force</b>	Use of force that does not seek to achieve a lawful law enforcement purpose or that contains elements of inappropriateness, injustice or lack of predictability under the circumstances.
<b>Abusive use of force</b>	Intentional application of force beyond the limits of existing powers to use such force.
<b>Acoustic devices</b>	Devices that emit a deterrent tone to disperse a crowd (or can be used as a megaphone type device to convey instructions over a long distance and wide area). They can be free standing, vehicle mounted, embedded in a riot control shield or carried (e.g. over the shoulder).
<b>Autonomous weapons systems</b>	AWS (Autonomous Weapons Systems) are systems which, once activated, can select, attack, kill and wound human targets without effective human control. AWS are different from remotely piloted aircraft or armed drones, which are remotely controlled and depend on a person to make the final decision whether to fire on a target. AWS are also often referred to as Lethal Autonomous Robotics (LARS) or Lethal Autonomous Weapons Systems (LAWS).
<b>Chemical irritants</b>	Chemical irritants are designed to temporarily deter or disable an individual by producing sensory irritation. They are commonly defined as locally acting chemical agents that rapidly produce disabling physical effects through sensory irritation of the eyes and upper respiratory tract which disappears within a short time following termination of exposure. A number of chemicals are used, most commonly: CN, <sup>17</sup> CS, <sup>18</sup> OC/Pepper <sup>19</sup> and PAVA. <sup>20</sup> Chemical irritants are commonly delivered through hand-held sprays, hand thrown grenades or weapon launched projectiles. Chemical irritants such as those listed above are often referred to as tear gases. This is a generic, non-specific name for such equipment. Under some national and international laws, for example in the Chemical Weapons Convention, these types of chemical irritants are also known as Riot Control Agents and are defined as: “Any chemical not listed in a

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- 17 The irritant properties of CN (chloroacetanophone) for crowd control are designed to prevent people from staying in an area voluntarily for long before the gas seriously disables them. CN gas can contaminate rooms, furniture, vehicles and clothing; its effects continue long after it has been released, and in high concentrations the gas is lethal if the victim is in a confined space. CN is now the active ingredient in Mace sprays.
- 18 CS gas is up to five times more irritant than CN gas, and has been developed in the USA and UK. Despite considerable evidence of the detrimental effects of CS gas on human health, it remains the “tear gas” most commonly used by security forces. The use of CS gas can have indiscriminate effects.
- 19 Oleoresin Capsicum (OC) is the principal ingredient of pepper spray which is an irritant but not necessarily a tear gas. The components of pepper spray are of biological origin and can vary depending on the capsicum used. It can contain very many different chemicals, few of which have been adequately studied.
- 20 PAVA (pelargonyl vanillylamide) pepper spray is a synthetic formulation of one active OC constituent, and is classified as an inflammatory, since, like OC, it causes acute burning of the eyes, severe inflammation of the mucous membranes and upper respiratory tract, and produces coughing and gagging.

Schedule [of the Chemical Weapons Convention], which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure.”

<b>Electric shock devices – projectiles</b>	A pistol shaped electric shock weapon (e.g. “Taser”). On activation, it fires two darts attached to the weapon by fine wires, which on impact administer an electric shock to the person. The shock can be continuous and prolonged if the trigger is held down (up to minutes), repeated numerous times if retriggered, or can be interrupted. Most models can also produce a spark across the electrodes and can be used as direct contact stun weapons, administering a painful localized electric shock.
<b>Electric shock devices – stun batons</b>	A portable, hand-held weapon that can be used to inflict a painful electric shock by touching electrodes onto the skin of the subject. They usually have 2-4 electrodes on the tip and some models have electrode strips of metal along the length of the baton. Some can also be used as a striking weapon like an ordinary baton, but some only function as an electric shock weapon. Many models can produce a spark discharge across the electrodes, creating a loud crackling sound and visible sparks.
<b>Firearm</b>	A weapon that by nature of its ammunition is designed to take life.
<b>Force</b>	Any physical means deployed against a person in order to achieve a law enforcement purpose, in particular to obtain compliance with an order.
<b>Kinetic impact weapons/projectiles</b>	Launchers which when fired can propel a range of different projectiles to the target. These projectiles can be made of wood, rubber, plastic or other materials (e.g. fabric bags weighted with lead shot). Single and multiple projectiles can be fired including e.g. balls, segments, blocks or cylinders of wood, plastic or rubber. On impact they are designed to cause blunt trauma (i.e. non-penetrating trauma). They are fired from various types of launchers and fall into two categories: direct fire rounds and indirect fire rounds (also known as ‘skip fired’) which are intended to be fired into the ground in front of the target.
<b>Kinetic impact weapons – striking</b>	Hand-held devices such as batons, truncheons, sticks and clubs are used to strike an individual to cause physical pain and injury or to threaten with the infliction of such pain. They can be made of wood, plastic, metal or other material and can be short or long (20 cm - 2 m), telescopic, collapsible or side-handled.
<b>Law enforcement official/Law enforcement agency</b>	Any security forces, including military forces, who exercise police powers, especially the power of arrest and detention. A law enforcement agency is a state institution charged with the enforcement of the law, which may include traffic police, prison service, criminal investigation bodies, public order units or departments, border guards etc.
<b>Irons</b>	Metal rings usually fixed around the ankles and secured by means of a bolt or screw arrangement; non-adjustable, linked together with a bar or chain.

<b>Less lethal weapon</b>	Term used to describe a weapon that is designed for the use of force without causing death, while acknowledging the inherent risk of <i>any</i> weapon to cause death depending on the circumstances and manner of its use. Also sometimes referred to as non-lethal (see below).
<b>Lethal force</b>	A type of force that involves either the high likelihood of causing death (potentially lethal force), or is used with the clear knowledge that it will lead to the loss of life (i.e. intentional lethal use of force).
<b>Necessity</b>	The criteria which assess whether the law enforcement action (in this instance: the use of force) is necessary at all to achieve the objective or could be achieved without force (qualitative element), how much force is needed for that purpose (quantitative element), and for how long force is needed (temporal element).
<b>Non-lethal weapon</b>	Term used to describe a weapon that is designed for the use of force without causing death – though any device may cause death in certain circumstances or if used in a certain way, therefore a term to be replaced by the term ‘less lethal weapon’ (see above).
<b>Proportionality</b>	The criterion weighing the importance of the law enforcement objective (benefit) against the degree of restriction/harm caused to human rights (cost) to make sure that the cost in terms of human rights (here: as a result of the use of force) does not outweigh the benefit of achieving a certain law enforcement objective.
<b>Riot control agent</b>	Riot control agents are defined in Article II.7 of the Chemical Weapons Convention as: “any chemicals not listed in a Schedule [i.e. of the Chemical Weapons Convention], which can rapidly produce in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure.”
<b>Serious injury</b>	A life threatening or life changing injury, e.g. loss of limb, loss of organ functions, etc.
<b>Spiked baton</b>	A baton with sharp spikes covering its entire length. Can be made of metal or other material.
<b>Third person</b>	A person who does not present a threat at the moment when a law enforcement official uses force (this may be a totally uninvolved person such as a bystander, but also a peaceful demonstrator, a hostage etc.).
<b>Thumb-cuffs</b>	A restraining device designed to be placed around a detainee’s thumbs consisting of two small cuffs connected by a chain or a solid metal bar. Some cuffs are serrated in the inside.
<b>Uninvolved person</b>	Term used in the Basic Principles to describe a person who should be particularly protected against harm as a result of the use of force, but here the preferred term used is: Third person (see above).

**Water cannon**

A water cannon can be free standing, vehicle mounted, building mounted or backpack style and is essentially a high pressure pumping system designed to shoot jets of water at people. The pressure of the water can be adjusted from low pressure to soak the person and deter or demoralise, to high pressure to inflict a blunt trauma pushing back a person or knocking him/her to the ground. A water cannon can also be modified to fire small volumes (“slugs” or “bullets”) of water. The water can have additives including marker dye (for later identification of persons) or a range of chemical irritants for additional effects.



# STANDARDS CITED AND ABBREVIATIONS USED

**AFOs** – Armed Firearms Officers

**AINL** – Amnesty International, Dutch Section

**ACHR** – American Convention on Human Rights

**ACPO** – Association of Chief Police Officers

**AWS** – Autonomous Weapons Systems

**Basic Principles (BPUFF)** – United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

**Chemical Weapons Convention** – OPCW [Organization for the Prohibition of Chemical Weapons] Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction

**CCLEO** – United Nations Code of Conduct for Law Enforcement Officials

**CN** – Chloroacetophenone

**CoE** – Council of Europe

**European Prison Rules** – Council of Europe – European Prison Rules

**Commission on Crime Prevention and Criminal Justice** – United Nations Commission on Crime Prevention and Criminal Justice

**Commissioner of Human Rights of the Council of Europe**

**ECHR** – European Convention on Human Rights (formally the Convention for the Protection of Human Rights and Fundamental Freedoms)

**Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

**CPT** – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

**CPT Standards** – Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

**CS** – Tear gas

**European Court of Human Rights**

**Equality and Human Rights Commission** – United Kingdom Commission on Equality and Human Rights

**ICCPR** – International Covenant on Civil and Political Rights

**ICRC** – International Committee of the Red Cross

**INP** – Indonesian National Police

**Inter-American Commission on Human Rights**

**Inter-American Court of Human Rights**

**IPCC** – Independent Police Complaints Commission

**Hague Declaration of 1899** – Hague Declaration concerning Expanding Bullets

**Human Rights Committee** – Human Rights Committee, General Comment No. 31 to Art. 2 ICCPR (2004)

**Mandela Rules** – The UN Standard Minimum Rules for the Treatment of Prisoners [SMR], originally adopted by the UN Crime Congress in 1955, have been revised (and renamed) during 2010-2015. The revised SMR – named Mandela Rules – were adopted by the UN Commission on Crime Prevention and Criminal Justice on 21 May 2015 (E/CN.15/2015/L.6/Rev.1), which recommended their adoption by the UN General Assembly, a process which should be completed by the end of 2015.

**Minnesota Protocol** – UN Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions, in: United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, UN Doc. E/ST/CSDHA/12 (1991).

**NGO** – Non-governmental organization

**OC** – Oleoresin Capsicum, Pepper spray

**OSCE** – Organization for Security and Co-operation in Europe

**Patten Commission** – Independent Commission on Policing for Northern Ireland

**PAVA** – Pepper spray

**PHRP** [in footnote] – Police and Human Rights Programme, Amnesty International Dutch Section

**PSNI** – Police Service of Northern Ireland

**SMR** – Standard Minimum Rules for the Treatment of Prisoners – see: Mandela Rules

**Special Rapporteur on extrajudicial executions** – United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions

**Special Rapporteur on freedom of peaceful assembly** – United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association

**UN** – United Nations

**UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power**

**UDHR** – Universal Declaration of Human Rights

**United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice Rights, General Assembly, UN Doc. A/C.3/69/L.5 (25 September 2014).**

**UNODC** – United Nations Office on Drugs and Crime



PART ONE

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**GUIDELINES FOR IMPLEMENTATION  
OF THE UN BASIC PRINCIPLES ON  
THE USE OF FORCE AND FIREARMS  
BY LAW ENFORCEMENT OFFICIALS**



**GUIDELINE NO. 1: The power of the police to resort to the use of force and firearms must be regulated by law.**

- a) The power of law enforcement officials to use force must be established in law, describing the circumstances in which and the purposes for which the use of force may be considered; this should also include a legally constituted process for the approval and deployment of equipment and weapons to be used. [see also Guideline 6]
- b) The use of force must be subject to the strict application of the principle of necessity: in qualitative terms (to use force only if the legitimate objective cannot be achieved without it), in quantitative terms (to use only the minimum force necessary to achieve the objective) and in temporal terms (the use of force must stop once the objective is achieved or can no longer be achieved).
- c) The law must prohibit use of force which causes harm that outweighs the legitimate objective (principle of proportionality).

**GUIDELINE NO. 2: The “protect-life”-principle must be enshrined in law, i.e. any force that involves a high likelihood of lethal consequences, in particular use of firearms, may only be used for protecting against a threat of death or serious injury.**

- a) The use of firearms – i.e. of a weapon that is designed to kill – must be regulated by specific provisions of the law, establishing a distinctly higher threshold for the use of firearms than for other forms of use of force.
- b) Any use of a firearm against a person must be considered to be potentially lethal; therefore the law may only authorize the use of firearms when there is a serious threat of death or of serious injury.
- c) The mere fact a person flees from arrest or escapes from custody does not justify the use of a firearm, unless this person presents an ongoing grave threat to the life of another person that can be realized at any time.
- d) Despite the fact that a firearm is designed to kill, law enforcement officials must take all precautionary measures to prevent the loss of life when resorting to the use of firearms.
- e) The use of a firearm in such a way that does not give a person any chance of survival – i.e. the intentional lethal use of the firearm – may only be authorized in the most extreme situation of a threat to life, in which the death of the person is the only way to prevent the loss of an imminently threatened life of another person; in any case, the death of the person must always be only a means to an end (preventing the loss of another life) and must never be a goal in itself.
- f) Any (other) type of force that carries the likelihood or high risk of causing death must be subject to the same strict application of the principle of proportionality and therefore only be allowed for the purpose of preventing death or serious injury.
- g) The protection of third persons must be given absolute priority. In particular, no law enforcement operation may be planned or conducted in such a way that from the outset accepts the killing or causing serious injury to third persons by the intervening law enforcement officials.
- h) As a rule, law enforcement officials must be obliged to issue a warning before resorting to the use of a firearm – situations in which such a warning is not required must remain the exception, must be clearly defined as such and need to be assessed individually in each situation.

**GUIDELINE NO. 3: Domestic legislation must ensure full and transparent accountability of law enforcement officials for the use of force and firearms.**

- a) Law enforcement officials must not be exempted from criminal liability for unlawful acts committed in the course of duty.
- b) Law enforcement officials must be entitled to refuse orders that are clearly unlawful and must be held responsible for knowingly executing unlawful orders. Such orders may not serve as an acceptable defence.
- c) Criminal investigations must seek to evaluate the responsibility under criminal law of the acting law enforcement officials for any unlawful behaviour, the responsibility of colleagues who witnessed an unlawful act but did not take steps to prevent it, and the responsibility of commanding and superior officers who may have given an unlawful order or have failed to prevent the unlawful use of force.
- d) Commanding and superior officers must be held accountable not only for unlawful orders they have given, but also for failings and other omissions in their superior and command responsibility which resulted in death or serious injury. In particular, they should be held liable when they knew or ought to have known that the law enforcement officials under their control and command committed unlawful acts and when they have failed to prevent them from doing so. They should also incur liability when they have failed to undertake measures of bringing those law enforcement officials before competent authorities for investigation.
- e) Safeguards must be established to ensure that criminal investigations are carried out in an effective, prompt, impartial and independent manner. In particular, the investigation must be carried out by a department or unit that has no link with the one of the law enforcement official under investigation. Clear rules must be established for the supervision of the investigation and proper evidence gathering.
- f) Disciplinary investigations may be required in cases where the conduct did not amount to a criminal offence, and also to determine additional disciplinary measures in case of a criminal offence. However, they should never preclude or replace criminal proceedings.
- g) Criminal and disciplinary penalties for use of force in breach of the law or of internal regulations must be commensurate with the committed offence or fault.
- h) An independent, impartial external oversight body should be mandated to investigate at least the most serious incidents in which force was used (i.e. which resulted in death or serious injury) and this irrespective of whether a criminal investigation has started or not. This body should have the mandate not only to carry out its own investigation, but also (e.g. in view of the correct gathering of evidence) to oversee the proper conduct of disciplinary investigations and to monitor the conduct of criminal investigations and the prosecutorial process. It should also intervene in case of undue delays.
- i) Adequate supervision, control and reporting measures need to be taken to enable effective investigations compliant with human rights standards. This requires the obligation to report to all relevant levels of supervision and oversight depending on the seriousness of the incident: to the superior, to the authorities competent to decide whether a criminal investigation needs to be opened, and/or to the independent oversight body.
- j) In all situations in which they interact with the public, law enforcement officials must be identifiable through name or number tags. Body-worn cameras can have serious human rights repercussions (e.g. privacy, dignity), but may also in certain circumstances serve to discourage unlawful use of force, including lethal force – provided their use is embedded in a functioning system of accountability. Any decision to introduce body-worn cameras must be taken by carefully balancing the relevant human rights issues in each specific context.



k) The accountability system must give due attention to the rights and needs of victims of the use of force. These include: the right to medical assistance, to file a complaint, to be informed of the progress of the investigation, to name and interrogate witnesses, to receive legal and psychological support, to be informed of the outcome of the investigation, to protection of privacy, to protection against threats and intimidation, and the right to full reparation, including compensation, rehabilitation, restitution, satisfaction and guarantees of non-repetition, if the use of force was found to be unlawful.

**GUIDELINE NO. 4: The command leadership of law enforcement agencies must create an operational framework that contains instructions for various kinds of situations that law enforcement officials may face during their work, including decision making criteria and the conditions for the use of force.**

a) The operational framework must not provide ready-made answers for specific type of situations. On the contrary, it must instruct the acting law enforcement officials to assess each individual situation on its own merits and thus allow for a certain personal discretion when deciding whether or not to resort to the use of force. However, the operational framework should present the possible options of response in a given situation, define the criteria that should guide the decision making process and the precautions to be taken, and set clear boundaries as to what is and what is not allowed (prohibitions).

b) The operational concept on the use of force should be guided by the overarching principle that law enforcement officials should seek to avoid the need to resort to the use of force, and require them to proactively seek to resolve any situation through other means than the use of force, such as the means of persuasion, negotiation, and de-escalation. In particular, law enforcement officials must be required to issue – as far as possible – a warning before *any* use of force.

c) The element of precaution must be given the utmost attention in both planned operations and suddenly occurring situations. This includes:

- obtaining and analysing relevant information in advance as much as possible;
- anticipating various scenarios, and making an assessment of the threats and risks in the given situation;
- ensuring the availability of a range of tactical options, including: protective equipment and means of communication, equipment and weapons allowing for a differentiated response, as well as sufficient resources and backup;
- deciding on the appropriate time and place for any law enforcement action with a view to minimizing risks and harm for the public as well as the law enforcement officials involved;
- ensuring the protection of persons or groups at risk;
- providing for the protection and/or evacuation of third persons;
- ensuring the availability of medical assistance.

d) Any use of force must be guided by the concept of a differentiated response with a view to minimizing damage: law enforcement officials should be instructed not to immediately resort to the easiest means at their disposal, but to choose – among the available means that are likely to be effective – the one that carries the lowest risk of causing harm and injury.

e) Law enforcement officials must not be expected to achieve their objectives at any cost. The operational framework must offer the option of retreat with a view to minimizing damage.

**GUIDELINE NO. 5: Law enforcement agencies must provide an operational framework that provides clear instructions on when and how to use a firearm.<sup>21</sup>**

a) The operational framework must reiterate the “protect-life”-principle and order law enforcement officials to seek to avoid the use of a firearm unless strictly necessary. It should give instructions for a range of situations that law enforcement officials may face and how to respond to them:

- Even in case of a potentially lethal attack, consideration must be given to a response with less lethal force, if that is likely to be effective and does not increase the risk for the law enforcement official or any third person.
- The mere fact of a person fleeing from arrest or escaping from custody does not justify the use of a firearm, unless this person presents an ongoing grave threat to the life of another person that can be realized at any time.
- The “protect-life”-principle requires that in case of doubt, law enforcement officials should not make use of their firearm.

b) The instructions should include the precise wording of the warning to be made before resorting to the use of a firearm, which should be a constant part of the firearms training so that it becomes ingrained and law enforcement officials can automatically repeat it in the stressful situations in which they may have to use a firearm. Firing warning shots is inherently risky and should either be prohibited or only considered as an exceptional means of warning with due precautions to be taken for the safety of others.

c) A distinction must be made between the potentially lethal use of a firearm and the intentional lethal use of a firearm. Intentional lethal use of a firearm is allowed only when a potentially lethal attack is already underway in such a manner that the death of the attacking person is the only possible means to save someone else’s endangered life, which can include the life of the law enforcement official. For all other situations, instructions should be given on how to shoot and which part of the body to aim at depending on the situation faced and with a view to minimizing the risk to the life of the targeted person as much as possible.

d) Operational instructions must make sure that priority is given to the protection of the lives of third persons. Operational procedures must impose particularly stringent conditions on the use of firearms in situations with uncontrollable risks for third persons (crowded public spaces, confrontation with heavily armed persons in densely populated areas, certain types of hot pursuits). Furthermore, no law enforcement operation may be planned in such a way that, from the outset, accepts the possibility of killing or causing serious injury to third persons by a law enforcement official in the course of action.

e) The decision on the type of weapons and ammunition to be used by law enforcement officials must be based on an assessment of the operational policing needs:

- In view of their inaccuracy and the impossibility to be able to account for each and every shot, automatic weapons are not suitable for normal law enforcement situations. They may only be used in exceptional situations of extreme danger where multiple exchange of fire might occur and therefore may only be distributed in anticipation of such situations. In any case they should have a “single-shot”-mode with this being the standard and first mode to which they are switched.
- In view of their inability to carry out the thorough assessment to be made on the spot of whether lethal force may be used or not, there is no room for Lethal Autonomous Weapons/Robotic Systems in law enforcement.
- Any weapons and ammunition used must have been thoroughly tested by the law enforcement agency with regard to their accuracy, their effectiveness to achieve the law enforcement objective, the risk of being discharged involuntarily, the type of injuries they may cause, and the risks to third persons in case of ricochet or if they might pass through the body of the targeted individual. Their use must be constantly monitored and the decision to use them must be revised in view of their effectiveness and/or the emergence of

<sup>21</sup> A firearm being a weapon that is designed to kill [see Chapter 2.2]

unexpected/excessive risks. These considerations also apply to any other device that is designed to kill (e.g. guided armed drones or explosive devices), and their use in law enforcement can therefore only be considered in very rare and absolutely extreme situations.

- Law enforcement officials should only be authorized to use official weapons issued by the law enforcement institution; the use of private weapons should be prohibited.
- Law enforcement officials must know the effects of the weapons and ammunition they are using, including the type of risks involved and the required precautions to minimize damage and preserve life.

f) A law enforcement agency must take a carefully balanced decision about the situations in which law enforcement officials may carry a firearm. They should not carry a firearm inside places of detention. In the context of assemblies or other public order events, their presence may involve a number of additional risks (being perceived as a threat and contributing to creating/increasing tensions; a high risk in such crowded places of hitting others than the targeted person; creating panic and/or aggression etc.). In countries where law enforcement officials are usually armed, law enforcement agencies should therefore carefully assess whether in the particular circumstances it might be better that those in direct contact with participants of the event do not carry their weapon.

g) The permission to carry a firearm must depend on a thorough authorization and certification process: this process must be based on realistic – scenario-based – training that allows assessing the physical and mental capabilities of the individual law enforcement official as well as the indispensable skills of de-escalation, negotiation, a variety of use-of-force-techniques and proficiency in handling the specific weapon assigned to the individual law enforcement official. This process must be repeated at regular intervals through refresher courses and retests that law enforcement officials have to pass to keep their certification.

h) Law enforcement officials should only be issued with individually registered and forensically traceable weapons which are personally assigned to them, as well as a recorded amount of ammunition. Clear rules should govern how weapons should be stored when the law enforcement official is not on duty.

i) Any drawing of a firearm as a means of warning and any pointing of a firearm against a person must be reported and evaluated by the competent superior irrespective of whether the firearm has been discharged or has caused any death or injury. When a firearm has been discharged an obligatory and thorough reporting process to the authorities must follow. Reporting must be comprehensive and allow for a full assessment of the justification of the use of the firearm in light of the “protect-life”-principle and of all actions that were taken or considered before the use of the firearm, such as de-escalation, differentiated response, warnings and other procedures, protection of third persons etc. The report must then be evaluated to determine the appropriate actions to be taken as a result of the incident.

**GUIDELINE NO. 6: Law enforcement agencies should have a range of less lethal equipment at their disposal that allows for a differentiated use of force in full respect of the principles of necessity and proportionality, and ensures that harm and injury are kept to the minimum.**

a) New law enforcement equipment should be developed and introduced based on clearly defined operational needs and technical requirements (and not just because of its availability on the market), with a view to reducing the amount of force used and the level of harm and injury caused.

b) Any equipment must be subjected to thorough testing as to whether it meets the required operational needs, technical requirements in terms of accuracy and precision, reliability, life span, and the degree of possible harm and suffering it may cause as well as possible unwarranted/unintended effects. Testing should be carried out by an independent body.

c) Each device should be subjected to an independent assessment as to its compliance with international human rights law and standards, in particular in meeting the requirements of the principle of proportionality, the prevention of risks for third persons and the prevention of misuse or abuse in practice.

d) Any equipment should be excluded which:

- is found to be inaccurate enough to carry a great risk of causing significant injury including to persons other than the targeted person (e.g. pellet firing shot guns, certain kinetic impact projectiles such as rubber balls);
- causes harm which is disproportionate to the objective (e.g. carries a high risk of causing death, despite being considered to be less lethal, such as rubber coated metal bullets);
- aims to achieve an objective that is equally achievable with a less harmful device (e.g. thumb-cuffs vs. ordinary handcuffs, spiked batons vs. ordinary batons);
- is highly abusive (electric shock devices that do not have a cut-off point, electric stun guns that act as a direct contact weapon) or the use of which would violate the prohibition on torture and other cruel, inhuman or degrading treatment (e.g. body-worn electric shock belts).

e) Given the potentially grave consequences of fully autonomous weapons systems (AWS) and their inability to replace indispensable human judgement in the decision to use force, the development, production, and use of such technology – even if only equipped with less lethal weapons – should be pre-emptively banned.

f) Each device should be accompanied by clear instructions as to the situations in which, and how, it should be used, explaining the effects and risks of the device and the necessary precautions to be taken, as well as warnings on the circumstances or situations in which the device may not be used. Law enforcement officials must have received adequate training and certification on the device as a precondition for being allowed to use the device.

g) Any new device should undergo and be subject to a legally constituted and publicly available piloting process that allows confirmation of whether the device meets the operational needs and technical requirements, the adequacy of instructions and training, as well as of the absence of any unexpected unwarranted risks.

h) The use of any device must be subject to thorough and rigorous reporting, supervision and control mechanisms with a view to continually evaluating the device with regard to its effectiveness and effects, including unwarranted ones.

**GUIDELINE NO. 7: The overall approach to policing of assemblies should be guided by the concept of facilitation of the assembly and should not from the outset be shaped by the anticipation of violence and use of force.**

a) The policing of assemblies should always seek to prevent the need to resort to force. As a rule, there is no room for the use of force in assemblies, except when dealing with individuals committing offences or seeking to prevent the assembly from taking place.

b) Even if an assembly is considered unlawful under domestic law, police should not resort to the use of force just because of the fact of its unlawfulness. Only when there are other compelling reasons – e.g. regarding public safety and security or the prevention of crime – should police consider resorting to the use of force.

c) When using force in response to violence, law enforcement officials must distinguish between the individuals who are engaged in violence and those who are not (e.g. peaceful demonstrators or bystanders) and carefully aim such force only at those engaged in violence. The violence of a few individuals must not lead to a response which treats the entire assembly as violent.

d) Due consideration must also be given to the protection and well-being of the law enforcement officials deployed (availability of protective equipment, prevention of excessive length of duty, possibility for rest breaks, food, water etc.).

e) In the decision whether or not to resort to the use of force, law enforcement agencies must carefully consider the risks of contributing to further escalation of an already tense situation.

f) The containment of groups of protestors by a police cordon to prevent them from leaving a certain area is a highly problematic tactic which carries a number of risks for those being contained and for the proper policing of the assembly. If at all, this tactic should only be used to contain the violence of a smaller group and to allow the peaceful protestors to proceed with the assembly. It should never be used as a preventive measure based on prior intelligence that some people might engage in violence. It may only be used for the shortest time possible. Persons in need of assistance, those who are not part of the assembly, and participants who are not involved in violence must be allowed to leave. The containment may not be used for the purpose of preventing people from peacefully participating in an assembly, even if the assembly is considered unlawful.

g) Kinetic impact projectiles must not be fired randomly at the crowd but must be aimed exclusively at persons who are engaged in violence against persons, and only when other means have failed to stop the violence. They should be aimed at the lower part of the body so as to minimize the risk of serious injury. They should never be fired in skip fire (re-bouncing off the ground).

h) Devices that have indiscriminate effects and a high potential of harm, such as tear gas or water cannon, may only be used in situations of more generalized violence for the purpose of dispersing a crowd, and only when all other means have failed to contain the violence. They may only be used when people have the opportunity to disperse and not when they are in a confined space or where roads or other routes of escape are blocked. People must be warned that these means will be used and they must be allowed to disperse. Cartridges with chemical irritants may never be fired directly at a person.

i) Firearms must never be used as a tactical tool for the management of public assemblies: they may only be used for the purpose of saving another life in line with Basic Principle No. 9. If firearms are discharged during public assemblies, there are additional risks, such as injuring or killing peaceful participants or bystanders or causing further escalation of the violence with even more casualties. These risks need to be taken into account and require particular consideration in the decision making process.

j) Any public assembly during which police resorted to the use of force, in which there was violence or in which injury or loss of life occurred, must be subjected to a thorough investigation with a view to establishing responsibilities and accountability of the officers involved, and must be followed by a proper lessons learned process to improve the policing of future events.

k) When military armed forces are tasked with the handling of public assemblies, they must be fully acquainted and able to comply with all the Guidelines and principles on the use of force mentioned above. This requires a complete shift in the operational approach, from a “fight-the-enemy” approach to a law enforcement approach. To achieve this, clear instructions must be given, appropriate law enforcement equipment must be available, and soldiers must be fully trained in operational public order management. When authorities are not in a position to ascertain the capability of the military to carry out such a law enforcement operation in compliance with international human rights rules and standards, they should not deploy military armed forces in public order situations.

l) Full accountability must be ensured for any use of force during public assemblies, in particular when firearms were used or death or injury occurred. In particular the various levels of the command structure in charge during the assembly must be held accountable.

**GUIDELINE NO. 8: The fact that a person is deprived of freedom does not give authorities any greater power to resort to the use of force: the use of force and firearms in detention facilities is subject to exactly the same rules, particularly the principles of necessity and proportionality, which apply in any other law enforcement context.**

- a) The use of force, including the use of means of restraint, may never be employed as a means of punishment.
- b) Staff members need to have the personal competence and professional skills to reduce tensions that are likely to arise easily in the confined environment of detention facilities, rather than to resort too easily to the use of force. They also should be specifically trained to control aggressive or violent detainees.
- c) Means of restraint should not be used as a routine measure, but only if the concrete situation so requires and not for any longer than necessary. They may only be used in a way that does not cause injury. Prolonged use of means of restraint must be avoided. Means of restraint that are intrinsically abusive and degrading, or cause serious pain and injury, such as thumb-cuffs and body-worn electric shock belts, should be prohibited.
- d) Firearms may only be used in circumstances involving a threat to life as described in Basic Principle No. 9. Carrying firearms in the confined space of a detention facility carries additional risks and, as a rule, staff members working inside such facilities who are in direct contact with detained persons should not be equipped with firearms.
- e) Situations of large-scale violent disorder in detention facilities must be guided by the same overall considerations as violent public order incidents. De-escalation must be the preferred mode of action, a distinction must be made between those inmates who are engaged in violence and those who are not, interventions must seek to minimize damage and injury, and firearms may only be used to protect against a threat to life or of serious injury.

**GUIDELINE NO. 9: Law enforcement agencies must ensure that their personnel are able to meet the high professional standards established in the Basic Principles.**

- a) The selection criteria for law enforcement officials should go beyond purely formal criteria (criminal record, level of education) and testing physical fitness. The criteria must also ascertain the moral integrity of the candidate and his or her psychological stability and ability to react appropriately to the highly stressful situations that law enforcement officials may face in their daily practice.
- b) Training of law enforcement officials should be based on realistic scenarios, acquainting them with the wide range of situations and challenges they may encounter in their daily practice. Training should be conducted in such a way that law enforcement officials acquire:
- the physical capability to use equipment and weapons, in terms of fitness and weapon skills;
  - the necessary professional skills in terms of communication, risk assessment and decision making;
  - the mental and psychological strength needed to respond appropriately to the challenging, stressful and often dangerous situations in which they may have to decide whether or not to resort to the use of force.
- All law enforcement officials should undergo first aid training at least at the basic level.
- c) It should be acknowledged that situations in which law enforcement officials decide to use force and firearms (or not), may be highly stressful or even traumatizing and have a great impact on their mental well-being and health. Supervision, coaching and counselling mechanisms need to be in place to address such situations. Superior officers bear the responsibility for close supervision and for taking appropriate measures when their subordinates have experienced problematic situations (personal coaching, ordinary or medical leave,

psychological evaluation and support etc.) – in particular when they were in a life threatening situation, had to resort to firearms, or were otherwise involved in situations in which serious injury or death occurred.

**GUIDELINE NO. 10: The command leadership and all other senior officers or supervisors must be held accountable for ensuring that the agency and its members fulfil their law enforcement duties and responsibilities in compliance with the law, including human rights law, and in an effective and professional manner.**

a) There must be a functioning and transparent system of command responsibility and command accountability and a pre-established chain of command with clearly assigned responsibilities. All decisions taken should be traceable and those who have taken them must be held accountable for them.

b) A pre-established supervision and reporting system within the law enforcement agency must allow for the assessment of the compliance of law enforcement officials with the law and internal regulations, as well as of their professional skills, competency and effectiveness. Superiors are responsible for correctly and appropriately supervising their subordinates.

c) Internal supervision and investigation should serve to assess the need for corrective measures (revision of procedures, equipment, training), the situation of the acting law enforcement officials (need for coaching, training, psychological support etc.), any failures in command responsibility and the need for disciplinary actions in case of any use of force that was in disrespect of the operational framework.

d) A detailed reporting system that allows for the evaluation of the lawfulness and appropriateness of the use of force needs to be in place, and should include reports by colleagues who may have witnessed the use of force. Obligatory reporting should be established not only for situations in which a firearm was discharged or in which death or serious injury occurred, but for *all* situations in which law enforcement officials have resorted to the use of force. Law enforcement officials who report on unlawful use of force by colleagues or on an unlawful order by their superiors must be protected against any retribution or other negative consequences.





**PART TWO**  
**EXPLANATORY TEXT**



## SECTION A

# REQUIREMENTS OF THE DOMESTIC LEGAL FRAMEWORK

### Introduction

This section presents the minimum aspects governing the use of force and firearms that must be regulated in domestic legislation:

- Establishing and regulating the general power to resort to the use of force and the purpose and circumstances in which it can be used.
- Establishing and regulating the power to resort to the use of lethal force, in particular firearms, and ensuring utmost respect for the right to life.
- Ensuring full and effective accountability for any law enforcement action that involved the use of force.

All law enforcement actions must be based in law and carried out with full respect for the law. It is therefore of the utmost importance that the domestic legislation itself provides a clear framework within which a law enforcement official is authorized to resort to the use of force and firearms. The framework itself must respect the four key principles (legality, necessity, proportionality and accountability) explained above **[International human rights principles governing the use of force and firearms]**.

Although it is not possible to deal with the great variety of challenges that law enforcement officials may face in their daily work in all details, domestic legislation must nevertheless provide a solid ground on which a law enforcement official must base his or her actions and ensure that they comply with the applicable international human rights law and standards. The Special Rapporteur on extrajudicial executions has already provided a detailed analysis of how domestic legislation should fulfil these requirements as well as the many shortcomings found in a large number of countries in this regard.<sup>22</sup> Within the framework of these Guidelines it suffices thus to highlight the minimum aspects that should be regulated by law.

It should be noted here that domestic legislation often contains a number of provisions that comply with international human rights standards, whereas other provisions fall considerably short in this regard. **Thus, the specific provisions cited in these Guidelines are used only as examples of the specific issues addressed in these provisions and do not constitute any assessment of the overall compliance (or non-compliance) of the domestic legislation with international human rights standards – nor does it address the question whether the domestic legislation is implemented and respected in practice. As mentioned earlier [see Introduction III.], even when domestic legislation is in line with international human rights standards, problems can arise due to the lack of respect for the legislation in practice and the failure to enforce these laws by the competent authorities (as is the case in a number of countries from which the illustrative examples are drawn).**

Nevertheless, human rights compliant domestic legislation is an indispensable precondition for human rights compliant law enforcement and the examples presented in this section are meant to point out important possible considerations and options that government authorities may take into account in this regard.

<sup>22</sup> Special Rapporteur on extrajudicial executions, UN Doc. A/HRC/26/36 (2014).



# 1 THE USE OF FORCE IN GENERAL

## Chapter outline

- 1.1 The power to use force (principle of legality)
- 1.2 The need to resort to force and minimum use of force (principle of necessity)
- 1.3 Prohibition of excessive harm (principle of proportionality)

## Relevant provisions of the Basic Principles for this Chapter:

### Preamble, § 10

“The basic principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by Governments within the framework of their national legislation and practice, and be brought to the attention of law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive branch and the legislature, and the public.”

### Basic Principle 1

“Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.”

### Basic Principle 4

“Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”

### Basic Principle 5

“Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:  
 (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;  
 (b) Minimize damage and injury, and respect and preserve human life; [...]”

## Guidelines for implementation of these Basic Principles

**Guideline No. 1:** The power of the police to resort to the use of force and firearms must be regulated by law.

a) The power of law enforcement officials to use force must be established in law, describing the circumstances in which and the purposes for which the use of force may be considered; this should also include a legally constituted process for the approval and deployment of equipment and weapons to be used [**see also Chapter 6**].

b) The use of force must be subject to the strict application of the principle of necessity: in qualitative terms (to use force only if the legitimate objective cannot be achieved without it), in quantitative terms (to use only the minimum force necessary to achieve the objective) and in temporal terms (the use of force must stop once the objective is achieved or can no longer be achieved).

c) The law must prohibit use of force which causes harm that outweighs the legitimate objective (principle of proportionality).

## 1.1 The power to use force (principle of legality)

### Basic Principle 1

“Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.”

The power to use force in general needs to be established by law. This requirement is a direct result of the principle of legality which also requires that the law regulates for which objectives and in which possible circumstances force may be used. While it may be difficult to regulate all possible situations in which resorting to force might be justified by law, a minimum framework should be established. Formulations that merely refer to the fulfilment of law enforcement duties or to the achievement of any law enforcement objective or lawful purpose are overly broad and do not give due consideration to the serious implications of resorting to the use of force.<sup>23</sup>

Situations in which resorting to force might be justified may include situations such as carrying out an arrest, preventing the commission of an offence, re-establishing public order, overcoming resistance preventing the execution of a legitimate law enforcement action, self-defence or defence of others etc.

### Illustrative country examples

#### ***Mexico: Law on the use of force by law enforcement in the Federal District, 2008***

Art. 9 lists the following situations in which force may be used: in the submission of a person resisting arrest following the order of a competent authority or after having committed a breach of a law or regulation, in fulfilling a duty or lawful order given by a competent authority, in the prevention of unlawful acts, in the protection or defence of legally protected interests or as legitimate self-defence.

#### ***Uruguay: Law on Police Procedures, 2008***

Art. 20 provides a list of situations in which the use of force may be considered (e.g. to subdue a violent person, to obtain compliance with an order, to protect installations, to disperse non-peaceful public assemblies).

The legal framework must, without necessarily going into operational details, clearly set out the boundaries for the use of force. This should also include the formal approval and deployment process for equipment and weapons to be used [see Chapter 6]. The principles of necessity and proportionality [see above: **International human rights principles governing the use of force and firearms**] set out such boundaries for all state actions that may interfere with or infringe the rights of the individual, and therefore are essential to ensure compliance with international human rights law and standards. The legal framework must reaffirm the applicability of these human rights standards to the use of force in the context of law enforcement, as clarified by Basic Principles No. 4 and 5:

<sup>23</sup> See for instance **India**, Kerala Police Act 2011, Art. 29 (2): “The police officers shall not use force against anybody or threaten that force be used or take any adverse police action or legal action unless it is necessary to carry out any lawful purpose.”; **Iceland**, Police Act No. 90, 1996, Art 14: “Those who exercise police authority may use force in the course of executing their duties.” [emphasis added]

**Basic Principle 4**

“Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”

**Basic Principle 5**

“Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:  
 (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;  
 (b) Minimize damage and injury, and respect and preserve human life; [...]”

## 1.2 The need to resort to force and minimum force (principle of necessity)

Although it can be formulated in various ways, it must be clear that force should only be used when there are no other means available (from the outset or after having exhausted all available means) that are likely to achieve the legitimate objective. It also should be clear that only minimum force should be used, i.e. that no greater force should be used than what is necessary to achieve the objective.

### Illustrative country examples

***Cyprus: Police Code of Ethics, 2003***

Art. 32: “The Police use force only when strictly necessary and only to the extent required to obtain a legitimate objective.”

***Kenya: National Police Service Act No. 11A, 2011***

Sixth Schedule, A(1), p. 62; “A police officer shall always attempt to use non-violent means first and force may only be employed when non-violent means are ineffective or without any promise of achieving the intended result.”

***Greece: Code of Police Ethics, 2004***

Art. 2(e): “The Police personnel (...) shall use non-violent means while maintaining and enforcing law. The use of force is permitted only when absolutely necessary and to the extent envisaged and required for law enforcement. The use of force shall always respect the principles of necessity, adequacy and proportionality.”

***Hungary: Policing Act XXXIV of 1994***

Sect. 15: “[...] (2) From various possible and appropriate police measures or coercive means the one must be used which – while being effective to achieve its aims – causes the smallest restriction, detriment or damage to the person targeted.”

***Lithuania: Law on Police Activities, 2000***

Art. 23 (1): “[...] Coercion which might cause bodily injuries or death may be used to the extent which is necessary for the fulfilment of the official duty, and only after all possible measures of persuasion or other measures have been used with no effect.”

***Malta: Police Act, 1961***

Art. 97: “The use of force is a remedy of last resort and shall only be used for the duration that is strictly necessary when it is evident that all other remedies would be of no avail.”

Legislation that is limited to general formulations such as “may use reasonable force” or “may use all means necessary” would be insufficient.<sup>24</sup> Such formulations allow the individual law enforcement official an extremely

24 Cf.: **Iceland**, Police Act No. 90 (1996) Art 14 (“[not] to a greater extent than is necessary”); **Kiribati**, Criminal Procedure Code 1977, Art. 10 (“may use all means necessary”); **Liberia**, Criminal Procedure Law (1969), Art. 10 (3) (2) (“no unnecessary or unreasonable use of force”); **Namibia**, Correctional Service Act 2012, §35 (“such force [...] as is reasonably necessary”); **Nauru**, Criminal Code 1899 (revised 2011), Art. 254 (“to use such force as may be reasonably necessary”); **Uganda**, Prisons Act (2006), Art. 40 (1 (“as is reasonably necessary”).

large amount of personal discretion, which in the end makes it almost impossible to hold him or her accountable for the (un)lawfulness of the force used. Such formulations are particularly worrying when in addition the principle of proportionality is not given sufficient attention, for instance when all means (including lethal force) are permitted to prevent escape – regardless of whether the person presents a threat or not. This is frequently the case in relation to the use of force in the course of an arrest or when preventing the escape of a person from custody.

In some countries, domestic courts have tried to specify the meaning of such broad formulations<sup>25</sup> or have even declared certain laws unconstitutional.<sup>26</sup> While such interpretations by the judiciary offer some sort of repair mechanism for broad or vague legislation, it is, however, strongly recommended to provide a legal framework that is sufficiently precise not to require such corrections – which in any case will only be implemented when the harm is already done. This question will be addressed again in more detail in the chapter on lethal use of force, where it is particularly relevant [see below: **Chapter 2.3**].

Furthermore, although this aspect may sometimes be considered to go without saying, it is good practice to explicitly mention the temporal element of necessity, i.e. that the use of force should stop when the objective is achieved (or is no longer achievable).

### Illustrative country examples

#### **Bahrain: Code of Conduct for Police Officers, 2012**

Sect. III: “Once the reason for using force no longer exists then the use of force must end.”

#### **Bulgaria: Code of Ethics for State Officials, 2013**

Art. 79: “The state official stops using physical power, auxiliary devices and weapons immediately after the necessity to use them has ceased to exist.”

#### **Uruguay: Law on Police Procedures, 2008**

Art. 3 (E): “Following the repressive phase, the use of force must immediately stop, once the order is re-established and the suspected offenders of the protected right do not offer resistance anymore [...]”

### i

**Explanatory note:** At this stage, it is important to mention a considerable problem arising from the official UN Spanish translation of the Basic Principles: the most important word, “*force*”, is omitted in the translation of Basic Principle No. 5: “Cuando el empleo de las armas de fuego sea inevitable...” (“When the use of firearms is unavoidable”), while in the other official translation to a roman language, French, these words can well be found: “Lorsque l’usage légitime **de la force ou** des armes à feu est inevitable...” (“when the lawful use of **force and** firearms is unavoidable”). Unfortunately, in some Hispanic countries, this translation was reproduced in the domestic legislation, with the unfortunate consequence that very important elements, including the principle of necessity, now only apply to the use of firearms, but not to other forms of the use of force.<sup>27</sup>

<sup>25</sup> E.g. Supreme Court of Appeal of **South Africa** (Case Number: 342/99, 2001, 1 June 2001), § 24 with regards to the term “reasonably necessary”.

<sup>26</sup> **United States**, Supreme Court, *Tennessee v. Garner* – 471 U.S. 1 (1985) in relation to the use of lethal force against a fleeing suspect.

<sup>27</sup> **Ecuador**, Regulation on the use of force by the national police (2014), Art. 14 (3); **Mexico**, Agreement 04/2012, General Rules on the Use of Force (2012), Art. 18; **Uruguay**, Law on Police Procedures (2008), Art. 23.



### 1.3 Prohibition of excessive harm (principle of proportionality)

The law must also establish the principle of proportionality as an overarching principle in policing in general, but in particular in relation to the use of force: law enforcement officials may not pursue their objectives at any cost. The law itself must set a clear limit and require law enforcement officials to balance their legitimate objective against the potential harm they might cause when resorting to the use of force.<sup>28</sup>

Usually, the responsibilities and duties of law enforcement officials require them to act in order to achieve a legitimate objective, and to use available police powers to attain this objective. Failing to act in such a situation may be followed by serious disciplinary action or even consequences under penal law. Legal clarity is therefore essential: the law must set the absolute limits to the use of police powers, both as a precaution to prevent law enforcement action from causing excessive harm, and in order to protect the individual law enforcement official from prosecution or other negative consequences when he or she chooses not to act to avoid greater harm. The law must therefore make sure the use of force does not lead to harm which is disproportionate to the legitimate objective and must clearly state that – if no other, less harmful options are available – the respect for the principle of proportionality can lead to a situation in which the legitimate objective is not achieved and that this result is acceptable.

#### **Illustrative country examples**

##### ***Bahrain: Code of Conduct for Police Officers, 2012***

Sect. III: “[...] – Police officers commit to the principle of using only such force as is proportional to the danger posed to life or public or private property.”

##### ***Croatia: Code of Practice for Police Officers, 2009***

Art. 3 (2): “Proportionate to the purpose of the police action, the police officer shall apply the powers prescribed by law in a manner causing the least harmful consequences.”

##### ***Czech Republic: Act Regulating the Police, 2008***

Art. 53 (5): “A police officer must take care that the use of coercive means does not inflict harm on the person of a degree obviously disproportionate to the nature and dangerousness of his/her unlawful conduct.”

##### ***Hungary: Policing Act XXXIV of 1994***

Sect. 15: “(1) A Police measure shall not cause a detriment which is manifestly out of proportion with the lawful objective of the measure.”

Sect. 16: “(1) The Police Officer shall apply a coercive measure only under the conditions determined by the Act, shall keep in mind the principle of proportionality so that it does not cause a disproportionate detriment to the person targeted by the measure. The application of means of coercion shall not be continued if resistance breaks and the effectiveness of the Police measure can be ensured without it.”

However, as can already be seen from the analysis of the Special Rapporteur,<sup>29</sup> only very few domestic laws state this limitation with the necessary clarity.

28 Similar to the terminology issues already mentioned above [see: **International human rights principles governing the use of force and firearms**], it should be noted, that in many legal or operational documents, proportionality is actually defined in terms of what would have to be considered quantitative necessity, e.g.: “the use of force may not be disproportionate to the level of resistance met.” While this wording as such is not worrying, it becomes a problem when this understanding of proportionality means that the overall balancing element – legitimate aim/benefit against the potential harm caused through the use of force – is not given sufficient consideration.

29 Special Rapporteur on extrajudicial executions, UN Doc. A/HRC/26/36 (2014), §§ 92-96.



# 2 | LETHAL FORCE

## Chapter outline

- 2.1 The “protect-life”-principle**
- 2.2 Definition of firearm**
- 2.3 Threshold for the use of firearms**
  - 2.3.1 Potentially lethal use of a firearm
    - a) Imminent threat of death or of serious injury
    - b) Prevention of crime, arrest and escape
    - c) The preservation of life
  - 2.3.2 Intentional lethal use of a firearm
- 2.4 Other forms of lethal force**
- 2.5 Protection of third persons**
- 2.6 Warning**

## Relevant provisions of the Basic Principles for this Chapter:

### Basic Principle 5

“Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: [...]

(b) Minimize damage and injury, and respect and preserve human life; [...]”

### Basic Principle 6

“Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.”

### Basic Principle 9

“Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

### Basic Principle 10

“In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.”

### Basic Principle 11

“Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

- (a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;
- (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;

- (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
- (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
- (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;
- (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.”

#### **Basic Principle 22**

“Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.”

#### **Guidelines for implementation of these Basic Principles**

**Guideline No. 2:** The “protect-life”-principle must be enshrined in law, i.e. any force that involves a high likelihood of lethal consequences, in particular use of firearms, may only be used for protecting against a threat of death or serious injury.

- a) The use of firearms – i.e. of a weapon that is designed to kill – must be regulated by specific provisions of the law, establishing a distinctly higher threshold for the use of firearms than for other forms of use of force.
- b) Any use of a firearm against a person must be considered to be potentially lethal; therefore the law may only authorize the use of firearms when there is a serious threat of death or of serious injury.
- c) The mere fact a person flees from arrest or escapes from custody does not justify the use of a firearm, unless this person presents an ongoing grave threat to the life of another person that can be realized at any time.
- d) Despite the fact that a firearm is designed to kill, law enforcement officials must take all precautionary measures to prevent the loss of life when resorting to the use of firearms.
- e) The use of a firearm in such a way that does not give a person any chance of survival – i.e. the intentional lethal use of the firearm – may only be authorized in the most extreme situation of a threat to life, in which the death of the person is the only way to prevent the loss of an imminently threatened life of another person; in any case, the death of the person must always be only a means to an end (preventing the loss of another life) and must never be a goal in itself.
- f) Any (other) type of force that carries the likelihood or high risk of causing death must be subject to the same strict application of the principle of proportionality and therefore only be allowed for the purpose of preventing death or serious injury.
- g) The protection of third persons must be given absolute priority. In particular, no law enforcement operation may be planned or conducted in such a way that from the outset accepts the killing or causing serious injury to third persons by the intervening law enforcement officials.

h) As a rule, law enforcement officials must be obliged to issue a warning before resorting to the use of a firearm – situations in which such a warning is not required must remain the exception, must be clearly defined as such and need to be assessed individually in each situation.

## 2.1 The “protect-life”-principle



**Explanatory Note:** Lethal force is to be understood as a type of force that involves either the high likelihood of causing death (potentially lethal force), or is used with the clear knowledge that it will lead to the loss of life (i.e. intentional lethal use of force).

As already stated, when it comes to the use of lethal force, the only legitimate objective can be the protection against a threat to another life or of serious injury. This follows naturally from the “protect-life”-principle and the principle of proportionality, and must be clearly established in law.

### Basic Principle 5

“Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:  
[...]  
(b) Minimize damage and injury, and respect and preserve human life;”

### Illustrative country example

#### *Indonesia: INP Regulation No. 8/2009*

Art. 47: “The use of firearms shall be allowed only if strictly necessary to preserve human life.”

In view of the serious – i.e. potentially lethal – consequences, the use of firearms must be regulated by law and cannot be left to operational considerations of a law enforcement agency within the framework of standing orders or procedures. The law must clearly define in which circumstances law enforcement officials are authorized to resort to lethal force, in particular the use of firearms.

### Basic Principle 9

“Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

As already mentioned above, the “protect-life”-principle requires that potentially lethal force – i.e. force with a high likelihood of lethal consequences – may only be used to protect against a threat to life or of serious injury [**definition of serious injury see Chapter 2.3.1**]. In this regard, Basic Principle No. 9 must be seen as a rigorous application of the right to life and in this respect “principle 9 of the Basic Principles reflects binding international law”.<sup>30</sup> It is a clear expression of the principle of proportionality, only allowing for the use of a firearm if it is for the purpose of protecting against a lethal threat or a risk of a similarly serious nature:

<sup>30</sup> Report by the Special Rapporteur on extrajudicial executions, in: UN Doc. A/61/311 (2006), §35.

**Special Rapporteur on extrajudicial executions, UN Doc. A/HRC/26/36 (2014)**

“70. Principle 9 is a strong affirmation of the principle of proportionality: All uses of firearms against people should be treated as lethal or potentially lethal. The first part of Principle 9 provides that potentially lethal force may be only to avert a potentially lethal threat or a risk of a similarly serious nature (e.g. self-defence against a violent rape). The second part deals with the intentional lethal use of force, which in any event may only be used when strictly unavoidable to protect life. What will be called the ‘protect life’-principle – a life may be taken intentionally only to save another life – may be described as the guiding star of the protection of the right to life.”

**2.2 Definition of firearm**

Basic Principle No. 9 does not provide for an explicit definition of a firearm. However, its logic and the high threshold established for the use of firearms strongly implies a definition of what is to be understood as a firearm: any tool that is *designed* to kill (as opposed to just having potentially lethal consequences in exceptional or unfortunate, accidental circumstances or in case of inappropriate use).<sup>31</sup> The term thus covers a large range of lethal tools: from handguns and rifles with live ammunition to guided armed drones and explosive devices.

**Special Rapporteur on extrajudicial executions, UN Doc. A/HRC/26/36 (2014) §71**

“71. A common sense understanding of the scope of application of Principle 9 suggests that all weapons that are designed and are likely to be lethal should be covered, including heavy weapons such as bombs and (drone) missiles, the use of which constitutes an intentional lethal use of force.”

**2.3 Threshold for the use of firearms**

The law must determine in which situations, in particular at which threshold of threat, law enforcement officials may resort to the use of firearms. This must not be left to internal operational procedures, much less to the personal discretion of the individual law enforcement official. Nor is it acceptable to subject the use of firearms to exactly the same rules and regulations as other forms of use of force without establishing specific criteria and rules for the use of firearms.<sup>32</sup> The high risk to life involved in the use of a firearm requires the law to establish specific rules clearly defining the thresholds and limitations for its use.

31 In this connection, it should be noted, thus, that in some domestic systems, the term “firearm” covers all types of weapons that eject some sort of projectile by propulsive energy, including those firing rubber bullets, electric discharge darts or tear gas canisters. While such terminology is not a problem in itself, it must be ensured that it does not lead to lowering the minimum threshold of danger allowing for the use of a weapon that is designed to kill.

32 However, there are still provisions in which the use of firearms is governed by exactly the same regime as any other forms of the use of force, e.g.: **Bulgaria**, Code of Ethics for State Officials (2013), Art. 78-81 governing the use of force regulate the use of physical power, auxiliary devices or weapons without any differentiation in terms of threshold, decision making criteria, limitations, precautions etc. Similarly, Art. 20-22 of the **Afghan** Police Law (2005) contain specific provisions for the use of explosives, but otherwise treat the use of for instance striking weapons and the use of firearms under the same regime, based on an abstract threat level (a person accused, charged or sentenced for felony or misdemeanour), without establishing specific criteria which subject the use of firearms to an assessment of whether the person presents a concrete threat to the lives of others or not.

***Nachova and Others v. Bulgaria (43577/98 and 43579/98), European Court of Human Rights Grand Chamber (2005)***

“95. Accordingly, and with reference to Article 2 § 2 (b) of the [European] Convention [on Human Rights], the legitimate aim of effecting a lawful arrest can only justify putting human life at risk in circumstances of absolute necessity. The Court considers that in principle there can be no such necessity where it is known that the person to be arrested poses no threat to life or limb and is not suspected of having committed a violent offence, even if a failure to use lethal force may result in the opportunity to arrest the fugitive being lost [...]

96. In addition to setting out the circumstances when deprivation of life may be justified, Article 2 implies a primary duty on the State to secure the right to life by putting in place an appropriate legal and administrative framework defining the limited circumstances in which law enforcement officials may use force and firearms, in the light of the relevant international standards [...] In line with the above-mentioned principle of strict proportionality inherent in Article 2 [...] the national legal framework regulating arrest operations must make recourse to firearms dependent on a careful assessment of the surrounding circumstances, and, in particular, on an evaluation of the nature of the offence committed by the fugitive and of the threat he or she posed.” [emphasis added]

As the Special Rapporteur pointed out (see above citation of §70 of the report under **[2.1]**), a firearm can be used in broadly two different ways: in a potentially lethal way and in an intentionally lethal way – with a different threshold for each of them.

**2.3.1 Potentially lethal use of a firearm**

According to Basic Principle No. 9, as a rule, law enforcement officials must not use firearms other than in exceptional situations. It goes on to define such exceptional situations in the light of the principle of proportionality.

*a) Imminent threat of death or of serious injury*

The first exception allows for the use of firearms against persons in self-defence or defence of others against the imminent threat of death or serious injury – and only when less extreme means are insufficient to achieve these objectives.

When life is at risk and no other, less extreme, means are available, law enforcement officials may resort to the use of a type of force that carries a high risk of causing death: the firearm. Hence, the life of the person attacked is weighed against the life of the person carrying out the attack (proportionality assessment) and this must be taken into consideration with regard to the meaning of “serious injury”. The Basic Principles do not provide for a definition of serious injury, nor will it be possible to provide for a mathematical determination of the criterion of seriousness. Nevertheless, again in application of the principle of proportionality, the risk of serious injury must be understood as a threat of a “similar serious nature” as a threat to life.<sup>33</sup> In view of the potentially lethal effect of the use of a firearm and the due consideration for the “protect-life”-principle required, the level of seriousness of the injury must be very close to a threat to life.<sup>34</sup> Such a threat may involve a potentially life threatening injury, i.e. a situation where it cannot reasonably be expected one takes unnecessary risks that may result in the loss of life (e.g. a person is attempting to throw another person down from a two-storey building: in this situation it is possible that the victim may survive, but he or she may well sustain life threatening injuries). Other types of injury that would present a sufficient degree of seriousness to

<sup>33</sup> Special Rapporteur on extrajudicial executions, UN Doc. A/HRC/26/36 (2014), §70.

<sup>34</sup> Any, not further specified, physical injury would have to be considered insufficient in this regard. For instance, Art. 22 of **Uruguay**, Law on Police Procedures (2008), which allows for the use of firearms when physical integrity in general is threatened, is too broad in this regard. The use of firearms should not be allowed when a police officer or another person might suffer minor injuries, e.g. some bruises; such a provision may already lead to the use of firearms when there is some sort of physical resistance that can easily lead to such sort of injuries.

justify resorting to the use of a firearm are life changing injuries, such as loss of a limb or an organ, acid thrown in the face, or a rape involving serious violence.

### Illustrative country examples

The following legal provisions may serve as illustrative examples regarding the meaning of “serious injury”:

**Paraguay: *Manual on the Use of Force by the National Police, 2011***

Sect. II.c: “Serious injuries: Any physical injury that poses a substantial threat to life or of serious disfigurement, or which results in the loss or diminishes the function of any part or organ of the body.”

**United States: *Department of Defense, Directive No. 5210.56, 2011***

“Subject: Carrying of Firearms and the Use of Force by DoD [i.e. Department of Defence] Personnel Engaged in Security, Law and Order, or Counterintelligence Activities

Part II (p.14) Definitions [...] Serious bodily harm or injury: Bodily harm or injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.”

**United States: *New York State Penal Law, 1967***

Art. 10 (10): “‘Serious physical injury’ means physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.”

In most cases, domestic legislation contains such scenarios in which the use of a firearm is authorized. However, some only mention the general concept of self-defence without defining a sufficiently serious degree of threat.<sup>35</sup> This may actually open the door to the use of firearms in violation of the principle of proportionality – e.g. in self-defence against a threat of lesser harm, or a threat to property.<sup>36</sup> It is crucial that domestic legislation clearly expresses that only a threat of death or serious injury, and not any other threat below that threshold, justifies the use of a firearm.<sup>37</sup>

#### *b) Prevention of crime, arrest and escape*

The following exceptions allowing for the use of firearms according to Basic Principle No. 9 then refer to situations where there is a possible perpetration of a crime involving a grave threat to life, a person presenting such a grave threat to life is resisting arrest, or when preventing the escape of a person presenting such a threat. The criterion of “grave threat to life” is crucial here: even when trying to prevent a crime from being committed, or when trying to apprehend a suspect fleeing from arrest or a person escaping from custody – all of which are lawful and quite common law enforcement objectives – these objectives taken alone can never

35 **United States**, Florida, Statutes XLVI (2014) [emphasis added]: “§ 776.05. Law enforcement officers; use of force in making an arrest: The officer is justified in the use of any force: (1) Which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest; [...].”

36 Unfortunately, in some countries defence of property is – in violation of international human rights standards – still an objective justifying the use of firearms, e.g. the revised **Kenyan** National Police Service Act (2011), Art. 6 c) (2014 amendment to the Sixth Schedule of No. 11A of 2011).

37 Here again, it is necessary to clarify the imprecise official UN Spanish translation of the Basic Principles, which reads: “salvo en defensa propia o de otras personas, en caso de peligro inminente de muerte o lesiones graves, o con el propósito de evitar la comisión de un delito particularmente grave que entrañe una seria amenaza para la vida” [except in self-defence or defence of other persons, against a threat of death or serious injury, or to prevent the omission of a particular serious crime involving a grave threat to life...]: This may read as if the element of self-defence is separate from a situation of threat of death or serious injury (and is used in that sense for instance in the **Argentinian** Operational Plan no. 01/10 of the National Gendarmerie: “El personal de la Gendarmería empleará armas de fuego contra las personas sólo: a) En defensa propia o de otras personas. b) en caso de peligro serio e inminente de muerte o lesiones graves. [...]”). However, the threat of death or serious injury is actually the indispensable characterization of situations of self-defence or defence of others in which the use of firearms may be considered (see the English text cited in the text box), and not a distinct situation.



justify the use of a degree of force that puts life in danger.<sup>38</sup> Here again, it is crucial that the domestic legal framework strongly asserts that law enforcement does not mean law enforcement objectives have to be achieved at *all* costs.

The use of a firearm in such circumstances can only be allowed if the crime which is going to be committed or the person fleeing from arrest or escaping from custody presents a danger to the lives of other persons.

### Illustrative country example

#### ***Argentina: Regulation on Weapons and Shooting Instruction, 2012***

Chapter X – Sect.: Use of Firearms:

“c) In the event of an escape the use of firearms is not justified, except when:

While running away the offender keeps firing at the police and, given this circumstance, not preventing the offender from escaping would amount to an imminent threat to the police officers themselves or third parties.”

The mere fact of a person resisting arrest or trying to escape, without presenting any danger to the life of anybody else, cannot be a sufficient justification for the use of a firearm. It is also insufficient just to refer to a certain level of seriousness of a suspected/committed crime (e.g. a felony) in an abstract manner.<sup>39</sup> The threat must be concrete and be assessed on a case-by-case basis and must not just be based on abstract legal considerations. The assessment must lead to the reasonable conclusion that the individual person – if not arrested or if allowed to escape – would present an ongoing grave threat to the lives of other people. Domestic legislation justifying the use of a firearm solely on the basis of abstract threat levels has to be considered as violating the right to life:

#### **Special Rapporteur on extrajudicial executions, UN Doc. A/HRC/26/36 (2014)**

“95. In the context of arrest or escape, the use of force is often determined purely by the crime the person is suspected to have committed. A typical provision reads as follows: in the prevention of the crimes of burglary, housebreaking or forcible unnatural crimes, among others, ‘a person may justify any necessary force or harm, extending, in the case of extreme necessity, even to killing’. Offences that are classified as felonies and crimes such as kidnapping in other cases permit the lethal use of force in effecting arrest or preventing escape. Some countries allow the use of lethal force based on the penalty for the suspected criminal offence; frequently where life imprisonment or imprisonment for 10 years or more is prescribed, but this does not constitute a reliable proxy for the question whether the person concerned is dangerous.

96. Similarly, some States allow for the use of firearms against prisoners or convicted persons, suspected of attempting to escape, without additional safeguards.” [emphasis added]

38 However, this is still a ground for resorting to the use of a firearm in many legislations: E.g. **Armenia**, Law on Police (2001), Art. 32 (4) allows for the use of a firearm when seeking to arrest “persons captured at the moment of committing a grave or particularly grave crime against the life, health or property and making an attempt to escape”. **Uganda**, Prisons Act (2006), Art. 40, (5) “If a prisoner attempts to escape or attacks or threatens to attack any prison officer or any other person or in concert with others commits any act of violence, a prison officer authorized under subsection (3) may, whenever it is necessary to prevent the escape or in defence of himself or herself or any other person, use a firearm upon any such prisoner.” See also Amnesty International, report on legislation in the **United States** that presents and analyses a number of laws which allow the use of lethal force to prevent escape when there is no threat to the life of another person: Amnesty International, *Deadly force: Police use of lethal force in the United States* (2015).

39 Art. 54 (1) of the Police law of **Baden-Württemberg (Germany, 1992)** allows for the use of a firearm against a person escaping from lawful custody if sentenced to imprisonment (without reference to the crime committed) or suspected of having committed an offence punishable with at least 1 year of imprisonment without any indication of the danger the person poses. (Similar laws exist in a large number of states in Germany). The **Nigerian** Police force order 237 allows shooting at any person escaping from lawful custody if suspected of a felony: As the act of escaping from lawful custody itself is a felony, this order actually allows police officers to shoot at anybody trying to escape from lawful custody. In the **United States**, there are also a number of laws that allow for the use of firearms to prevent the escape of a person based on the abstract seriousness of the (committed or suspected) crime, see: Amnesty International, *Deadly force: Police use of lethal force in the United States* (2015).

***Nadege Dorzema et al. v. Dominican Republic (Series C No.251), Inter-American Court of Human Rights (2012)***

“85. [...] Although, in theory, the events of this case could constitute the presumption of opposing resistance to authority and prevention of flight, the Court considers that, even when abstaining from the use of force would have allowed the individuals that were the subject of the State’s action to escape, the agents should not have used lethal force against people who did not represent a threat or a real or imminent danger to the agents or third parties. Consequently, in short, this event did not constitute a situation of absolute necessity.”

**Illustrative country example*****United States: Tennessee v. Garner, 471 U.S. 1, 11 (1985)***

“The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. It is not better that all felony suspects die than that they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. It is no doubt unfortunate when a suspect who is in sight escapes, but the fact that the police arrive a little late or are a little slower afoot does not always justify killing the suspect. A police officer may not seize an unarmed, non dangerous suspect by shooting him dead. The Tennessee statute is unconstitutional insofar as it authorizes the use of deadly force against such fleeing suspects.”

This means that, as a rule, an unarmed person fleeing from arrest or escaping from custody may not be shot at unless they pose an imminent threat to life of others. Only very extreme situations might warrant an exception to this rule, that is when the nature of the threat posed by the person may lead to the loss of life of another person at *any* time (e.g. a known serial killer is running away), but these situations must remain the *absolute* exception and require the existence of *objective facts* which lead to the conclusion that there is an ongoing threat to the lives of others which may be realized at any time.<sup>40</sup>

**Illustrative country example*****Kosovo: Law on Police, 2012***

Art. 27 – Use of Firearms: “1. A Police Officer is authorized to possess and carry an official firearm issued by the Police. A Police Officer is authorized to use a firearm only when strictly necessary and only up to the level intended to achieve the legitimate police objective, and only when its use is proportional to the degree of danger and to the seriousness of the offence in the situation and only if it is considered that with the use of smaller force means the legitimate police objective shall not be achieved.

2. A Police Officer is authorized to use a firearm against a person only when less extreme means are insufficient to:

- 2.1. defend the Police Officer’s own life or the life of another person from imminent attack;
- 2.2. prevent the imminent commission or continuation of a criminal offence involving grave threat to life;
- 2.3. arrest a person presenting an imminent threat to the life of other persons and who is resisting orders lawfully issued by the Police Officer; and
- 2.4. prevent the escape of a person presenting an imminent threat to the life of other persons and who is resisting orders lawfully issued by the Police Officer.”

***c) The preservation of life***

When resorting to a firearm in such circumstances the intention must always be to stop the threat. Nevertheless, due to the risks involved in the use of a firearm, the outcome may well be the death of the person against

<sup>40</sup> Thus, this “ongoing threat” is fundamentally different from any simplistic assumption that a person who has or is suspected of having committed a certain crime in the past, will also do so in the future (“future threat”), see Special Rapporteur on extrajudicial executions, in: UN Doc. A/66/330 (2011), §60.

whom the firearm is used. However, this must be considered an *undesired* outcome against which all possible precautions must be taken and domestic legislation should formulate clear requirements in this regard:

#### Basic Principle 5

“Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: [...] (b) Minimize damage and injury, and respect and preserve human life; [...]”

#### Illustrative country example

##### **Czech Republic: Act Regulating the Police, 2008**

Sect. 56 (4): “When using a weapon, a police officer must take the necessary care, in particular, not to endanger other persons’ lives and to spare as much as possible the life of the person against whom the action is being taken.”

### 2.3.2 Intentional lethal use of a firearm

#### Basic Principle 9

“[...] In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

While all the other parts of Basic Principle No. 9 need to be understood in view of the high *potential* of a firearm to cause death, its last sentence addresses the use of a firearm with the clear knowledge that it will certainly result in death (i.e. *intentional* lethal use).<sup>41</sup> Law enforcement officials may indeed be confronted by situations in which another life is so imminently threatened that it can only be saved by causing the immediate and certain death of the aggressor. However, such extreme situations need to be considered as the absolute exception. Here, Basic Principle No. 9 formulates the highest thresholds in terms of imminence and unavoidability. Usually, these will only be reached when a potentially lethal action is already ongoing or is about to start at that moment and needs to be interrupted instantly; in such a situation, when an action is already in motion, even seriously injuring the aggressor may not stop the act, so that only the absolute and immediately lethal law enforcement action can stop the life threatening action. This is what is meant by “absolutely unavoidable” in Basic Principle No. 9.

With regard to the intentional lethal use of force, it would fall outside the scope of these Guidelines to go into all legal aspects related to the so-called “shoot to kill” use of firearms.<sup>42</sup> However, the following principles must be respected:

1. The intentional lethal use of force may only be a means to an end, never an end in itself. The purpose of the action must always be to save another life.
2. The threat to that life must be so imminent that only the intentional lethal use of force can stop the threat. Where lower levels of force – i.e. less lethal force or potentially lethal use of force – would be sufficient to stop the threat, the intentional lethal use of force would be unnecessary, and therefore unlawful.
3. Prior to resorting to intentional lethal use of force, all necessary precautions must have been taken to avoid the loss of life:

<sup>41</sup> Here again, we have to mention the imprecision in the UN official Spanish translation of the Basic Principles: The Spanish version reads “En cualquier caso, sólo se podrá hacer **uso intencional de armas letales** cuando sea estrictamente inevitable para proteger una vida”. [In any case, the intentional use of lethal weapons is permitted when strictly unavoidable to protect life)]. However, it should read: En cualquier caso, sólo se podrá hacer **uso intencionalmente letal de armas de fuego** cuando....

<sup>42</sup> See on this topic: Special Rapporteur on extrajudicial executions, UN Doc. E/CN.4/2006/53 (2006), §§ 44-54; a more in-depth analysis of these situations can also be found in: Nils Melzer, Targeted killing in International law, Oxford, 2008.

***McCann and Others v. The United Kingdom (1998/91), European Court of Human Rights Grand Chamber (1995)***

“211. However, the failure to make provision for a margin of error must also be considered in combination with the training of the soldiers\* to continue shooting once they opened fire until the suspect was dead. [...] Against this background, the authorities were bound by their obligation to respect the right to life of the suspects to exercise the greatest of care in evaluating the information at their disposal before transmitting it to soldiers whose use of firearms automatically involved shooting to kill.

212. [...] The soldiers’] reflex action in this vital respect lacks the degree of caution in the use of firearms to be expected from law enforcement personnel in a democratic society, even when dealing with dangerous terrorist suspects, and stands in marked contrast to the standard of care reflected in the instructions in the use of firearms by the police which had been drawn to their attention and which emphasised the legal responsibilities of the individual officer in the light of conditions prevailing at the moment of engagement [...]. This failure by the authorities also suggests a lack of appropriate care in the control and organization of the arrest operation.” [emphasis added]

[\* This was a law enforcement operation carried out by military forces.]

4. When a decision to resort to the intentional lethal use of force is already taken during the planning stage, it does not meet this criterion as this means that no attempt was made to spare the person’s life. This is, by the way, one of the reason why for instance the so-called Lethal Autonomous Weapons/Robotic Systems (LAWS/LARS) may not be lawfully used in law enforcement. The decision to deploy them is taken well ahead of the moment that lethal force is going to be used by that system (with the actual use of force being autonomously “decided” by that system at the moment it faces the target). This means that no precaution has been taken to intervene in a manner that seeks to prevent the loss of life, nor does such a system allow for assessing whether the necessity and proportionality of that lethal force is still justified at that moment.
5. In the framework of law enforcement there is no room for extending the concept of imminence to anybody for the mere reason of belonging to a group considered dangerous and who might carry out a deadly attack sometime in the future. This concept only exists in armed conflict, where those who are directly participating in hostilities may be directly targeted even if they are not posing an imminent threat at the moment they are attacked. Where security forces are engaged in operations outside the context of an armed conflict,<sup>43</sup> with a view to arresting or detaining members of an armed group (as for instance was the case in the operation assessed in *McCann and Others v. The United Kingdom* cited above) the applicable legal framework is international human rights law, and not international humanitarian law, and the degree of the actual or perceived threat this group poses does not justify departing from its application.

In view of the serious consequences resulting from the use of lethal force, governments and law enforcement or other authorities should not blur the line between law enforcement and the conduct of hostilities in situations of armed conflict. When carrying out law enforcement duties, it is the absolute and primary duty of the state to save and protect life. Therefore, taking life can only be accepted in the most extreme circumstances. This is a fundamental difference to the conduct of hostilities in situations of armed conflict, where the use of lethal force against those directly participating in the hostilities is almost normal practice. In law enforcement, the “protect-life”-principle must be upheld in all situations and there is no room for departing from it, even in exceptional circumstances:

**Basic Principle 8**

“Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.”

<sup>43</sup> It is important to bear in mind that law enforcement operations may actually take place at all times, including during times of armed conflict. It is therefore important to distinguish in terms of mandate and mission, between military operations aiming to combat an enemy in the context of an armed conflict (provided the overall situation reaches the threshold of armed conflict) on the one hand, and actions to enforce the law e.g. by means of arrest and detention, on the other.

It is precisely for this reason that the last paragraph was added to Basic Principle No. 9: The “*intentional lethal use of firearms*” can only be acceptable in the most extreme situations and only when it is strictly unavoidable in order to protect life. Where this high threshold is not met, intentionally killing a person in the name of the law (and – for countries retaining the death penalty – outside judicial proceedings) must be considered to be unlawful.

Again, this demonstrates why Lethal Autonomous Weapons Systems have no place in law enforcement: the individual threat assessment when deciding whether to resort or not to resort to lethal force, based on the considerations and principles presented above, is an evaluation process that can only be carried out by a human being and not by a machine – and at the very moment when lethal force is about to be used and not prior to it.

## 2.4 Other forms of lethal force

Basic Principle No. 9 (as well as the related Principles No. 10 and 11) specifically applies to firearms, in view of their characteristic of being designed to kill. Any use of a firearm is considered potentially lethal and therefore must meet the requirements of Basic Principle No. 9. However, there are numerous other potentially lethal ways of using force. Virtually any tool can be used in such a way that it causes death or serious injury – even if it was specifically designed to be less lethal [**on less lethal weapons see Chapter 6**]. While Basic Principle No. 9 does not apply to such other means of force, the principle of proportionality does. This means that any act likely to cause death or serious (i.e. life-threatening or life-changing) injury must pass the balancing test and comply with the “protect-life”-principle: causing serious harm to a person can only be accepted for the purpose of saving another person from a risk of a similarly serious nature; putting a life at risk is only acceptable if it is for the purpose of protecting somebody else against a risk to his or her life.

## 2.5 Protection of third persons

In all situations, the consequence of the potentially lethal or intentional lethal resort to the use of a firearm is only acceptable – if at all – with regard to the person presenting the threat. In law enforcement, the protection of third persons must be given the highest priority.

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**Explanatory note:** In a number of provisions, the Basic Principles use the term “uninvolved persons”, who should be protected against unwarranted risks. For reasons of clarity, the present Guidelines use the term “third” person in most instances, in order to include persons who are not “uninvolved” in the strictest sense of the word, but who are “uninvolved” in the sense of not being engaged in violence or not presenting a threat (e.g. peaceful participants of an assembly or hostages).

### Illustrative country example

#### **Germany: Baden-Württemberg, Police Law, 1992**

Art. 53 (2): “The use of a firearm is prohibited if this creates a serious risk for clearly uninvolved persons. This is not applicable if the use of the firearm is the only means of defence against a grave threat to life.”

Of course, law enforcement officials may face extremely difficult and challenging situations (e.g. an armed group taking hostages and threatening to imminently harm them), in which they have no choice but to intervene – including with potentially lethal force. This intervention may lead to the death of the hostages (either as the result of an accidental killing by the law enforcement officials or an intentional killing by those who issued the initial threat, i.e. the hostage takers). Still, in such situations law enforcement officials must take all possible precautions to avoid the loss of life of those they actually want to rescue or of other persons who do not present a direct threat.

And in any case, no law enforcement operation may be planned and/or conducted in a way that implies a high risk for third persons or even will certainly result in their death, if this is likely to be directly caused by a law enforcement official: The concept of an acceptable level of incidental harm to other persons (often called “collateral damage” in international humanitarian law) only applies to the conduct of hostilities in situations of armed conflict; it has no place in law enforcement.

This is one of the reasons why states must regulate the use of firearms by law enforcement officials by law and not leave this entirely to the discretion of the law enforcement agency or the individual law enforcement official.

## 2.6 Warning

### Basic Principle 10

“In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement official at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.”

Although situations in which a law enforcement official may consider the use of a firearm can suddenly arise, require a quick reaction and be very dangerous, this does not mean that law enforcement officials may always resort to the firearm immediately.<sup>44</sup> As a rule, they must be obliged by law to issue a warning before using the firearm and only to dispense with issuing a warning in the extreme situations described in Basic Principle No. 10.

In fact, the requirement of giving a warning is yet another expression of the principle of necessity: if the person presenting the risk stops his or her activity in response to the warning, use of a firearm is no longer necessary. A warning is part of the concept that law enforcement officials must try non-violent means first (in this instance: verbal warning). Domestic legislation should therefore establish the obligation to – as a rule – issue a warning before discharging a firearm, and indicate the possible exceptions to this rule.

### Illustrative country example

#### *Kosovo: Law on Police, 2012*

Art. 27: “3. Before using a firearm, a Police Officer shall issue a verbal warning, identify himself/herself as a Police Officer, ordering the person to stop, and warning that he/she will shoot if the person does not stop.

4. As an exceptional measure in exigent circumstances, a Police Officer may withhold the warning if issuing it would place the Police Officer or other persons in imminent danger of serious harm.”

<sup>44</sup> However, in **Indonesia**, Art. 8 (3) of the INP Regulation on the Use of Force in Police Action No. 1/2009 seems to imply that situations in which there is a threat to life may justify the immediate use of a firearm without warning: “To stop the subject’s or suspect’s action that is an imminent and/or immediate danger to the life of INP personnel or the community as referred to in paragraph (1), the use of a firearm or other implements without being preceded by a verbal warning or verbal order is allowed.”

# 3 | ACCOUNTABILITY

## Chapter outline

### 3.1 Introduction

### 3.2 Criminal investigation process

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- 3.2.2 Unlawful orders by superior: no defence
- 3.2.3 Responsibility of commanding and superior officers
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### 3.6 Victims' Rights

- 3.6.1 Medical assistance and notification of family or friends
- 3.6.2 The right to complain and to be involved in the proceedings
- 3.6.3 Compensation/Reparation

## Relevant provisions of the Basic Principles for this Chapter:

### Basic Principle 7

“Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.”

### Basic Principle 22

“Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control. [...]”

### Basic Principle 24

“Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use. [...]”

**Basic Principle 26**

“Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.”

**Guidelines for implementation of these Basic Principles**

**Guideline No. 3:** Domestic legislation must ensure full and transparent accountability of law enforcement officials for the use of force and firearms.

- a) Law enforcement officials must not be exempted from criminal liability for unlawful acts committed in the course of duty.
- b) Law enforcement officials must be entitled to refuse orders that are clearly unlawful and must be held responsible for knowingly executing unlawful orders. Such orders may not serve as an acceptable defence.
- c) Criminal investigations must seek to evaluate the responsibility under criminal law of the acting law enforcement officials for any unlawful behaviour, the responsibility of colleagues who witnessed an unlawful act but did not take steps to prevent it, and the responsibility of commanding and superior officers who may have given an unlawful order or have failed to prevent the unlawful use of force.
- d) Commanding and superior officers must be held accountable not only for unlawful orders they have given, but also for failings and other omissions in their superior and command responsibility which resulted in death or serious injury. In particular, they should be held liable when they knew or ought to have known that the law enforcement officials under their control and command committed unlawful acts and when they have failed to prevent them from doing so. They should also incur liability when they have failed to undertake measures of bringing those law enforcement officials before competent authorities for investigation.
- e) Safeguards must be established to ensure that criminal investigations are carried out in an effective, prompt, impartial and independent manner. In particular, the investigation must be carried out by a department or unit that has no link with the one of the law enforcement official under investigation. Clear rules must be established for the supervision of the investigation and proper evidence gathering.
- f) Disciplinary investigations may be required in cases where the conduct did not amount to a criminal offence, and also to determine additional disciplinary measures in case of a criminal offence. However, they should never preclude or replace criminal proceedings.
- g) Criminal and disciplinary penalties for use of force in breach of the law or of internal regulations must be commensurate with the committed offence or fault.
- h) An independent, impartial external oversight body should be mandated to investigate at least the most serious incidents in which force was used (i.e. which resulted in death or serious injury) and this irrespective of whether a criminal investigation has started or not. This body should have the mandate not only to carry out its own investigation, but also (e.g. in view of the correct gathering of evidence) to oversee the proper conduct of disciplinary investigations and to monitor the conduct of criminal investigations and the prosecutorial process. It should also intervene in case of undue delays.



i) Adequate supervision, control and reporting measures need to be taken to enable effective investigations compliant with human rights standards. This requires the obligation to report to all relevant levels of supervision and oversight depending on the seriousness of the incident: to the superior, to the authorities competent to decide whether a criminal investigations needs to be opened, and/or to the independent oversight body.

j) In all situations in which they interact with the public, law enforcement officials must be identifiable through name or number tags. Body-worn cameras can have serious human rights repercussions (e.g. privacy, dignity), but may also in certain circumstances serve to discourage unlawful use of force, including lethal force – provided their use is embedded in a functioning system of accountability. Any decision to introduce body-worn cameras must be taken by carefully balancing the relevant human rights issues in each specific context.

k) The accountability system must give due attention to the rights and needs of victims of the use of force. These include: the right to medical assistance, to file a complaint, to be informed of the progress of the investigation, to name and interrogate witnesses, to receive legal and psychological support, to be informed of the outcome of the investigation, to protection of privacy, to protection against threats and intimidation, and the right to full reparation, including compensation, rehabilitation, restitution, satisfaction and guarantees of non-repetition, if the use of force was found to be unlawful.

### 3.1 Introduction

All state agents, including law enforcement officials, need to be held accountable whenever the exercise of their powers has infringed the human rights of a person. It would go beyond the scope of these Guidelines to address all aspects of accountability in this regard.<sup>45</sup> However, since the use of force can have a severe impact on a person's human rights (in particular, the right to life, physical and mental integrity and human dignity), accountability becomes particularly important.

In fact, when it comes to excessive, arbitrary, abusive or otherwise unlawful use of force, the most important factor leading to such behaviour is when impunity prevails. Individuals are more likely to break laws, rules and regulations if they do not have to fear any consequences of doing so. Thus, effective accountability is indispensable to ensure lawful, human rights compliant policing – in general and with regard to the use of force and firearms.

In addition, an effective accountability system should also support a lessons learned approach allowing for the improvement of the overall functioning of a law enforcement agency as well as its policies and regulations. Undetected institutional weaknesses will inevitably contribute to the reoccurrence of human rights violations, causing unnecessary harm, injury and/or death – with or without failures being attributable to an individual person. An effective accountability system should prevent this through the timely identification of any institutional shortcomings.

In general, an effective accountability system should cover the following areas:

- criminal investigations;
- disciplinary investigations;
- civil or administrative proceedings for reparation including compensation, rehabilitation, restitution, satisfaction and guarantees of non-repetition;
- a review of institutional functioning.

<sup>45</sup> For more details on the aspect of independent complaints mechanisms to ensure police accountability, see for instance the Opinion of the Commissioner for Human Rights of the Council of Europe, CommDH(2009)4; see also: UNODC Handbook on Police Accountability, Oversight and Integrity, Vienna, 2011.

For such a system to be effective the following components need to be established in domestic legislation:

- an efficient and effective system of internal reporting, control and supervision;
- a functioning judicial system for criminal as well as civil and/or administrative proceedings, including an independent and functioning judiciary;
- an independent external oversight mechanism with a sufficient mandate and capacity to oversee and investigate police conduct and operations as well as the functioning of the law enforcement agency as a whole;
- provision for public transparency and scrutiny of all persons and institutions involved to ensure that all components of the accountability system are working correctly.

## 3.2 Criminal investigation process

### 3.2.1 *Criminal liability: no exemption*

#### **Basic Principle 7**

“Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.”

#### **Special Rapporteur on extrajudicial executions, UN Doc. A/HRC/26/36 (2014)**

“83. An effective remedy is dependent on an effective investigation. The General Assembly has addressed the obligation of all States ‘to conduct exhaustive and impartial investigations... to identify and bring to justice those responsible... and to adopt all necessary measures... to put an end to impunity.’”

To effectively fight impunity, a primary function of an accountability system is that it brings to justice all state agents, including law enforcement officials, who have committed criminal offences. Therefore, domestic criminal legislation must apply to law enforcement officials just as to anybody else and they must not be exempted from criminal investigation, and, if there is sufficient admissible evidence that they have committed crimes (including inflicting bodily harm or homicide) and other serious offences, criminal prosecution.

#### **Illustrative country examples**

##### ***Bahrain: Code of Conduct for Police Officers, 2012***

Introduction, §5: “Police officers operate according to legislative, regulatory and procedural rules that define their functions and the ambit of their work, and which must not be transgressed or violated. In the case of any violations by any police officer, he will be subject to disciplinary and criminal actions if the violation amounted to a crime, since exceeding the boundaries of police duties is deemed in violation of the law as well as the disciplinary framework of the police force.”

##### ***Botswana: Penal Code, 1964***

Art. 237: “Any person authorized by law [...] to use force is criminally responsible for any excess, according to the nature and quality of the act which constitutes the excess.”

##### ***Indonesia: INP Regulation on the Use of Force in Police Action No. 1/2009***

Art. 13 (1): “Every INP individual shall be responsible for the use of force in his/her police action.”

Furthermore, accountability, including criminal liability, must be ensured even in situations that have not resulted in death or serious injury. Of course, the decision to resort to the use of force is often a very difficult one, and when trying to come to the best possible decision in an often complex or even dangerous situation, errors of judgement may occur. In this regard, accountability must not impose on law enforcement officials an excessive and unrealistic burden, which may ultimately rather paralyse them in their ability to take decisions and lead to ineffective and inefficient policing.

However, when law enforcement officials resort to the use of force in an arbitrary or abusive manner, i.e. when the decision to use force was not based on the criteria established by law (but on other, e.g. discriminatory or other personal considerations), this constitutes an abuse of the powers granted to them, and must therefore be considered a serious wrongdoing in its own right. Therefore, in line with Basic Principle No. 7, abusive or arbitrary use of force by law enforcement officials should be established as a specific criminal offence – and not just be covered by the more general criminal law provisions of homicide, bodily harm or coercion applicable to everyone.

### **Illustrative country examples**

#### ***Armenia: Guidelines for Police in Public Order Management***

(<http://www.police.am/images/Uxecuyc-N2-eng.pdf.pdf>)

“Sect 100. Where a member of police whilst using physical force, special means or firearms, abuses their authority they will be held liable for their actions at a disciplinary level as well as any criminal liability.”

#### ***India: Kerala Police Act, 2011***

“116. Vexatious arrest, search, seizure, violence, etc. —Whoever, being a police officer,— [...]

(c) deliberately subjects, any person in custody or with whom he comes into contact in the course of his duties, to torture or any kind of inhuman or unlawful personal violence or grave misconduct; [...]

shall on conviction, be punished with imprisonment for a term which may extend to three years or fine or with both:

Provided that nothing in this section shall preclude any court from punishing any police officer, under any other law for the time being in force, if the same matter is an offence under the provisions of that law.”

#### ***Republic of Korea: Criminal Code, 1953***

Art. 125 (Violence and Cruel Act):

“A person who, in performing or assisting in activities concerning judgement, prosecution, police or other functions involving the restraint of the human body, commits an act of violence or cruelty against a criminal suspect or against another person while in the performance of his duties, shall be punished by imprisonment for not more than five years and suspension of qualifications for not more than ten years.”

Art. 135 (Aggravation of Punishment for Crimes in Course of Official Duty):

“A public official who, taking advantage of his official authority, commits a crime other than those specified in this Chapter, shall be punished by increasing one half of the penalty specified for the crime committed [...].”

In any case, the law should not provide exemption from criminal liability for law enforcement officials. Unfortunately, such exemptions can still be found in a number of countries in a direct or indirect form.<sup>46</sup> However, such exemptions are in clear violation of the state’s duty to protect life, in particular of its duty to prevent arbitrary or otherwise unlawful deprivation of life.

46 **Peru**, Law No. 30151/2014, on use of force by the armed force and national police, Art. 20: “Is exempted from criminal responsibility[...] 11. the personnel of the Armed Forces and of the National Police of Peru who, in fulfilment of their duties and the use of arms or other means of defence, causes injuries or death.” In other countries, the possibility for criminal prosecution depends on the authorization by the executive (Head of Police, responsible line ministry, sometimes even the President), e.g. **India**, Kerala Police Act, Sect. 113 (2), **Sudan**, The National Security Act (2009), Section 52 (3). This equally opens the door for covering up and impunity: Investigation should be obligatory, impartial and independent, independently from any authorization by the hierarchy of the officer whose act is to be investigated.

This has been clearly established by the Human Rights Committee:

**Human Rights Committee, General Comment No. 31 to Art. 2 ICCPR (2004)**

“18. [...] As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment (article 7), summary and arbitrary killing (article 6) and enforced disappearance (articles 7 and 9 and, frequently, 6). Indeed, the problem of impunity for these violations, a matter of sustained concern by the Committee, may well be an important contributing element in the recurrence of the violations.”

### 3.2.2 *Unlawful orders by superior: no defence*

**Basic Principle 26**

“Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.”

The legislation establishing criminal liability of law enforcement officials must also make sure that orders by superiors may not serve as a defence and furthermore that superiors themselves can be held accountable for unlawful orders they give.

The requirement of strict obedience to orders by superiors can still be found in numerous countries<sup>47</sup> – often as a result of the “militaristic” self-image of the law enforcement agency. This is, however, in clear opposition to the respect for the rule of law that should govern all law enforcement action, an aspect that is expressed in a number of domestic laws which even go so far as to explicitly prohibit knowingly executing unlawful orders.

#### **Illustrative country example**

***Kosovo: Law on Police, 2012***

Art. 13 (2): “A police officer shall have a duty to refuse orders when they are unlawful and to report such orders immediately, in accordance with sub-legal acts.”

See also for instance **Bulgaria**, Code of Ethics for State Officials (2013), Art. 44; **Cyprus**, Police Code of Ethics (2003), Art. 33; **Georgia**, Police Code of Ethics (2013), Art. 2.9; **Lithuania**, Law on Police Activities (2010), Art. 22 (3); **Uruguay**, Law on Police Procedures (2008), Art. 8 (2).

It is therefore important that law enforcement officials must be given a reasonable opportunity not to execute obviously unlawful orders and, in this regard, it can be considered as good practice when laws and regulations clarify that not executing an unlawful order will not be followed by disciplinary or other sanctions.

#### **Illustrative country examples**

***Albania: Law No. 108/2014 on State Police***

Art. 86 Duty to carry out orders:

“(1) An employee of the Police has the duty to carry out all lawful orders given to him by a person higher in function or in rank.

<sup>47</sup> E.g. **Peru**, Penal Code (1991), Art. 20 (9) provides for a possible exemption from criminal liability in case of executing an obligatory order of a competent authority – without the requirement of the order to be a lawful one.

(2) Where an employee of the Police has reason to suspect that an order given to him is unlawful, he shall immediately make this known to the superior and request, when possible in writing, that the order be given in writing. In any case where a verbal or written request for a written order is made, the superior has the duty to proceed in writing, as requested.

(3) In cases where the failure to comply with the order until it is given in writing in accordance with point (2) of this article would endanger the life of another person, the employee of the Police must comply with that order.

(4) Where an employee of the Police, even after carrying out the procedures specified in this article, continues to have reason to suspect that the order is unlawful, he takes the following actions:

a) he opposes the order, except in the cases specified in point (3) of this article;

b) he immediately informs an employee of the Police who is directly superior to his superior who gave the order, also about the action taken by him in implementation of this provision.” [emphasis added]

***Armenia: Law on Police, 2001***

Art. 38, part 7: “Where a police officer receives from his or her superiors (head officers) (immediate or direct) or other authorized officials obviously unlawful orders, commands and executive orders, the police officer shall be obliged to be guided only by the requirements of law and inform his or her superior thereof.”

(8): “[...] whereas failure to fulfil the obviously unlawful order or executive order shall exempt the police officer from liability.”

***Armenia: Guidelines for Police in Public Order Management***

(<http://www.police.am/images/Uxecuyc-N2-eng.pdf.pdf>)

Sect. 102: “Individual police must act lawfully at all times and where they know the action expected of them (order) is clearly unlawful they must be allowed to refuse to obey that order and have a means of reporting such requests.”

***Ecuador: Regulation on the Use of Force by the National Police, 2014***

Art. 9: “Order in violation of the law on the use of force

No police official can be subject to any proceedings or sanctions for refusing to carry out an unlawful order to use force that is manifestly unconstitutional or obviously unconstitutional or illegal, or would constitute a criminal offence; such an order – besides not being executed – shall be immediately reported to the superior of the person who issued the unlawful order.”

***Indonesia: INP Regulation No. 8/2009***

Art 56 (2): “Every INP member who disobeys any order from their superior which clearly violates the law has the right for legal immunity.”

See also ***Georgia***, Police Code of Ethics (2013), Art. 2.9 (3); ***Indonesia***, INP Regulation on the Use of force in Police Action, No. 1/2009, Art. 13 (2, 3).

### ***3.2.3 Responsibility of commanding and superior officers***

Domestic legislation should also establish the responsibility of commanding and superior officers – not only when they have given an unlawful order, but also when they have not prevented unlawful acts from being committed.

#### **Basic Principle 24**

“Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use. [...]”

**Special Rapporteur on extrajudicial executions, UN Doc. A/HRC/26/36 (2014)**

“82. This framework must include criminal, administrative and disciplinary sanctions. Modes of criminal accountability must include command or superior responsibility. The general existence of laws is not enough to ensure accountability of State officials – special measures are needed to ensure that those in office are held responsible.”

**Illustrative country examples****Armenia: Law on Police, 2001**

Art. 38, part 8: “Police officers having committed a deliberate crime upon obviously unlawful order or executive order, as well as the officials rendering unlawful executive orders or orders shall be subject to liability under general principles [...]”

**Armenia: Guidelines for Police in Public Order Management**

(<http://www.police.am/images/Uxecuyc-N2-eng.pdf.pdf>)

Sect. 101: “Authorizing Officers, commanders and cumulative decision making bodies remain accountable for their actions.”

**Bulgaria: Code of Ethics for State Officials, 2013**

Art. 45: “A state official, when acting as an authority, who has confirmed an order or command, takes on his own responsibility if it is determined unlawful. [...]”

**Cyprus: Police Code of Ethics, 2003**

Art. 12: “Police personnel, at all levels and regardless of rank are personally responsible and accountable for their own actions, omissions or for the orders issued to subordinates.”

Art. 13: “Cyprus Police has a hierarchical structure, which provides for a clear chain of command within the Police. It is always possible to determine the Superior Officer, ultimately responsible for the acts or omissions of police personnel.” [emphasis added]

**Indonesia: INP Regulation No. 8/2009**

Art. 57: “(6) Every INP official is responsible for every consequence of their orders.

(7) The responsibilities for any consequence of any duty mentioned in article (6) include criminal and administration responsibilities.”

**Indonesia: INP Regulation on the Use of Force in Police Action, 01/2009**

Art. 13 (4): “The commander who gives INP personnel an order to use force in a police action shall be held accountable for the risks/results of the force used, when the ordered INP personnel does not deviate from the given directions.”

**United Kingdom: Northern Ireland, Policy Directive PD 07/07 on Public Order and the Use of Force, 2007**

3. Introduction [...] (4) Role of the Ombudsman [...] (e):

“The scope of the investigation [...] will not only include the circumstances of any injury to, or death of any person, but also the circumstances leading up to the event and all the surrounding issues such as the management of the incident and planning of the operation. Police officers responsible for the planning and control of operations, where the use of force is a possibility, shall so far as possible plan and control them to minimize recourse to force, in particular, potentially lethal force. Consideration shall be given during the planning of an operation to the need for medical assistance to be available.” [emphasis added]

Lack of knowledge may not serve as an excuse when superior officers have failed to exercise proper supervision and control. Commanding and superior officers should be held liable both when they knew and when they ought to have known that their subordinates committed or were about to commit a criminal act and they did not take action to prevent such act. They should also incur liability when they have failed to take measures to bring those responsible for such acts before competent investigative authorities.

### Illustrative country examples

#### **United Kingdom: College of Policing (2013): Legal framework [Internet]**

<https://www.app.college.police.uk/app-content/armed-policing/legal-framework/>

#### **Improper and unlawful force**

“Commanders and supervisory officers will be held responsible if, they know, or should have known, through the proper discharge of their duties, that officers under their command are resorting, or have resorted, to the unlawful use of force, and they did not take all reasonable measures to prevent or report such use.”

#### **United States: *Bonsignore v. City of N.Y.*, 521 F. Supp. 394 (S.D.N.Y. Sept. 3, 1981) [retrieved from: *Fischler, et al. (2011)*]**

“The city was found negligent because, in part, the officer ‘was never identified as a problem officer, despite his displaying many of the signs that should have flagged him as having mental or emotional problems ...’ The Court held that a law enforcement department must take reasonable precautions to hire and or retain officers who are psychologically fit for duty.”

### 3.2.4 Conduct of criminal investigations

The criminal investigation must respect the fair trial rights<sup>48</sup> of the law enforcement official and must be carried out in an effective, prompt, impartial and independent manner. In most countries, criminal investigations are carried out by the police, sometimes under the supervision and control of the prosecutor or an investigating judge. Even when the investigation is conducted by the prosecution office, its daily working relationship with the police means that there is a considerable risk that the investigation might be carried out in a partisan manner where the suspected perpetrator of the crime is a police officer, and that the prosecution office might seek to clear the police officer from any accusations. Strong safeguards need to be put in place to prevent such partiality of the investigation.

Such safeguards may be:

- In countries where the initial investigations are normally carried out by the police, this should be done by a special unit in charge of investigating possible offences by police officers, which does not have any personal or professional ties to the officer(s) whose conduct is being investigated.

#### Illustrative country example

In **The Netherlands**, the National Police Internal Investigations Department (Rijksrecherche), though being part of the Dutch Police, is a separate, highly specialised investigation service under the direct control of the General Prosecutor (College van procureurs-generaal), thus not under any control by the police hierarchy. It is responsible for handling complaints about the conduct of government officials and public servants. As regards to the area of the use of force, the Rijksrecherche routinely investigates cases involving serious injury or death following the use of firearms by the police. The same applies in the event of a detainee’s death in prison or a police station. (However, less serious incidents will still be investigated by the normal police themselves.)

– see: <https://www.om.nl/algemeen/english/about-the-public/organisation-the/>.

<sup>48</sup> For more detail on these rights, see Amnesty International, Fair Trial Manual, Second Edition, POL 30/002/2014.

- Special supervision to prevent any partiality in the investigation.

#### **Illustrative country example**

##### ***Uruguay: Law on Police Procedures, 2008***

Art. 36 (2): “When the accused or the complainant is a police officer, the competent authorities shall take the necessary supervisory measures in order to guarantee the proper management of information and of the entire proceedings by the police.”

- A special prosecutor in charge of overseeing/conducting investigations against law enforcement officials.
- The opportunity for victims of the use of force to directly press charges themselves or to be effectively represented by public prosecutorial authorities in doing so. At a minimum in cases where the investigating authorities decide not to continue the investigation or decide not to prosecute the law enforcement official, victims should have the right to have that decision reviewed by court. They should also be able to effectively participate in every stage of the proceedings.

#### **Illustrative country example**

##### ***Germany: Criminal Procedure Code, 1987***

Art.172: If dissatisfied with the conclusion of the prosecution not to bring a case to trial, a victim of any offence (including offences committed by a law enforcement official), may appeal to court to have the decision reviewed with a view to have the case admitted for criminal trial.

- Obligatory reporting to external oversight bodies: to prevent any cover-up of unlawful police conduct by the investigating authority, a number of countries have also established obligatory reporting by police agencies to external oversight bodies – at least for the most serious issues.

#### **Illustrative country example**

##### ***South Africa: Independent Police Investigative Directorate Act, 2011***

“28. The Directorate must investigate

- (a) any deaths in police custody;
- (b) deaths as a result of police actions;
- (c) any complaint relating to the discharge of an official firearm by any police officer;
- (d) rape by a police officer, whether the police officer is on or off duty;
- (e) rape of any person while that person is in police custody;
- (f) any complaint of torture or assault against a police officer in the execution of his or her duties;

[...]

29. (l) The Station Commander, or any member of the South African Police Service or Municipal Police Service must-

- (a) immediately after becoming aware, notify the Directorate of any matters referred to in section 28(l)(a) to (f); and
- (b) within 24 hours thereafter, submit a written report to the Directorate in the prescribed form and manner of any matter as contemplated in paragraph (a).[...]

See also for instance **Kenya**, National Police Service Act No. 11A, 2011, Sixth schedule [Sect. 61(2)], A.5; **United Kingdom**, Police Reform Act 2002 (Chapter 30), Schedule 3.



- Furthermore, appropriate procedures must be established to ensure that evidence will be preserved and thoroughly gathered and all possible additional safeguards are put in place.

#### **Illustrative country example**

##### ***United Kingdom: College of Policing (2014): Post-deployment [Internet]***

<https://www.app.college.police.uk/app-content/armed-policing/post-deployment/>

##### ***Post-incident procedures***

provides for a complete procedure of post-incident management for any situations in which: “there has been a discharge of a weapon by the police (including those involving a conventional firearm or less lethal weapon), whether intentional or unintentional which has, or may have:

- resulted in death or serious injury, – these will be subject to mandatory referral to the IPCC [i.e. the Independent Police Complaints Commission] or another independent investigative authority (IIA)
- revealed failings in command
- caused danger to officers or the public.”

These procedures should in particular regulate the preservation of the scene of the incident, establishing whether people were injured, and the correct handling of dead bodies.

#### **Illustrative country examples**

##### ***Armenia: Guidelines for Police in Public Order Management***

(<http://www.police.am/images/Uxecuyc-N2-eng.pdf>)

Sect. 98: “Where practicable all injuries that are alleged to have been caused during the use of force, special means or use of firearms should be recorded and photographs taken. This should include any injuries to the police.”

##### ***India: Kerala Police Act, 2011***

Sect. 50: “Action in respect of injury of those in police custody.– When any person is taken into Police custody in a physically injured condition or any person who is physically injured due to the use of force by a police officer complains about his physical injury or the matter of sustaining injury comes to the notice of the police officer such person shall be taken before the nearest qualified medical practitioner and the medical practitioner shall seek and understand about the injury and the manner of its causation and record the same and shall render necessary treatment:

Provided that such person is medically fit to be taken before a Magistrate, he shall be produced by the Station House Officer before the Judicial Magistrate having jurisdiction or before an Executive Magistrate if it is outside the jurisdiction of such Judicial Magistrate and the said Magistrate shall seek and understand details of the injured in respect of the matter in which the injury was caused:

Provided further that the injured is not in a condition to be produced before a Magistrate, the details of the incident and circumstances shall be furnished forthwith by the Station House Officer to such Magistrate and a copy of the said report shall be given to the medical officer and the injured and proper acknowledgement shall be obtained from them in writing.”

The ***Lagos State (Nigeria) Coroners’ System Law of 2007*** provides for the creation of the Office of Chief Coroner (a judge of the High Court) and for the appointment of District Coroners as well as a Chief Medical Examiner (CME) and District Medical Examiners (appointed by the CME, who must have qualifications and experience in forensic pathology). The law provides that a coroner shall hold an inquest whenever he or she is informed of a death in a number of circumstances, including a violent, unnatural or other suspicious death or any death occurring in police custody. The Chief Medical Examiner shall, among other things, perform a postmortem examination following a death in these circumstances and “establish the cause and manner of death of any person within his District referred to him by an order issued by the Coroner.” The Medical Examiner is therefore required to determine not only the medical process by which death was caused, but also the manner in which the

death came about. In addition, the Medical Examiner shall “write detailed post-mortem examination reports with formulation of conclusions, opinions or testimony to be tendered as evidence during inquest proceedings. Bodies may only be preserved by embalming after the autopsy is completed (Article 16). (Source: Amnesty International, Nigeria: No Justice for the Dead, AFR44/001/2013).

**United Kingdom: College of Policing (2014): Post-deployment [Internet]**

<https://www.app.college.police.uk/app-content/armed-policing/post-deployment/>

contains concrete instructions regarding the management of the incident scene (Management at the scene).

The UN Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (The “Minnesota Protocol”) provides detailed guidelines on how the investigation into suspected extra-legal, arbitrary and summary executions should be conducted, including crime scene preservation, body examination, processing evidence etc.<sup>49</sup>

- The official concerned should be suspended from duty or at the very least be transferred to a position in which there is no contact with the public (and with those conducting the investigation), until the investigation is concluded. This should not be seen as a punishment, but just as a normal part of the procedure.<sup>50</sup>

### 3.2.5 Penalties

A criminal investigation process can only contribute to accountability and preventing a climate of impunity for human rights violations if law enforcement officials who are found guilty of a criminal offence receive penalties commensurate with the seriousness of their offence. Effective accountability also requires that investigations and proceedings must be carried out and – if appropriate – penalties must be imposed in a timely manner: when the conclusion of a trial and imposition of penalties is unduly delayed, sometimes even for years, the deterrent effect on other law enforcement officials is likely to be reduced.

**European Committee for the Prevention of Torture (CPT), CPT/Inf/E (2002) – Rev. 2015**

p. 107: “41. It is axiomatic that no matter how effective an investigation may be, it will be of little avail if the sanctions imposed for ill-treatment are inadequate. When ill-treatment has been proven, the imposition of a suitable penalty should follow. This will have a very strong dissuasive effect. Conversely, the imposition of light sentences can only engender a climate of impunity. Of course, judicial authorities are independent, and hence free to fix, within the parameters set by law, the sentence in any given case. However, via those parameters, the intent of the legislator must be clear: that the criminal justice system should adopt a firm attitude with regard to torture and other forms of ill-treatment. Similarly, sanctions imposed following the determination of disciplinary culpability should be commensurate to the gravity of the case.”

### Illustrative country examples

**Argentina: Penal Code, 1984**

Article 80 (on homicide, with imprisonment or life imprisonment as penalties), subsection 9 establishes as an aggravating factor the fact that a homicide is committed abusing the authority of being a member of the security or police forces or of the penitentiary system.

49 See also: United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, UN Doc. E/ST/CSDHA/12 (1991); International Committee of the Red Cross, Guidelines for investigating deaths in custody, Geneva 2013.

50 Unfortunately, there are still many situations in which law enforcement officials accused of serious wrongdoings remain on duty, and thus have ample opportunity to influence an investigation. This also fosters an environment in which the use of force and firearms is not considered a particularly serious issue. In some instances, provisional or preventive measures are even explicitly excluded before a criminal sentence is pronounced in judicial proceedings (except for extreme cases of obvious unlawful behaviour); see for instance **Paraguay**, Manual on the use of force by the National Police, 2011, Sect. IV.

**Germany: Penal Code, 1998**

Art. 340 establishes as a specific offence the commission of bodily harm in the exercise of duty by public servants (which includes law enforcement officials).

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**3.3 Disciplinary investigation****3.3.1 Purpose and conduct of the investigation**

Human rights violations committed by law enforcement officials will not always amount to a criminal offence, but they will still require to be addressed in an internal disciplinary process. As a result, the area of focus of disciplinary proceedings may differ according to whether or not the case is also subject to criminal proceedings:

If the use of force by the law enforcement official did not amount to a criminal offence, but was in violation of internal regulations or was otherwise inappropriate, a disciplinary investigation should be carried out in order to take the necessary corrective measures: these can vary from obliging the law enforcement official to take part in a special training or a coaching process, to disciplinary penalties (demotion, postponement of promotion, not granting scheduled benefits, through up to dismissal). In addition, in some cases, the revision of procedures or regulations might be required as well.

If a criminal offence has been committed, a disciplinary process needs to establish whether there is a need for additional internal measures, e.g.:

- to prevent any reoccurrence of such an act (e.g. establish a special supervision process);
- to determine whether the law enforcement official can still be considered suitable for the position he or she holds (e.g. in contact with the public, in contact with a specific group of people, in a particular stressful environment); or
- to determine whether the conduct demonstrated must lead to the conclusion that the law enforcement official is no longer suitable to be a member of the law enforcement agency.

**Illustrative country example****Uruguay: Law on Police Procedures, 2008**

Art. 170: “(Responsibility for non-compliance).– Non-compliance with the norms established in this law will lead to the application of corresponding administrative sanctions, irrespective of the penal or civil liability to be determined by the judiciary.

In particular, the non-compliance with rules of a prohibitive character is considered serious misconduct and carries the related disciplinary consequences.”

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Disciplinary proceedings, too, need to contain appropriate procedural safeguards: the law enforcement official should have the opportunity to defend him/herself either in person or by a legal representative, and receive fair treatment.

Finally, the disciplinary process should never preclude any criminal investigation. Where there is an indication that the conduct of a law enforcement official may have amounted to a criminal offence, this cannot simply be dealt with in an internal disciplinary process. Furthermore, any disciplinary process should not be conducted in such a way that it negatively affects either the right to a fair trial of the law enforcement official or the admissibility of evidence in the criminal trial.

### 3.3.2 Penalties and other measures

Disciplinary sanctions imposed should be commensurate with the seriousness of the committed offence or fault. All too often, disciplinary systems focus more on maintaining good order within the agency than on professional behaviour during law enforcement operations (e.g. an untidy uniform may sometimes be followed by harsher disciplinary measures than force used in violation of the law or regulations).

Particularly in cases in which the unlawful use of force represents an act of serious misconduct, this must also have an influence on the disciplinary and administrative proceedings, which must include the option for the law enforcement official to be dismissed from service. This would not present an undue double penalty for the same offence, but is justified by the fact that such a person is no longer suitable to be a law enforcement official – a decision which, if it does not follow automatically by law as a result of the criminal sentence, would have to be taken in the course of the disciplinary proceedings.

#### Illustrative country example

##### **Germany: Penal Code, 1998**

Art. 358 explicitly mentions the power of the Court – apart from imposing a criminal sanction – to deprive the public servant of his or her ability to hold a public function.

Even when the use of force did not amount to a criminal offence, but was otherwise in violation of internal procedures and standing orders, other disciplinary measures, including penalties, might be necessary.

Finally, the disciplinary investigation process may lead to the identification of a broad range of other, more general, measures which must be taken when law enforcement action has failed to meet the high standards required by the law and by the profession, such as the revision of internal procedures; the adaptation of training programmes; enhanced control, supervision and coaching; changes in equipment etc. **[see also Chapter 10]**.

## 3.4 Independent, impartial external oversight

### 3.4.1 Purpose

#### **Special Rapporteur on extrajudicial executions, UN Doc. A/HRC/14/24 Add. 8 (2010)**

“3. Without external oversight, police are essentially left to police themselves. Victims are often reluctant even to report abuse directly to police, for fear of reprisals, or simply because they do not believe a serious investigation will result. Especially in cases of intentional unlawful killings, purely internal complaint and investigation avenues make it all too easy for the police to cover up wrongdoing, to claim that killings were lawful, to fail to refer cases for criminal prosecution, or to hand down only minor disciplinary measures for serious offences.”

#### **Baldeón-García v. Perú, (Section C, No. 147), Inter-American Court of Human Rights (2006)**

“94. Such investigation must be conducted using all legal means available and should be aimed at establishing the truth and conducting the investigation, search, arrest, trial, and punishment of all masterminds and actual perpetrators of the crimes, especially when State officials are or may be involved.  
95. In order for a death investigation to be effective, it is essential that the persons in charge of such investigation be independent, de jure and de facto, of the ones involved in the case. This requires not only hierarchical or institutional independence, but also actual independence.

96. In this sense, based on the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, this Court has specified the guiding principles that must be observed when a death incident is deemed to have been the result of an extrajudicial execution. The State authorities conducting an investigation shall, inter alia, a) identify the victim; b) collect and preserve evidence related to the death in order to assist with any investigation; c) identify possible witnesses and obtain testimonies in relation to the death under investigation; d) determine the cause, manner, place and time of death, as well as any pattern or practice which may have brought about such death, and e) distinguish between natural death, accidental death, suicide and homicide. In addition, it is necessary that a thorough investigation of the crime scene be conducted and rigorous autopsies and analyses of human remains be performed by competent professionals, using the best available procedures.

97. Any deficiency or fault in the investigation affecting the ability to determine the cause of death or to identify the actual perpetrators or masterminds of the crime will constitute failure to comply with the obligation to protect the right to life.”

As mentioned above, there is a great need to prevent the possibility that law enforcement officials can escape from being held accountable for the unlawful use of force – whether investigations are not carried out at all, are unduly delayed, or are carried out in a partisan manner attempting to clear the law enforcement official from any charges.

It is therefore important that an independent external mechanism can look into at least the most serious matters related to the use of force and firearms – in particular where death or serious injury occurred.

### **3.4.2 Mandate and powers**

#### **Special Rapporteur on extrajudicial executions, UN Doc. A/HRC/26/36 (2014)**

“84. Independent, external oversight of police is a best practice. However, mere establishment of an external oversight body itself is insufficient. An effective external police oversight agency requires the necessary powers, resources, independence, transparency and reporting, community and political support, and civil society involvement. In addition, a high degree of transparency is also required to ensure the long-term success of the oversight agency.”

The independent oversight body should be mandated to investigate at least the most serious incidents to establish individual and command responsibility as well as institutional failures and deficiencies.<sup>51</sup>

To this purpose it should be able to carry out its own investigation:

- independently of whether a criminal investigation has started;
- in response to a complaint by a person affected or a report of a witness;
- on its own initiative; or
- as a result of a report to that body by the law enforcement agency. In particular, any serious incidents involving the use of force (e.g. where death and injury occurred or when a firearm was discharged) should be subjected to obligatory reporting by the law enforcement agency.

<sup>51</sup> More details on important elements to be considered when setting up an independent oversight mechanism: Amnesty International, Dutch Section, Police oversight (2015).

### **Illustrative country example**

#### ***United Kingdom: England and Wales, IPCC Statutory Guidance to the police service on the handling of complaints, 2015***

Sect. 8 (p. 42) lists a number of acts or offences which must obligatorily be referred to the Independent Police Complaints Commission. These include all cases where death or serious injury occurred, but also other serious offences, such as serious assault, serious sexual offences, serious corruption, criminal offences for which the possible sentence is imprisonment for seven years or more, etc.

In view of possible criminal proceedings, the investigation should be carried out in a manner that does not affect the right to a fair trial of the law enforcement official concerned or the admissibility of evidence for the criminal trial. Rules for thorough evidence gathering should be established similar to the ones presented above [see Chapter 3.2.4], in line with those set out in the UN Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (The “Minnesota Protocol”).

Furthermore, the independent oversight mechanism should have the authority to monitor the criminal investigation and prosecutorial process and to oversee disciplinary proceedings in order to prevent any partiality or undue delays.

Full cooperation with the investigation by the law enforcement agency must be guaranteed.

#### ***Nadege Dorzema et al. v. Dominican Republic (Series C No. 251), Inter-American Court of Human Rights (2012)***

“101. The general prohibition for State officials to arbitrarily deprive life would be ineffective if no procedures existed to verify the legality of the use of lethal force exercised by State agents. The Court has understood that the general obligation to guarantee the human rights established in the [Inter-American] Convention [of Human Rights], contained in Article 1(1) thereof, includes the obligation to investigate violations of the substantive right that must be safeguarded, protected or guaranteed. This general obligation is particularly significant in cases where lethal force has been used. As soon as the State is aware that its security agents have used firearms with deadly consequences, it is obliged to initiate ex officio and without delay, a serious, independent, impartial and effective investigation [...] This obligation is a fundamental and conditioning element for the protection of the right to life that is negated in these situations.”

#### ***Nachova and Others v. Bulgaria (43577/98 and 43579/98), European Court of Human Rights Grand Chamber (2005)***

“110. The obligation to protect the right to life under Article 2 of the [the European] Convention [on Human Rights], read in conjunction with the State’s general duty under Article 1 of the Convention to ‘secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention’, requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force [...]. The essential purpose of such an investigation is to secure the effective implementation of the domestic laws safeguarding the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility [...].

111. The authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to request particular lines of inquiry or investigative procedures [...].

112. For an investigation into alleged unlawful killing by State agents to be effective, the persons responsible for and carrying out the investigation must be independent and impartial, in law and in practice [...].

113. The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used was or was not justified in the circumstances and to the identification and punishment of those responsible [...] The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, inter alia, eye-witness testimony and forensic evidence. [...]"

## 3.5 Reporting and control

In order for the different components of the accountability system mentioned above to work effectively, obligatory reporting and control measures are required.

### 3.5.1 Reporting

Systematic reporting should be obligatory as follows:

- Any use of force, any drawing of a firearm as a means of warning, and any pointing of a firearm against a person (even without any injury caused) should be reported to the superior in order to allow for the assessment of appropriateness and lawfulness of the action, so that any necessary corrective measures (instructions, training, or disciplinary measures) can be taken **[see also Chapter 10.3]**.
- In addition, it is considered good practice that such cases should also be reported to an independent external oversight body. This would allow this body to identify – over time – problematic patterns within an agency or a specific department or unit or point to problematic operational policies or practices.

#### Illustrative country example

##### **Armenia: Guidelines for Police in Public Order Management**

(<http://www.police.am/images/Uxecuyc-N2-eng.pdf.pdf>)

Art. XI establishes obligatory reporting in case of any use of force during public order:

“116. Information regarding the use of special means during mass disorder and any discharge of a firearm by the police whilst performing their lawful duties should be referred to the Independent oversight body as a matter of course.” [emphasis added]

- Any discharge of a firearm, even if no person was harmed, should be reported to the superior and the independent oversight body **[see also Chapter 5.7]**.
- Any situation in which death or serious injury occurred should be reported to the superior, to the authorities competent to determine whether a criminal investigation needs to be opened, and to the independent external oversight body **[see also Chapter 5.7 and Chapter 10.3]**.

#### **Special Rapporteur on extrajudicial executions UN Doc. A/HRC/14/24/Add.8, 2010**

“74. [...] Police should be required by law to report all deaths in police custody or due to police action to the external agency, and there should be penalties for delayed or non-reporting.”

### **Illustrative country examples**

#### ***Armenia: Law on Police, 2001***

Art. 29 part 8 establishes the obligation of the police to inform the prosecutor of any case of death, or serious injury.

#### ***Kenya: National Police Service Act No. 11A, 2011***

Sixth schedule [Sect. 61(2)], A.5: “Any use of force that leads to death, serious injury and other grave consequences shall be reported immediately by the officer in charge or another direct superior of the person who caused the death or injury, to the Independent Police Oversight Authority who shall investigate the case.”

#### ***In The Netherlands,***

all incidents in which firearms were used and death or serious injury occurred are automatically investigated by the separate investigative police unit operating under the control of the Public Prosecution Service (Rijksrecherche) [on the Rijksrecherche see above Chapter 3.2.4].

#### ***South Africa: Correctional Services Act, 1998***

[Definition of “correctional centre” inserted by s. 1 (e) of Act No. 25 of 2008 gives a broad definition and includes any place of detention]

“15. Death in correctional centre.– (1) Where an inmate dies and a medical practitioner cannot certify that the death was due to natural causes, the Head of the Correctional Centre must in terms of section 2 of the Inquests Act, 1959 (Act No. 58 of 1959), report such death.

(2) Any death in a correctional centre must be reported forthwith to the Inspecting Judge who may carry out or instruct the National Commissioner to conduct any enquiry.

(3) The Head of the Correctional Centre must forthwith inform the next of kin of the inmate who has died or, if the next of kin are unknown, any other relative.”

#### ***United Kingdom: Police Reform Act 2002 (Chapter 30) Schedule 3***

§13(1): “It shall be the duty of a police authority or a chief officer to refer a recordable conduct matter to the Commission [i.e. the Independent Police Complaints Commission] if, in a case [...] in which the authority or chief officer is the appropriate authority – (a) that matter relates to any incident or circumstances in or in consequence of which any person has died or suffered serious injury; [...].”

- The same should apply where the circumstances give reason to believe that the conduct may have amounted to a criminal offence (even if the incident did not lead to death or injury).

### **Illustrative country example**

#### ***Ecuador: Regulation on the Use of Force by the National Police, 2014***

Art. 31 (5): “A superior who has knowledge of unlawful use of force is responsible to report this to the competent – judicial or administrative – authority.”

- Any person affected by the use of force should be entitled to complain to any of the three tiers of the accountability system (the law enforcement agency itself, the authorities in charge of criminal investigations, and the independent external oversight body).

### **3.5.2 Other control measures: Identification of law enforcement officials/body-worn cameras**

To allow the different accountability bodies to carry out their investigations properly, it is indispensable that law enforcement officials who have used force can be identified. This means that when in contact with the public every police officer should wear a visible tag – either with his or her name on it or with a number identifying him or her personally. These tags should be visible in all circumstances and not be covered by other parts of clothing or by special protective gear during public order situations.



### Illustrative country example

#### **United Kingdom: Report of the Independent Commission on Policing for Northern Ireland (“Patten Commission”), 1999**

Recommendation 72 “Officers’ identification numbers should be clearly visible on their protective clothing, just as they should be on regular uniforms. [§.9.18]”

Another important question with regard to accountability is whether police officers should systematically wear body cameras. Such a decision needs to be taken on an individual basis taking into account the circumstances of each situation. The following aspects should be considered:<sup>52</sup>

- Privacy and human dignity can be seriously affected, putting people filmed in a very uncomfortable situation, e.g. if persons are filmed in humiliating circumstances or if they are victims of domestic violence, sexual violence or rape.
- If the cameras are only switched on by the law enforcement officials when they consider it necessary, this may lead to biased and selective video recording, e.g. if what happened before or after a particular moment or incident was not recorded. (However, if these cameras are permanently switched on, this might not only become unmanageable in terms of reviewing such a large quantity of recordings at a later stage, but it might also affect dignity and privacy of officers when they are under constant surveillance during their work even when going to toilet or having a short private talk with somebody.)
- Another question of privacy has to do with the possible storage and further use of the video records at a later stage. This would also need to be carefully regulated by law in order not to allow for the unlawful storage and retention of records which could become a de facto surveillance data base, which may violate the rights to privacy of the persons filmed – in particular, but not only, if the cameras are linked with facial recognition programmes and police databases.

### i

**Explanatory note:** Clearly, privacy today has become quite a relative concept with people being able to take footage of any situation with the cameras of their mobile phones and post it on the internet. Nevertheless, if it is the state making and storing such video recordings, this has completely different implications in view of the human rights obligations that the state must respect and the greater powers of the state to use such footage in a way that will affect human rights.

- If used in the context of policing assemblies, body-worn cameras can have a chilling effect on the exercise of the right to peaceful assembly, as they may dissuade people from participating in demonstrations because they want to avoid their images being captured by the police – for example in contexts in which the images might be used by the police for the purpose of later prosecuting them for the mere fact of having participated in the assembly.
- However, it could be a life saving measure in circumstances where there is frequent use of lethal force by law enforcement officials and the body-worn camera might have a dissuasive effect.

Thus a decision on if, how, and when to use body-worn cameras needs to be taken by carefully balancing the costs and benefits, in particular in terms of human rights, taking into account the specific context in which the law enforcement agency operates and applying the principle of proportionality. In some contexts, the life-saving aspect might become so important that other human rights considerations become of secondary importance and the use of body-worn cameras might be justified. In other situations, the risk that such video recordings might result in excessive surveillance by the state could lead to a decision not to use them (at least not in a systematic way).

<sup>52</sup> On the advantages and concerns regarding body-worn camera’s see also Special Rapporteur on extrajudicial executions, UN Doc. A/HRC/29/37, 2015.

In any case, it is important to stress that wearing body cameras will not contribute to improving human rights compliance *without* the support of a legal and operational framework in which law enforcement officials are effectively held accountable for their actions.

### 3.6 Victims' rights

#### Basic Principle 5

“Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: [...] (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment. [...]”

#### Basic Principle 23

“Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.”  
Furthermore, in case the use of force presents a criminal offence or might be considered an abuse of power the **UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power** (A/Res/30/34) needs to be given due consideration.

#### 3.6.1 Medical assistance and notification of family or friends

Law enforcement officials are obliged, immediately after having resorted to the use of force, to take care of those who are injured or otherwise affected, to ensure that they receive medical and other assistance and that their families and friends are notified.

#### Illustrative country examples

##### **Albania: Law No. 108/2014 on State Police**

Art. 89: “Other duties

Employees of the Police have the following duties when exercising their competences:

[...]

c) to seek medical care and to take such measures as are reasonably practicable to protect the life and health of a person who is in his care, or whom he injured while undertaking measures while on duty.”

Art. 133 Use of force

[...] “(4) The injured shall be provided help, including medical assistance when force is applied, in cases where this is necessary and possible.”

##### **Armenia: Law on Police, 2001**

Art. 29 obliges to provide for medical aid to anybody injured (part 5 (2)), and to inform close relatives in case of injuries or death (part 5 (3)).

##### **Armenia: Guidelines for Police in Public Order Management**

(<http://www.police.am/images/Uxecuyc-N2-eng.pdf.pdf>)

Art. IX. Responsibilities of the Police (p. 21 of the pdf)

“97. All persons who have been injured as a result of use of force, special means or use of firearms should be provided with initial medical treatment and where necessary access to further treatment. [...]

99. The police have a responsibility to notify the relatives of any injured party and to disclose their current location, i.e. street, hospital or police premises.”

***Czech Republic: Act Regulating the Police, 2008***

Sect. 57 (1) obliges to render first aid after use of coercive means.

***Portugal: Regulation on Limits to the Use of Coercive Means by the National Police, 2004***

Chapter 2, 4 (e) on chemical irritants:

“Individuals exposed to incapacitating substances shall be given, as soon as possible, the opportunity to wash and remove residues off their affected body parts, as well as medical assistance if needed.”

See also: **Azerbaijan**, Police Act 1999, Section 27(5); **United States**, Santa Barbara Use of Force Policy Manual (2013), Art. 300.4.2.

**3.6.2 The right to complain and to be involved in the proceedings**

Affected persons must be entitled to complain about any alleged unlawful use of force and to be involved in and informed about the investigation proceedings.

**Illustrative country examples*****Australia: Victims Rights and Support Act, 2013***

“6.4 Information about investigation of the crime

A victim will, on request, be informed of the progress of the investigation of the crime, unless the disclosure might jeopardise the investigation. In that case, the victim will be informed accordingly.

6.5 Information about prosecution of accused

(1) A victim will be informed in a timely manner of the following:

- (a) the charges laid against the accused or the reasons for not laying charges,
- (b) any decision of the prosecution to modify or not to proceed with charges laid against the accused, including any decision to accept a plea of guilty by the accused to a less serious charge in return for a full discharge with respect to the other charges,
- (c) the date and place of hearing of any charge laid against the accused,
- (d) the outcome of the criminal proceedings against the accused (including proceedings on appeal) and the sentence (if any) imposed.

(2) A victim will be consulted before a decision referred to in paragraph (b) above is taken if the accused has been charged with a serious crime that involves sexual violence or that results in actual bodily harm or psychological or psychiatric harm to the victim, unless:

- (a) the victim has indicated that he or she does not wish to be so consulted, or
- (b) the whereabouts of the victim cannot be ascertained after reasonable inquiry.”

***Austria: Code of Criminal Procedure, 1975***

Art. 106: “Appeal against violation of rights

(1) Any person, who claims to have suffered a violation of a personal right by the criminal investigation police or the prosecution in the course of the criminal investigation is entitled to an appeal to the court, if [...] 2. an investigation or coercion measure was ordered or applied in violation of the norms of the present code.”

***Ireland: Garda Síochána Act, 2005***

Part III establishes the Ombudsman Commission, and addresses in Part 4 Complaints, Investigations and other Procedures.

Art. 91 establishes the proceedings to be followed by the Ombudsman in case of complaints concerning death of, or serious injury to, a person.

Art. 103 (1)(a)(i) obliges the Ombudsman to keep the complainant informed of progress and result of investigation.

***United Kingdom: England and Wales, The Police (Conduct) Regulations, 2012***

Regulations in case of an allegation indicating that the conduct of a police officer may amount to misconduct or gross misconduct: Art. 30 – The complainant has the right to attend the misconduct proceedings.

### ***The Netherlands***

The Rijksrecherche (the National police investigation office in charge of investigating – among others – cases of death or serious injury in the course of police operations) appoints a family liaison officer in such cases to keep contact with the family of a victim, to clarify the investigative process, to correct wrong information that might be circulating in the public domain etc.

### **3.6.3 Compensation/Reparation**

Victims should be entitled to effective reparation, including compensation for the harm suffered. This should be granted in all cases where it is established that the harm suffered was the result of the unlawful resort to the use of force by a law enforcement official – irrespective of whether the individual official responsible can be identified and held criminally liable.<sup>53</sup>

**See also: UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, General Assembly Resolution 40/34 (1985)**

“18. ‘Victims’ [of abuse of power] means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.

19. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. [...]” [emphasis added]

### **Illustrative country examples**

#### ***Czech Republic: Act Regulating the Police, 2008***

Sect. 95 (1): “The State shall also be liable for damages caused by the Police in connection with their performance of police tasks; this shall not apply in the case of damages suffered by a person who, by his/her unlawful conduct, gave rise to a lawful and adequate police action.”

#### ***Hong Kong: Criminal and Law Enforcement Injuries Compensation (CLEIC) Scheme***

[http://www.swd.gov.hk/en/index/site\\_pubsvc/page\\_socsecu/sub\\_criminalan/](http://www.swd.gov.hk/en/index/site_pubsvc/page_socsecu/sub_criminalan/)

“Compensation may be claimed for any injury or death resulting from the use of a weapon by a law enforcement officer in the course of his duty.”

<sup>53</sup> Unfortunately, it still happens that victims do not receive compensation, despite the fact that an unlawful act occurred and was confirmed in judicial proceedings, for the mere reason that it was not possible to identify the individual officer responsible (see for instance the case of Consuelo Baudín injured by Spanish police officers during a public assembly: “The case has been provisionally dismissed by the examining judge because, although he considers there is evidence of force used by the police that constituted criminal breach, the identity of the perpetrator is unknown.” (Amnesty International, Spain: The right to protest under threat, EUR 41/001/2014, p. 37)

# CONCLUDING REMARKS ON SECTION A

The points mentioned above are the minimum requirements for what needs to be established by law in order to fully implement the human rights standards set by the Basic Principles, in particular:

- create a comprehensive legal framework governing the police power to resort to the use of force in general, with particular emphasis on the principles of legality, necessity and proportionality;
- subject the use of lethal force to the strict requirements of the “protect-life”-principle;
- ensure full accountability at all relevant levels (acting law enforcement officials, witnessing colleagues and superior officers) for the use of force and firearms through setting up effective accountability mechanisms which encompass criminal and disciplinary proceedings, independent external oversight and an institutional lessons learned process. Particular attention should be given to the accountability of superior officers and the command hierarchy as well as the rights and interests of victims.

The more concrete operational and practical aspects of the use of force have to be addressed in internal regulations, standard orders or procedures, or manuals, and will be discussed in the next section. In some countries, however, certain elements set out in the next section may be included in the domestic legislation; therefore Section B will contain references to both domestic legislation and the internal operational procedures or regulations of law enforcement agencies.



## SECTION B

# THE OPERATIONAL FRAMEWORK

### Introduction

This section explains the concrete measures law enforcement agencies should take to ensure that the Basic Principles are effectively implemented in practice: it is a fundamental duty of the command leadership of a law enforcement agency to develop an operational framework which creates the best possible environment for law enforcement officials to carry out their duty in a lawful, human rights compliant, effective, efficient and professional manner. This is not an easy task. With regard to the use of force, this is not achieved merely by writing a human rights manual on the use of force and adding a few hours to the training curriculum. It requires a broad range of measures:

- operational instructions to be given to law enforcement officials on how the leadership expects them to do their job;
- providing the appropriate equipment and training;
- a thorough human resources management system;
- a clearly established system of command and control – such a system being essential to ensure effective accountability for any law enforcement action.

### Illustrative country example

#### ***United States: Department of Justice, Investigation of the Cleveland Division of Police, 2014***

p. 28: “Police departments have the ability and responsibility to detect and take steps to prevent the use of unreasonable force by their officers. The components of an effective use of force accountability system are well known. Police departments must ensure appropriate training in how and when to use force, and provide the supervision necessary for sufficient oversight of officers’ use of force. Departments must also provide their officers clear, consistent policies on when and how to use and report force. Departments must implement systems to ensure that force is consistently reported and investigated thoroughly and fairly, using consistent standards and without regard to improper external factors or biases. The force investigation serves as the basis for reviewing the force incident to determine whether the officer acted both lawfully and consistently with departmental policy, as well as to determine whether the incident raises policy, training, tactical, or equipment concerns that need to be addressed for officer and civilian safety. Use of force aggregate data and trends should be monitored to enable the Division to identify and address emerging problems before they result in significant or widespread harm.”

All these measures need to address the use of force in general, the use of lethal force, the use of less lethal weapons and the use of force in specific situations such as public assemblies and places of detention.

The present section seeks to provide the considerations which should be taken into account when developing this operational framework in relation to the use of force, so that it conforms to the standards as established by the Basic Principles.

It is important to note that this task would also be incumbent on military armed forces [see **Introduction IV.**] should they be tasked with law enforcement duties (when this is lawful under domestic legislation). It is obvious that this cannot be achieved in a short period of time and involves a considerable risk of human rights

violations committed by the military, if it is not done properly. Therefore, authorities should carefully consider whether they are able to effectively implement all necessary measures to prevent such violations **[see also Chapter 7.4.4]**.

Furthermore, it is important to stress that the development of a consistent and appropriate operational framework is a never-ending task. Procedures, equipment, training, chain of command, supervision and control – all these aspects need to be continually reviewed in a thorough and ongoing lessons learned process in order to make the necessary corrections, adaptations and improvements to meet the needs and requirements of daily law enforcement practice.

As already mentioned in the introduction **[see Introduction III.]**, where reference is made in this text to particular operational documents, this does not represent any judgement on whether those rules and regulations are effectively implemented in practice. In fact, the correct implementation and application of operational procedures, rules and regulations is one of the most frequent failings within law enforcement. That is where internal supervision and control as well as external accountability become particularly important **[see Chapter 3 and Chapter 10]**.

**Finally, it must be stressed again that the examples from existing operational procedures provided in this section are only “illustrative country examples” that are not suitable for simplistic “copy-paste” exercises [see Introduction II.]. The command leadership of a law enforcement agency must create its own operational framework that takes into account the situation of the country – while ensuring full compliance with international human rights law and standards.**



# 4 | THE GENERAL CONCEPT OF THE USE OF FORCE

## Chapter outline

- 4.1 General considerations
- 4.2 Overarching principle: avoid the need to resort to the use of force
- 4.3 Element of precaution and decision making
  - 4.3.1 Planning and preparation
  - 4.3.2 Equipment
  - 4.3.3 Time and place of intervention
  - 4.3.4 Protection of groups or persons at risk
  - 4.3.5 Protection of third persons
  - 4.3.6 Medical attention and other life saving measures
- 4.4 Differentiated response and minimize damage
- 4.5 Proportionality: retreat must be an option

## Relevant provisions of the Basic Principles for this Chapter:

### Basic Principle 1

“Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.”

### Basic Principle 2

“Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.”

### Basic Principle 3

“The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.”

### Basic Principle 4

“Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”

**Basic Principle 5**

“Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

- (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- (b) Minimize damage and injury, and respect and preserve human life;
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
- (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.”

**Guidelines for implementation of these Basic Principles**

**Guideline No. 4:** The command leadership of law enforcement agencies must create an operational framework that contains instructions for various kinds of situations that law enforcement officials may face during their work, including decision making criteria and the conditions for the use of force.

a) The operational framework must not provide ready-made answers for specific type of situations. On the contrary, it must instruct the acting law enforcement officials to assess each individual situation on its own merits and thus allow for a certain personal discretion when deciding whether or not to resort to the use of force. However, the operational framework should present the possible options of response in a given situation, define the criteria that should guide the decision making process and the precautions to be taken, and set clear boundaries as to what is and what is not allowed (prohibitions).

b) The operational concept on the use of force should be guided by the overarching principle that law enforcement officials should seek to avoid the need to resort to the use of force, and require them to proactively seek to resolve any situation through other means than the use of force, such as the means of persuasion, negotiation, and de-escalation. In particular, law enforcement officials must be required to issue – as far as possible – a warning before *any* use of force.

c) The element of precaution must be given the utmost attention in both planned operations and suddenly occurring situations. This includes:

- obtaining and analysing relevant information in advance as much as possible;
- anticipating various scenarios, and making an assessment of the threats and risks in the given situation;
- ensuring the availability of a range of tactical options, including: protective equipment and means of communication, equipment and weapons allowing for a differentiated response, as well as sufficient resources and backup;
- deciding on the appropriate time and place for any law enforcement action with a view to minimizing risks and harm for the public as well as the law enforcement officials involved;
- ensuring the protection of persons or groups at risk;
- providing for the protection and/or evacuation of third persons;
- ensuring the availability of medical assistance.

d) Any use of force must be guided by the concept of a differentiated response with a view to minimizing damage: law enforcement officials should be instructed not to immediately resort to the easiest means at their disposal, but to choose – among the available means that are likely to be effective – the one that carries the lowest risk of causing harm and injury.

e) Law enforcement officials must not be expected to achieve their objectives at any cost. The operational framework must offer the option of retreat with a view to minimizing damage.

## 4.1 General considerations

### Basic Principle 1

“Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials.”

International human rights law and standards as well as domestic legislation set the framework within which law enforcement officials may lawfully resort to the use of force and firearms. However, there is a need to establish how this legal framework should be implemented in the day-to-day practice of law enforcement officials. Operational procedures are of vital importance in providing law enforcement officials with clear instructions on how to carry out their daily work in full respect and application of the applicable legal framework. They must clearly explain what the command hierarchy expects from the individual law enforcement official in this regard and compliance with these operational procedures must be obligatory and enforceable. It goes without saying that operational instructions and institutional policies should comply with international human rights law and should be formulated in a way that ensures that there is no room for discriminatory practices – in general, and specifically when it comes to the use of force (e.g. the use of a higher degree of force against a specific group).

This requires operational instructions and procedures to be as precise as possible with regard to the situations in which force and firearms can legitimately be used and how they are supposed to be used – while still leaving room for the personal discretion that law enforcement officials need to carry out their work effectively.

But law enforcement agencies all too often lack proper operational instructions, or the instructions they have are vague and unclear, or sometimes even contradictory. Furthermore, in many instances these instructions are not respected, with little or no reaction to such disrespect from superiors or the command leadership.

It is in the nature of law enforcement work that it is carried out in a large variety of situations, in which there are many different factors to be taken into account when deciding on a course of action, particularly with regard to the use of force. Such decisions are far from easy and law enforcement officials often have to take them instantaneously. It is obvious that such decisions therefore are often not clear-cut, and law enforcement officials need to rely on their own professional judgement in the concrete situation and a certain degree of discretion is therefore indispensable for their work.

Thus, operational procedures should not become a straitjacket for law enforcement officials, considering that each situation presents different challenges with a different level of threat, requiring an individual decision for each individual situation. At the same time, operational procedures should not leave law enforcement officials in a limbo of uncertainty as to what is expected from them. It is therefore important that standard operational procedures provide different instructions for different situations, scenarios, and types of police operations.<sup>54</sup>

### Illustrative country example

For instance, in *Portugal (Regulation on Limits to the Use of Coercive Means by the National Police, 2004, Chapter 3, sect. 11-14)* operational instructions differentiate between various types of aggression: by an unarmed person, by a person with an object other than a firearm, and this at a close enough range to harm somebody (or not), a person armed with a firearm and a person armed with explosives.

<sup>54</sup> As some of the examples in this section will demonstrate, a number of countries have chosen to regulate (some of) these aspects by law, and have not left them to internal law enforcement regulations and procedures. They will nevertheless be discussed in this section, as it is the content of the operational framework that is relevant here and not its form (provided that the legal framework established meets the minimum criteria presented in [Section A.]).

Although in such operational documents it is good practice to provide for a number of standard procedures to be followed, the actual decision whether or not to make use of force must be subject to an assessment of the concrete situation. The operational documents must leave room for some discretion, and not provide ready-made answers based on an abstract description of a certain type of situation. Nevertheless, they should provide clear instructions as to the criteria for the appropriate use of this discretion, e.g. considering the mindset of the person against whom force might be used (drunk or under the influence of drugs, mentally disturbed, in exceptional emotional distress, etc.), the size and physical strength of the person, any risks for other persons being affected if force is used (or if no action is taken), the urgency of the intervention (including the option to delay/postpone the intervention) etc.

At the same time, they must ensure that the decision making criteria do not give room for discriminatory bias, e.g. from the outset considering a certain category of person as being more dangerous than others and thus allowing for a “tougher” approach than for other groups.

Furthermore, the degree of responsibility and decision making power needs to be clearly established for each individual law enforcement official in accordance with the different levels of the agency’s hierarchy [see **Chapter 10**]. Who may (and must!) take which type of decisions? This is actually not only a power, but also a responsibility and the system must ensure that decisions made can be traced back in order to ensure full accountability for all decisions that have (or have not) been taken. For that purpose, larger-scale operations require a more formal set-up of the decision-making process with a clear chain of command and full traceability of decisions made, to ascertain that the decision is taken at the correct level (and to ensure that decisions are taken at a level where it is indeed possible to fully assess the situation) [see **Chapter 7.3** and **Chapter 10.2**].

### **Illustrative country example**

#### ***United Kingdom: College of Policing (2014): Command [Internet]***

<https://www.app.college.police.uk/app-content/armed-policing/command/>

#### ***Initial command responsibility***

“[...] In planned operations, a command structure must be in place prior to the officers being deployed. Any consideration in respect of the deployment of AFOs [Armed Firearms Officers] should be recorded along with the rationale for it [...]”

The governing operational concept of the use of force and firearms should reflect the following general elements as expressed in the Basic Principles:

- A threat to life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole (Basic Principles Preamble §2),
- Resorting to the use of force should only take place when strictly necessary and to the extent required for the performance of their duty (Preamble §5),
- The obligation to give due respect for human rights (Preamble §7),
- The duty to minimize the risk of endangering uninvolved [i.e. third] persons (Principle No. 3),
- The duty to apply as far as possible non-violent means first (Principle No. 4),
- The duty to exercise restraint and act in proportion to the legitimate objective, to minimize damage and injury, to respect and preserve human life, and to render medical assistance to injured persons (Principle No. 5a-c),
- Special attention should be given to alternatives to the use of force: peaceful settlement of conflicts, mediation etc. (Principle No. 20).

Concretely, this boils down to the following four elements that are of particular importance for law enforcement agencies when developing their operational concept and procedures regarding to the use of force:

- the overarching principle that law enforcement officials should seek to avoid the need to resort to use of force;
- the need to take all possible precautionary measures;
- the need for a differentiated response and the obligation to minimize injury and damage;
- the principle of proportionality and the option of retreat.

## i

**Explanatory note:** These elements (explained further below) apply to any use of force, e.g. also when making an arrest or when resorting to means of restraint. Additional guidance for the use of means of restraint can be found in [Chapter 6 and 8.2].

## 4.2 Overarching principle: avoid the need to resort to the use of force

Any operational procedure/framework should start from the overarching principle that law enforcement officials should seek to respond to situations without the need to resort to the use of force.

### Illustrative country example

#### ***Portugal: Regulation on Limits to the Use of Coercive Means by the National Police, 2004***

Chapter 1, sect. 3b): “Necessity:

The use of coercive means which would affect the life or integrity of citizens shall be the ‘last resort’ during police actions.

Without prejudice to the legal provisions on the exclusion of criminal responsibility [e.g. the right to self-defence for any person, including law enforcement officials, as established in Art. 31 (2a) of the Penal Code], force shall only be used when it is not possible for police to fulfil their law enforcement function in another way, specifically as regards to:

1. Carrying out arrests/detentions;
2. Putting an end to resistance against the execution of a lawful and legitimate police order;
3. Preventing that prisoners or persons in custody escape;
4. Ensuring the compliance with administrative acts from the competent authority;
5. Maintaining public order, security and peace.”

However, it is important to stress that this concept implies much more than only using force when necessary; it implies a proactive and active attempt to achieve a legitimate law enforcement objective in a different way. Still, operational documents quite often put the use of force and firearms at the centre of their focus, the use of force apparently being considered to be the normal response in any situation of a threat or a non-compliant person.

Such concepts, however, are in contradiction with the duty to protect life, the principle of necessity and the particular emphasis placed on communication, de-escalation, and mediation as established in the Basic Principles. The need to resort to the use of force should be considered as an *undesired* outcome, that should proactively and actively be sought to be avoided.<sup>55</sup> Law enforcement officials should therefore be required to attempt to de-escalate a situation, to initiate a dialogue and to negotiate with a person, before considering any resort to the use of force. (This obviously requires that law enforcement officials are not only instructed to use such techniques, but are also trained accordingly to develop the necessary skills of conflict management and communication [see Chapter 9.2]).

<sup>55</sup> This is also the reason why any use of force should be reported and evaluated at least by the superior, to determine whether the use of force was justified in the given situation or whether it would have been possible to deal with the situation without resorting to force [see Chapter 3.5 and 10].

### **Illustrative country examples**

#### ***Afghanistan: National Police Code of Conduct, 2011***

Principle 3: “Use of Force. I will use force when necessary and only to the extent absolutely required for the performance of my duties. I will never employ unnecessary force or violence. I will use force as a preventive tool only when discussion, negotiation and persuasion have been attempted unsuccessfully [...]”

#### ***Georgia: Police Code of Ethics, 2013***

“3.7. Police officers, along with other capabilities, shall possess persuasion, negotiation, mediation skills that are vital in minimizing the use of force in critical situations.”

#### ***Ghana: Police Handbook, 2010***

p. 14, sect. 4.1.1: “Police officers are required by duty to attempt to de-escalate a tense situation whenever tactically possible.”

#### ***Lithuania: Law on Police Activities, 2000***

Art. 23 (1) “Coercion which might cause bodily injuries or death may be used to the extent which is necessary for the fulfilment of the official duty, and only after all possible measures of persuasion or other measures have been used with no effect.”

#### ***Nigeria: Police Code of Conduct, 2013***

p. 2: “The use of force should be used only after discussion, negotiation and persuasion have been found to be inappropriate or ineffective.”

#### ***Uruguay: Law on Police Procedures, 2008***

Art. 3 (D): “[...] Prior to the legitimate use of force, the police shall exhaust the appropriate deterrent means available, as for instance dialogue and negotiation with the individuals involved.”

### Warning

Other than in instances of the use of firearms, the Basic Principles do not explicitly require a warning to be issued before resorting to the use of force. However, whenever possible this should be attempted, to ensure compliance with the requirement of necessity: when a person already complies with an order or stops being violent or resisting the law enforcement officer after a warning, then the use of force is not necessary. The warning should therefore be considered one of the non-violent means to be attempted first and provisions requiring law enforcement officials to issue a warning prior to any resort to the use of force are a good practice.

### **Illustrative country example**

#### ***Uruguay: Law on Police Procedures, 2008***

Art. 21 contains an obligation for the law enforcement officer to identify himself and to issue a warning that force might be used, unless the warning would put the life or physical integrity of the law enforcement officer or of anybody else at risk.

Similar instructions can be found for instance in: **Armenia**, Law on Police (2001), Art. 29 (3) and the Guidelines for Police in Public Order Management, Sect. 23.

However, it is also important to distinguish between a warning and intimidation, the latter being a means to instil fear, which may lead to an escalation of the situation rather than de-escalating and obtaining compliance.

### **Illustrative country example**

#### ***Portugal: Regulation on Limits to the Use of Coercive Means by the National Police, 2004***

Chapter 2: The regulation instructs officers never to intimidate a person with chemical irritant (sect. 4c) or a baton (sect. 6c), unless this is done with a view to avoiding its use.

### 4.3 Element of precaution and decision making

Precautionary measures are required for law enforcement officials to be able to avoid the use of force or, where the use of force is unavoidable, to minimize damage.

These measures include obtaining and analysing relevant information beforehand as much as possible; anticipating different scenarios, including an assessment of the threats and risks in the given situation; ensuring the availability of a range of tactical options, and considering which one to use; deciding on the appropriate time and place for any law enforcement action with a view to minimizing risks and damage, both for the public and the law enforcement officials involved; considering the need for the protection of third persons, and of persons or groups at risk; and the availability of medical assistance.

This responsibility lies with both the acting law enforcement officials and their commanding officers.

#### **Special Rapporteur on extrajudicial executions, UN Doc. A/HRC/26/36 (2014)**

“63. [...] Once a situation arises where the use of force is considered, it is often too late to rescue the situation. Instead, in order to save lives, all possible measures should be taken ‘upstream’ to avoid situations where the decision on whether to pull the trigger arises, or to ensure that all the possible steps have been taken to ensure that if that happens, the damage is contained as much as is possible.”

#### **4.3.1 Planning and preparation**

A first element of precaution is ensuring – as far as possible – that the maximum amount of information is available, before determining any course of action. Unfortunately, it still happens that law enforcement officials are sent into potentially dangerous situations without sufficient planning and precautions: insufficient staff numbers and lack of protective gear and other types of equipment, lack of means of communication, and lack of sufficient background information to appropriately judge and assess a situation are just a few of the shortcomings that have characterized serious incidents resulting in casualties among both law enforcement officials and individuals involved or uninvolved in the situation.

Often, police action occurs spontaneously as a response to a suddenly arising situation. However, other operations can be planned ahead of time and here, all possible measures need to be taken to avoid the need to resort to force, and where this is unavoidable, to minimize damage, protect third persons and respect and protect life (including the life of police officers).

#### **Illustrative country examples**

##### ***Georgia: Police Code of Ethics, 2013***

“5.5 Police officer is obliged to plan and control operations in a manner to minimize the use of force, especially a lethal means that can cause the loss of human life.”

##### ***United Kingdom: Northern Ireland, Police Code of Ethics, 2008***

Art. 4.2: “Police officers responsible for the planning and control of operations where the use of force is a possibility shall so far as possible plan and control them to minimize recourse to the use of force, in particular, potentially lethal force.”

In law enforcement there may always be unexpected, suddenly and spontaneously arising situations to which law enforcement officials have to react immediately (for such situations, [see further down Chapter 4.3.3]: Time and place of intervention). Still, this does not mean that there is no room to ensure proper command and intelligence gathering support. In particular, law enforcement officials should not recklessly rush into situations

that can easily degenerate nor should they be deployed in such a manner.<sup>56</sup> Information about the persons likely to be encountered in the course of a police operation, knowledge of the location, light and weather conditions etc. can become of vital importance for all those involved in the situation. For instance, the so-called “high-risk-arrests”, when the person to be arrested is likely to be armed or to become violent in other ways, should – if the circumstances allow – only be conducted after thorough intelligence gathering on location, possible escape routes or hiding places, the likelihood of the presence of third persons, weather and light conditions, the possibility to communicate with the person to be arrested etc.

### Illustrative country example

#### **United Kingdom: College of Policing (2014): Armed deployment [Internet]**

<https://www.app.college.police.uk/app-content/armed-policing/armed-deployment>

#### **Assessment of the current situation**

“An assessment of the situation should take account of:

- the subject’s physical capacity
- the subject’s emotional or mental state
- the subject’s capacity to understand what is happening
- any cultural, religious and ethnic considerations relevant to the individual
- the locality in which the incident is taking place.

The availability of such information will be subject to the circumstances, time available and level of risk. Consideration may be given to obtaining information from sources such as a friend or a family member, locally based police officer, a health professional or a representative from a community group.”

#### **McCann and Others v. The United Kingdom (18984/91), European Court of Human Rights Grand Chamber (1995)**

“211. However, the failure to make provision for a margin of error must also be considered in combination with the training of the soldiers\* to continue shooting once they opened fire until the suspect was dead. [...] Against this background, the authorities were bound by their obligation to respect the right to life of the suspects to exercise the greatest of care in evaluating the information at their disposal before transmitting it to soldiers whose use of firearms automatically involved shooting to kill.

212. [...] This failure by the authorities also suggests a lack of appropriate care in the control and organization of the arrest operation.” [emphasis added]

[\* This was a law enforcement operation carried out by military forces.]

The planning and preparation for an operation should also include considerations for its wider impact, e.g. with regard to the community. How an operation is carried out, how disproportionate or measured the visual appearance of deployed law enforcement officials and the use of force is, and how well or badly authorities communicate with the public, can have a serious impact on the situation within the community: it is crucial that such an operation seeks to avoid creating panic, fear, and unnecessary feelings of insecurity or anger/hostility (be it towards police or towards specific members or groups of the community) within the community as much as possible.

<sup>56</sup> The events on 16 August 2012 in Marikana, **South Africa**, where 34 people were killed, illustrates the terrible outcome such decisions may have; cf. Report of the Marikana Commission of Enquiry (released on 25 June 2015), p. 348: “[...] In a section in their heads on expert policing issues with which the Commission is in entire agreement, the evidence leaders deal with the following topics: [...]” p.367:] “ [...]The] decision that the ‘tactical option’ would be implemented the next day, if the strikers did not lay down their arms and leave the koppie [=hill] that morning. That decision was inexplicable, and no real attempt has been made to explain or justify it. It was frankly reckless. Second, at 13h30 on 16 August, [the Provincial Commissioner] made the decision that it was now time to move to phase 3 (the tactical phase). This too was a reckless decision. She had been informed of the risks of the operation, but nevertheless proceeded, at a time when there was no reason to do so.”



### 4.3.2 Equipment

#### Basic Principle 2

“Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.”

The availability of protective equipment is another important element of precaution: it should help to reduce the risks to personal safety, thus limiting the situations in which law enforcement officials may need to use force to defend themselves. The availability of such equipment is a fundamental responsibility of the command hierarchy. Failure to provide protective equipment for personal safety must be considered a violation of law enforcement officials’ human right to life and physical integrity. Superiors are also responsible for ensuring the use of this equipment by their subordinates.

#### Illustrative country example

##### **Armenia: Guidelines for Police in Public Order Management**

(<http://www.police.am/images/Uxecuyc-N2-eng.pdf>)

Sect. 28: “In the circumstances where the police are required to carry special means for active protection and fail to do so should be dealt with as a disciplinary matter for both the individual and supervisor.”

At the same time, the risks of escalation of tense situations as a result of law enforcement officials appearing unnecessarily threatening because they wear protective equipment also needs to be taken into account. There is thus a need to strike a balance between maximum protection and de-escalation by having an unthreatening appearance. Having different options for appearance/protective equipment, ranging from plain clothes to full protective gear, with lighter forms in between (e.g. only bullet-proof vests), should help solve this dilemma. Police forces might also opt to wear protective equipment beneath their ordinary clothing or larger overalls so that the equipment cannot be seen. Obviously, clothing that is non-flammable is also crucial, particularly in public order situations.

Other types of equipment are of similar importance: the availability of means of communication (to call for backup, to pass crucial information, to communicate with persons against whom force might be used) is a fundamental element of precaution.

Availability of different types of weapons is another element of precaution: if law enforcement officials are only provided with firearms, they are very likely to make use of them. Having different types of devices at their disposal to confront a threat would allow them to select the one with the least harmful effects and thus minimize damage.

#### Illustrative country example

##### **Brazil: Interministerial Ordinance No. 4.226 of 31 December 2010**

Art. 8: “Any law enforcement official likely to be involved in a situation where the use of force might become necessary should have at least 2 (two) less lethal devices available, as well as the protective equipment necessary for the operation.”

The choice and development of incapacitating weapons as well as the necessary instructions for their use will be addressed in a separate section [see **Chapter 6**]. The point to be made at this stage is that availability of such equipment should be standard within a law enforcement agency, accompanied by instructions as to the type of situation in which it is supposed to be used, as a precautionary measure, so that law enforcement officials are prepared for any of the large variety of situations they may face at any given moment in the course of their duty.

### **4.3.3 Time and place of intervention**

Operational instructions should stress the importance of choosing the appropriate time and place for an intervention:

Time is a crucial factor to take into account when deciding to intervene and whether or not to resort to the use of force. In situations where there is already an ongoing threat, circumstances may sometimes require an immediate and quick, almost instantaneous reaction, which places an additional burden on the law enforcement official to make the “right” decision in a very short period of time.

However, in other circumstances time might be the ally of the law enforcement official: waiting, not acting, while negotiating, trying to calm a person down, or waiting for backup or other elements that might lead to resolving a situation might sometimes be a better option than immediately trying to resolve it in a rushed and unprepared manner.<sup>57</sup> The operational framework should provide these different options, and highlight the risks involved when acting in an unnecessary hurry just for the purpose of “resolving the situation”, when the situation does not require immediate action. Experience shows that attempts “just to end the situation” often lead to disastrous consequences, whereas waiting for a situation to stabilize, for an individual to calm down, or for preparatory and precautionary measures to be taken, would have helped to defuse the situation or at least to minimize the damage.

***Evrin Öktem v. Turkey (9207/03), European Court of Human Rights, Information Note on the Court’s case-law No. 113, November 2008***

p. 7 “Nothing in the case file indicated by what criminal behaviour the protestors might have endangered the lives of innocent bystanders present at the time of the police officers’ intervention. [The Court] also found it difficult to understand how the police officers could have hoped to use their authority to control the situation satisfactorily when they were in an unmarked car and in plain clothes. As to the threats from iron bars and sticks and the purported attempt by one of the protestors to attack the police, these were uncorroborated claims unsupported by any judicial finding.

Even assuming that they did have good reason to fear for their lives, the police should not have gone so far as to upset the necessary balance between the aims and the means. In the absence of any clear escalation in the damage done or any serious threat to people’s safety, it would surely have been preferable for them to wait for reinforcements better equipped to deal with such difficulties and thereby avoid unnecessarily provoking the crowd, bearing in mind that at the time they had no power of dissuasion other than their weapons. Instead, the three police officers had launched an impromptu operation on their own initiative, which had led to developments to which R.Ç. had reacted with the use of his weapon in a manner which was both uncontrolled and dangerous.”

Operational procedures should give due consideration to the option of waiting for backup, seeking to defuse a situation or other options that may help to prevent unnecessary escalation which could lead to loss of life or to serious injury.

<sup>57</sup> The risks involved in such problematic ways of intervening are for instance highlighted in: **United States**, Department of Justice, Investigation of the Cleveland Division of Police (2014), pp. 25-28.

### **Illustrative country example**

#### ***United Kingdom: College of Policing (2014): Armed deployment [Internet]***

<https://www.app.college.police.uk/app-content/armed-policing/armed-deployment/>

##### **2.4.1 Options**

“Before selecting any other option, consideration should be given to whether it is appropriate or necessary in the circumstances to take immediate action. It may be, for example, more appropriate to record information and allow further time to gather additional information or intelligence that will enable other options to be considered.”

[...]

##### **4.2.4 Defusing the situation**

“The following actions can help create opportunities for the subject and officers to have more time and space to defuse the situation:

- Use of effective cover by police officers
- Evacuation of immediate area
- Being prepared to back off (if safe)
- Giving available space and time to the subject when considering containment
- Early negotiation or negotiation advice.

This may enable:

- tension to be defused
- officers to have more time to assess the person’s vulnerability
- the effects of alcohol or drugs to wear off
- positive communication and contact to be established
- the level of mental or emotional distress to decrease.

This may result in more positive and constructive communication with the subject, allowing the situation to be dealt with in a controlled manner.”

However, in other cases, waiting might lead to a situation in which life is at risk, where the police would have no other option but to intervene with lethal force. For instance, in some situations law enforcement officials decide to wait, in order to obtain sufficient evidence for the serious crime which they assume is going to be committed. Such a strategy may well be justified in some circumstances; however, it should never lead to a situation where the delay in intervention leads to the development of a high threat level where resort to lethal force becomes unavoidable. In such circumstances it may be necessary to intervene at an earlier stage in order to prevent a situation from reaching such a high threat level.

#### ***McCann and Others v. The United Kingdom (1998/91), European Court of Human Rights Grand Chamber (1995)***

“202. The Court first observes that, as appears from the operational order of the Commissioner, it had been the intention of the authorities to arrest the suspects at an appropriate stage. Indeed, evidence was given at the inquest that arrest procedures had been practised by the soldiers before 6 March and that efforts had been made to find a suitable place in Gibraltar to detain the suspects after their arrest [...].

203. It may be questioned why the three suspects were not arrested at the border immediately on their arrival in Gibraltar and why, as emerged from the evidence given by Inspector Ullger, the decision was taken not to prevent them from entering Gibraltar if they were believed to be on a bombing mission. Having had advance warning of the terrorists’ intentions it would certainly have been possible for the authorities to have mounted an arrest operation. [...]

204. On this issue, the Government submitted that at that moment there might not have been sufficient evidence to warrant the detention and trial of the suspects. [...]

205. The Court confines itself to observing in this respect that the danger to the population of Gibraltar – which is at the heart of the Government’s submissions in this case – in not preventing their entry must be considered to outweigh the possible consequences of having insufficient evidence to warrant their detention and trial. In its view, either the authorities knew that there was no bomb in the car – which the Court has already discounted [...] – or there was a serious miscalculation by those responsible for controlling the operation. As a result, the scene was set in which the fatal shooting, given the intelligence assessments which had been made, was a foreseeable possibility if not a likelihood. The decision not to stop the three terrorists from entering Gibraltar is thus a relevant factor to take into account under this head.”

Similar criteria apply with regard to the appropriate choice of the place of an intervention, e.g. letting a person leave an area where there is a high risk of harm to third persons or, conversely preventing a person from leaving a certain area because of the possible risks of that person getting out of sight or reaching a crowded place presenting high risks for bystanders.

#### **4.3.4 Protection of groups or persons at risk**

In a situation in which law enforcement officials may have to resort to the use of force, the risk of causing harm and injury and its impact may be increased for certain groups, e.g. children, the elderly etc.

##### **UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, UN Doc. A/C.3/69/L.5 (2014)**

“34. Mindful of the fact that arrests and investigations are situations in which violence against children can occur, Member States are urged, as appropriate and while taking into consideration relevant international human rights instruments:

[...]

(c) to prohibit the use of firearms, electric shock weapons and violent methods to apprehend and arrest children, and to adopt measures and procedures that carefully limit and guide the use of force and instruments of restraint by the police while apprehending or arresting children; [...]”

Operational procedures should oblige law enforcement officials to show particular care and restraint when dealing with persons presenting such factors of increased risk.

#### **Illustrative country examples**

##### ***Portugal: Regulation on Limits to the Use of Coercive Means by the National Police, 2004***

Chapter 1: “Sect. 5.3 Graduated levels of Use of force [...]

d) The use of coercive means which would affect the life or the physical integrity of minors, pregnant women, elderly and disabled are of an exceptional character, and is only acceptable in case of a threat to life or integrity of the police officer or third parties.”

##### ***United States: The President’s Task Force on 21st Century Policing, Final Report, May 2015***

p. 15-16: “Use of physical control equipment and techniques against vulnerable populations — including children, elderly persons, pregnant women, people with physical and mental disabilities, limited English proficiency, and others — can undermine public trust and should be used as a last resort. Law enforcement agencies should carefully consider and review their policies towards these populations and adopt policies if none are in place.”

Dealing with persons with mental illnesses or persons under the influence of drugs or alcohol is a particularly challenging task which requires careful attention with regard to instructions and training [see Chapter 9.2]

given to law enforcement officials. All too often, law enforcement officials do not understand the reactions of such persons and wrongly interpret them as resistance or even aggression and are very quickly to respond with the use of force, or even firearms.<sup>58</sup> Instructions and training should guide law enforcement officials on how to assess the mental state of a person, on the necessary precautions to be taken, including seeking support from mental health professionals or other persons who might be in a better position to communicate with such a person. In particular, the instructions and training should remind law enforcement officials that waiting, not doing anything – where this does not increase the risks for themselves, the person concerned, or others – may sometimes calm a person down, facilitate communication, and prevent the need to resort to the use of force.

#### **4.3.5 Protection of third persons**

Due consideration must be given to the protection of third persons **[see Definition of Terms]**. This element needs to be looked at from two angles:

On the one hand, when third persons are at risk of serious harm, law enforcement officials might be called upon to intervene even sooner and with a higher degree of force (or even with firearms) in order to protect them. The duty to protect human rights incumbent upon law enforcement officials is particularly relevant here.

On the other hand, police action and in particular the use of force and firearms can put third persons at risk of being harmed (either by the law enforcement officials or as a result of the reaction by the people involved). It is this latter situation that needs to be given specific attention: as mentioned above **[see Chapter 2.5]**, the so-called “collateral damage” (i.e. the concept of acceptable incidental harm to third persons) is, as a matter of principle, not accepted in law enforcement as it is incompatible with the duty to protect and respect life. While it cannot be ruled out that third persons might inadvertently be harmed in the course of a legitimate police operation, all measures need to be taken to prevent such harm **[see Chapter 5.4 on the use of firearms and Chapter 6.2.2 a) and e) on less lethal weapons]**. Any law enforcement action that would foreseeably entail a risk of harm to third persons must meet the strictest criteria of necessity and proportionality. Under no circumstances should law enforcement officials conduct an operation that from the outset implies the loss of life or serious injury of third persons being caused by the law enforcement action **[see Chapter 2.5]**.

Of course, law enforcement officials may sometimes find themselves in “dilemma situations”, e.g. hostage takings or school shootings, in which they have to intervene to prevent loss of life, but in which their intervention can also lead to the loss of life. The choices they have to take in such a situation are very difficult and need to be made on a case by case basis. Still, operational procedures must instruct law enforcement officials to give the protection of third persons the utmost attention and priority in all circumstances.

#### **4.3.6 Medical attention and other life saving measures**

The availability of first aid assistance is another important precaution. This entails both the availability of first aid equipment and the training of law enforcement officials in at least the basic first aid response procedures (aspects which are frequently overlooked in police institutions). This training should also include adequate instructions on how to deal with injuries or harm caused by specific types of police equipment, e.g. pepper spray, firearms, etc. **[see Chapter 5.6.2, 6.4 and 9.2.5]**. In high-risk or large-scale operations adequately prepared medical services should be held available.

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<sup>58</sup> See for instance the analysis in: **United States**, Department of Justice, Investigation of the Cleveland Division of Police (2014), pp. 22-24.

***Finogenov and Others v. Russia (18299/03 and 27311/03), European Court of Human Rights First Section (2012)***

“265. [...] The Court is called upon to decide whether the State as a whole complied with its international obligations under the [European] Convention [on Human Rights], namely its obligation to ‘take all feasible precautions in the choice of means and methods of a security operation mounted against an opposing group with a view to avoiding and, in any event, minimizing, incidental loss of civilian life’ [...]. 266. The Court acknowledges that in such situations some measure of disorder is unavoidable. It also recognises the need to keep certain aspects of security operations secret. However, in the circumstances the rescue operation of 26 October 2002 was not sufficiently prepared, in particular because of the inadequate information exchange between various services, the belated start of the evacuation, limited on-the-field coordination of various services, lack of appropriate medical treatment and equipment on the spot, and inadequate logistics. The Court concludes that the State breached its positive obligations under Article 2 of the Convention. [I.e. the right to life under Art. 2 ECHR]”

**Illustrative country examples*****United Kingdom: College of Policing (2014): Armed deployment [Internet]***

<https://www.app.college.police.uk/app-content/armed-policing/armed-deployment/>

***Medical assistance***

“When planning operations where AFOs [Armed Firearms Officers] are being deployed, Tactical Firearms Commanders should consider where and how emergency medical aid would be provided if this is required. This should be based on risk assessment and may include the availability of officers trained in relevant first aid, and placing an ambulance on standby.

Forces should ensure that agreements are in place with local emergency health care services to provide medical support to police operations, including those involving the deployment of AFOs.”

Another important element of precaution is the availability of fire extinguishers, e.g. in police cars and during public order events.

**4.4 Differentiated response and minimize damage**

The principle of necessity requires law enforcement officials to exercise restraint in the use of force and not to use more harmful means than necessary to achieve the objective (quantitative necessity – see **[International Human Rights Principles – II.]**). It is thus essential that they have a range of means at their disposal allowing them to tailor their response to the concrete situations in the most appropriate way. Less lethal equipment will be dealt with in more detail in **[Chapter 6, 7.4.2 and 8.2]**, but there are a few elements relating to the concept of a differentiated response worth mentioning at this stage.

This concept seeks to prevent law enforcement officials from having immediate recourse to a higher degree of force and the easiest means at hand to overcome resistance, without due regard for the consequences. However, it is not about “equality of arms” either – that is, the law enforcement official is not expected to resort to exactly the same type of weapon the resisting or aggressive individual is using. It is also obvious that to a certain extent law enforcement officials will have to use a greater force than the resisting or aggressive individual in order to effectively overcome the resistance or aggression, and they should not be requested to attempt the use of lesser means if this would expose them (or others) to a greater risk of harm. Still, each and every situation will need to be evaluated on its own merits and the appropriate response will depend on a number of factors (e.g. the age, size and strength of the individual and of the individual law enforcement official, the possible risks to third persons etc.). Pre-established standard responses are rather problematic in this respect. This places in a problematic light a tool some law enforcement agencies use to illustrate the idea of a graduated response, that is the so-called “use-of-force-continuum” model.

These models can take different shapes (e.g. a ladder, a pyramid, wheel or a more complex graph), but the underlying idea is to pair the behaviour of an individual with the appropriate response of the law enforcement official: in short, the higher the level of resistance and/or aggression, the higher the degree of force that may be used, and vice-versa: the lower the level of resistance, the lower the degree of force that may be used in response by the law enforcement official.<sup>59</sup>

These models have the advantage that they alert law enforcement officials to the need for a differentiated response according to the circumstances and warns them not to use excessively heavy handed force in situations where the level of resistance is lower. However, on their own, these models are quite problematic in a number of aspects:

1. At least some of these models omit the element of de-escalation, i.e. not just acting according to the increase in violence by the individual, but the need to continuously seek to de-escalate and defuse a situation.
2. They stimulate a reactive response by the law enforcement official rather than suggesting a more proactive approach to influence a situation, and where possible to aim for pacification.
3. They do not distinguish between the many different ways equipment or weapons can be used. One has to bear in mind the risk of underestimating the harmful effects of a specific type of tool or weapon: almost all techniques and weapons can be used both in a way that causes a low level of harm or injury and in a very dangerous way, with a high risk of causing serious injury or even death. Even empty-hand techniques, i.e. body control techniques that do not involve weapons or other equipment (e.g. martial art techniques), can be potentially lethal, though they are usually categorized in the lower range of the continuum-model.
4. They do not take into consideration that the different aspects of each individual situation might call for a quite different response; in particular there might be an opportunity to address serious aggression with a lower degree of force in an effective way and without running additional risks (e.g. a young boy wielding a knife should be approached in a different way than a tall and strong adult armed in the same way).

#### **Illustrative country example**

##### ***Armenia: Guidelines for Police in Public Order Management***

(<http://www.police.am/images/Uxecucyc-N2-eng.pdf.pdf>)

Sect. 82: “It seems sensible that when dealing with a person who has access to a firearm or is so dangerous that a firearm has to be considered that the police response will include access to firearms. This does not mean if force has to be applied it will automatically be with a firearm.”

Sect. 84: “[...] Example: A person has a firearm in his hand and comes towards the police. Communication and loud warnings to put the weapon down or ‘stop’ should be used. If the person is coming too close to the police and the police believe he poses an imminent threat to life or serious injury then use of force can be applied. That use of force may be with a firearm. However, should special means be available and safe to use then even though the law and circumstances justify the use of a firearm a lower level use of force should be used or considered before recourse to the firearm.” [emphasis added]

5. These models do not consider the option of retreat, or do so only at the very last stage.

In summary, such “use-of-force-continuum” models can help to illustrate the basic idea of a graduated response. They cannot, however, replace a thoroughly developed use-of-force policy that includes all the considerations for a differentiated use of force presented above.<sup>60</sup>

<sup>59</sup> For instance: **Venezuela**, Training Manual on Use of Force by the National Police, 2010; **Peru**, Human Rights Manual for Police, 2006, p. 84.

<sup>60</sup> For other criticism of the use-of-force-continuum see: <http://www.policeone.com/legal/articles/5643926-Use-of-force-Downfalls-of-the-continuum-model/>

Furthermore, a differentiated response should not be understood as to require an immediate response by law enforcement officials in all circumstances. As mentioned above, there may well be circumstances where postponing an intervention may be more appropriate than engaging in a cycle of escalating violence.

In any event, operational instructions must require law enforcement officials who find themselves in a situation where they have to resort to force, to consider postponement of the action as well as to take all possible measures to minimize damage. This refers both to their choice of what type of force to use (including choices of equipment) and to how this force is subsequently applied (e.g. on which parts of the body empty-hand techniques are used).

### **Illustrative country example**

#### ***Portugal: Regulation on Limits to the Use of Coercive Means by the National Police, 2004***

Chapter 1: “6. Body classification with regard to physical trauma not caused by firearms

a. General aspects

1) Different areas of the human body, show different levels of resistance and vulnerability to impacts and/or trauma, the severity of potential injuries therefore depends on which area of the body is affected;  
2) As regards the trauma caused by baton use or empty-hand techniques, and taking into account the physiology of the human body and the location of its vital organs, three areas can be distinguished (**annexes A and A1**):

- Low-risk areas for serious and/or lasting injuries, labelled as GREEN;
- Medium-risk areas, or YELLOW;
- High-risk areas, or RED.”

The operational procedures then go on to list the parts of the human body falling into each of these categories and highlight for the different types of use of force (e.g. empty-hand techniques, baton use etc.) the possible target areas – depending on the degree of threat faced – with a view to minimizing harm in accordance with the requirements of the situation.

Thus, if at all, “use-of-force-continuum” models should only be used within the framework of a more comprehensive policy on the use of force and should include the following elements:

- the obligation to seek to de-escalate a situation by negotiation and dialogue;
- the obligation to use a less harmful way of intervention if this is feasible and likely to be effective;
- the option of retreat or to wait (e.g. for backup) in order to prevent excessive harm to anybody;
- the cautioning that *any* use of force may have serious consequences, that less lethal weapons may also cause death and are not non-lethal, and that the risks involved in empty-hand-techniques (i.e. the use of force without any weapon or equipment) should not be underestimated etc.

Evidently, in situations in which it is unavoidable to use force in order to control a resisting individual, the use of force must stop as soon as the individual is brought under control.

### **Illustrative country example**

#### ***Portugal: Regulation on Limits to the Use of Coercive Means by the National Police, 2004***

Chapter 2, sect. 2g) also prohibits the use of empty-hand impact techniques on an individual who is no longer standing, reflecting the concept that such techniques are no longer necessary once an individual is on the ground.



## 4.5 Proportionality: retreat must be an option

Law enforcement officials should not seek to pursue a legitimate objective at all costs. The principle of proportionality – as explained above [see: **International Human Rights Principles III. and Chapter 1.3**] – requires them to strike a balance between the aim and the consequences of the action, and where the consequences outweigh the aim, the contemplated action should not be taken; this should include an assessment of the risks to the person against whom the action would be directed, to possible bystanders and to the police officers themselves. Policing does not require pursuing an action at all costs. Consequently, the option to retreat, not to pursue the action (at that time and place) must be given due consideration and operational procedures and instructions should be clear on this.

### Illustrative country examples

#### ***Argentina: Regulation on Weapons and Shooting Instruction, 2012***

Chapter X: “E) Specific recommendations

When the police assess that it is not reasonably possible to intervene without putting their own physical integrity at risk, or that of victims or third parties (whether these persons are carrying weapons or not), or if intervening would lead to an even higher risk than the unlawful action, they will limit their action to gathering information that will allow later identification of the perpetrators, as follows: they will memorize a correct and rigorous criminal individualization, based on morphological features, physical characteristics (scars, tattoos), apparent age, clothing, vehicles used and other details, to guide later investigations in a professional manner.

Immediately after the unlawful act the police officer will, in compliance with his/her duty, report it to the competent authorities on it, providing all information that would contribute to future investigations.”

#### ***Germany: North Rhine-Westphalia, Handbook on operational training, 2014***

Annex 2: The scenario-based evaluation explicitly includes the option of retreat as a possible response to a given situation, e.g. the following governing principles are stated for pursuit on foot (p. 73): “The protection of life and health of all involved and uninvolved persons is to be ensured. No pursuit at all costs” or in response to collective violence (p. 77): “Temporary retreat is an option to be taken into consideration and if required it is to be carried out with determination and in a coordinated manner.”

#### ***Portugal: Regulation on Limits to the Use of Coercive Means by the National Police, 2004***

Chapter 1: “sect. 3e) Proportionality (*stricto sensu*)

There shall be reasonableness and just measuring between the advantages resulting from the use of coercive measures by the police, as a means to pursue public interest, and the inherent sacrifice of the related private interest (in terms of cost-benefit, the measure should be acceptable or tolerable).”

Still, the option of retreat is not generally accepted, particularly within law enforcement institutions which are quite militarized. Instructions stating that a police officer should “stand his ground”, or provisions that establish “cowardice” as a criminal or disciplinary offence<sup>61</sup> are problematic in this regard, as they put considerable pressure on the law enforcement official to resort to force at whatever cost, in order to achieve the objective. This entails a high risk of disproportionate action, unless the option of retreat to avoid causing disproportionate harm is explicitly mentioned in such instructions.

There is no doubt that a law enforcement institution can legitimately expect its officials to confront danger, and there should be no room for negligent policing. However, it should also be made very clear that retreat as such is not a punishable act if the retreat is made in order to prevent greater harm. On the contrary, it should be made clear that law enforcement officials are expected to give due consideration to the option of retreat.

61 For instance **India**, Kerala Police Act (2011), sect. 95.

### **Illustrative country example**

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Chuck Wexler, executive director, Police Executive Research Forum, in *United States, The President's Task Force on 21st Century Policing*, Final Report, May 2015, p. 21:

“In traditional police culture, officers are taught never to back down from a confrontation, but instead to run toward the dangerous situation that everyone else is running away from. However, sometimes the best tactic for dealing with a minor confrontation is to step back, call for assistance, de-escalate, and perhaps plan a different enforcement action that can be taken more safely later.”

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# 5 | THE USE OF LETHAL FORCE, IN PARTICULAR THE USE OF FIREARMS

## Chapter outline

### 5.1 When to use a firearm

5.1.1 Definition of “use of a firearm”

5.1.2 Reaffirmation of the “protect-life”-principle

### 5.2 Warnings to be given

### 5.3 How to use a firearm

### 5.4 Protection of third persons

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### 5.6 Who may use a firearm: authorization, certification, training

5.6.1 Authorization of firearms for different law enforcement duties

5.6.2 Certification and training

### 5.7 Control and reporting

## Relevant provisions of the Basic Principles for this Chapter:

### Basic Principle 5

“Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: [...]

(b) Minimize damage and injury, and respect and preserve human life; [...]”

### Basic Principle 6

“Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.”

### Basic Principle 7

“Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.”

### Basic Principle 8

“Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.”

### Basic Principle 9

“Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

### Basic Principle 10

“In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.”

**Basic Principle 11**

“Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

- (a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;
- (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
- (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
- (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
- (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;
- (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.”

**Basic Principle 19**

“Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.”

**Basic Principle 22**

“Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.”

**Guidelines for implementation of these Basic Principles**

**Guideline No. 5:** Law enforcement agencies must provide an operational framework that provides clear instructions on when and how to use a firearm.<sup>62</sup>

- a) The operational framework must reiterate the “protect-life”-principle and order law enforcement officials to seek to avoid the use of a firearm unless strictly necessary. It should give instructions for a range of situations that law enforcement officials may face and how to respond to them:
  - Even in case of a potentially lethal attack, consideration must be given to a response with less lethal force, if that is likely to be effective and does not increase the risk for the law enforcement official or any third person.
  - The mere fact of a person fleeing from arrest or escaping from custody does not justify the use of a firearm, unless this person presents an ongoing grave threat to the life of another person that can be realized at any time.
  - The „protect-life“-principle requires that in case of doubt, law enforcement officials should not make use of their firearm.
- b) The instructions should include the precise wording of the warning to be made before resorting to the use of a firearm, which should be a constant part of the firearms training so that it becomes ingrained and law enforcement officials can automatically repeat it in the stressful situations in which they may

62 A firearm being a weapon that is designed to kill [see Chapter 2.2].

have to use a firearm. Firing warning shots is inherently risky and should either be prohibited or only considered as an exceptional means of warning with due precautions to be taken for the safety of others.

c) A distinction must be made between the potentially lethal use of a firearm and the intentional lethal use of a firearm. Intentional lethal use of a firearm is allowed only when a potentially lethal attack is already underway in such a manner that the death of the attacking person is the only possible means to save someone else's endangered life, which can include the life of the law enforcement official. For all other situations, instructions should be given on how to shoot and which part of the body to aim at depending on the situation faced and with a view to minimizing the risk to the life of the targeted person as much as possible.

d) Operational instructions must make sure that priority is given to the protection of the lives of third persons. Operational procedures must impose particularly stringent conditions on the use of firearms in situations with uncontrollable risks for third persons (crowded public spaces, confrontation with heavily armed persons in densely populated areas, certain types of hot pursuits). Furthermore, no law enforcement operation may be planned in such a way that, from the outset, accepts the possibility of killing or causing serious injury to third persons by a law enforcement official in the course of action.

e) The decision on the type of weapons and ammunition to be used by law enforcement officials must be based on an assessment of the operational policing needs:

- In view of their inaccuracy and the impossibility to be able to account for each and every shot, automatic weapons are not suitable for normal law enforcement situations. They may only be used in exceptional situations of extreme danger where multiple exchange of fire might occur and therefore may only be distributed in anticipation of such situations. In any case they should have a "single-shot"-mode with this being the standard and first mode to which they are switched.
- In view of their inability to carry out the thorough assessment to be made on the spot whether lethal force may be used or not, there is no room for Lethal Autonomous Weapons/Robotic Systems in law enforcement.
- Any weapons and ammunition used must have been thoroughly tested by the law enforcement agency with regard to their accuracy, their effectiveness to achieve the law enforcement objective, the risk of being discharged involuntarily, the type of injuries they may cause, and the risks to third persons in case of ricochet or if they might pass through the body of the targeted individual. Their use must be constantly monitored and the decision to use them must be revised in view of their effectiveness and/or the emergence of unexpected/excessive risks. These considerations also apply to any other device that is designed to kill (e.g. guided armed drones or explosive devices), and their use in law enforcement can therefore only be considered in very rare and absolutely extreme situations.
- Law enforcement officials should only be authorized to use official weapons issued by the law enforcement institution; the use of private weapons should be prohibited.
- Law enforcement officials must know the effects of the weapons and ammunition they are using, including the type of risks involved and the required precautions to minimize damage and preserve life.

f) A law enforcement agency must take a carefully balanced decision about the situations in which law enforcement officials may carry a firearm. They should not carry a firearm inside places of detention. In the context of assemblies or other public order events, their presence may involve a number of additional risks (being perceived as a threat and contributing to creating/increasing tensions; a high risk in such crowded places of hitting others than the targeted person; creating panic and/or aggression etc.). In countries where law enforcement officials are usually armed, law enforcement agencies should therefore carefully assess whether in the particular circumstances it might be better that those in direct contact with participants of the event do not carry their weapon.

g) The permission to carry a firearm must depend on a thorough authorization and certification process: this process must be based on realistic – scenario-based – training that allows assessing the physical and mental capabilities of the individual law enforcement official as well as the indispensable skills of de-escalation, negotiation, a variety of use-of-force-techniques and proficiency in handling the specific weapon assigned to the individual law enforcement official. This process must be repeated at regular intervals through refresher courses and retests that law enforcement officials have to pass to keep their certification.

h) Law enforcement officials should only be issued with individually registered and forensically traceable weapons which are personally assigned to them, as well as a recorded amount of ammunition. Clear rules should govern how weapons should be stored when the law enforcement official is not on duty.

i) Any drawing of a firearm as a means of warning and any pointing of a firearm against a person must be reported and evaluated by the competent superior irrespective of whether the firearm has been discharged or has caused any death or injury. When a firearm has been discharged an obligatory and thorough reporting process to the authorities must follow. Reporting must be comprehensive and allow for a full assessment of the justification of the use of the firearm in light of the “protect-life”-principle and of all actions that were taken or considered before the use of the firearm, such as de-escalation, differentiated response, warnings and other procedures, protection of third persons etc. The report must then be evaluated to determine the appropriate actions to be taken as a result of the incident.

## 5.1 When to use a firearm

### Basic Principle 9

“Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

As mentioned above [Chapter 2], the use of firearms must be regulated by domestic law. However, the concrete implementation of the legal provisions is the task of the law enforcement institution itself. It must ensure its law enforcement officials put the legal provisions into practice through institutional regulations, operational procedures and/or standing orders.

### 5.1.1 Definition of “use of a firearm”

“Use of a firearm” can have different meanings, from drawing the weapon to pointing a weapon at a person and to discharging the weapon (as a warning or when firing at a person), which imply various degrees of risks and considerations as regard to their appropriateness.

In fact, when a law enforcement official draws the weapon (i.e. takes it out of the holster), there already is a high risk that the situation may escalate into a situation in which the officer may feel the need to fire the weapon. Also, there is the risk of involuntarily discharging the weapon when drawing it, with potentially lethal consequences. This risk is exacerbated when a law enforcement official directly points a weapon at a person. The time between drawing the weapon and a person being killed by that weapon may only be a few seconds,

sometimes only just a split second. Finally, discharging the weapon has to be considered as (at least) potentially lethal force [see Chapter 2.1].

Drawing or pointing the weapon might be a precautionary measure in a situation where possible dangers are difficult to assess (e.g. following a suspect in a dark neighbourhood of a high violent crime area, stopping a person who fits the description of a highly dangerous suspect, but who might also not be this person). Still, in view of the above mentioned risks involved in drawing a weapon or pointing it at a person, the appropriateness of this action needs to be justified by specific circumstances and the reasonable anticipation of a possibly dangerous situation. This should in no way be part of a routine behaviour and some police forces therefore equate the drawing or pointing a weapon to the use of force (though not (yet) lethal).

### **Illustrative country examples**

#### ***Brazil: Interministerial Ordinance No. 4.226 of 31 December 2010***

Art. 7 explicitly stipulates that pointing with a gun at a person in stop and search situations may not be routine behaviour.

#### ***Paraguay: Manual on the Use of Force by the National Police, 2011***

Sect. III.j: “Prohibited actions with regard to the use of force: The following actions are prohibited since they are considered inappropriate use of force: [...]”

12. Drawing, displaying or manipulating a firearm is only allowed when its potential use is appropriate, or if the circumstances clearly require the use of firearm in order to bring a dangerous situation under control.”

Sect. IV.h: “Drawing a handgun:

Police officers may draw a handgun in a situation of real, imminent or perceived threat, to prepare themselves for a situation of potential use of lethal force. In most of the situations in which a handgun is drawn, the evolution of the threatening situation will not require its use. Even so, the mere fact of drawing a handgun causes alarm and concern to the public, and therefore is considered a use of force and must be treated as such.”

Supervision and control are therefore required and, consequently, these actions should be subject to strict reporting obligations in line with Basic Principle No. 11 (f) [see Chapter 5.7 and Chapter 10.3].

Discharge of a firearm, however, may never be a precautionary measure, but may only take place in a situation that meets the threshold of danger as set down in Basic Principle No. 9.

### **5.1.2 Reaffirmation of the “protect-life”-principle**

The operational framework governing the use of firearms must reaffirm the “protect-life”-principle and clarify its meaning for law enforcement in practice.

### **Illustrative country examples**

#### ***United Kingdom: College of Policing (2014): Command [Internet].***

<https://www.app.college.police.uk/app-content/armed-policing/command/>

#### ***Command roles and functions***

“It is the responsibility of the strategic firearms commander to satisfy themselves that the tactical plan is capable of meeting the strategic aims of the operation, and that the provisions of ECHR Article 2 [that is governing the use of force in particular with regard to the right to life] take precedence.”

#### ***United States: The President’s Task Force on 21st Century Policing, Final Report (2015)***

p. 19: “Not only should there be policies for deadly and non-deadly uses of force but a clearly stated ‘sanctity of life’ philosophy must also be in the forefront of every officer’s mind.”

Firearms should not be treated as a standard tool in law enforcement (though this is still the commonly held perception and practice in many law enforcement agencies). The framework should make clear that the use of a firearm remains the absolute exception and should be avoided as much as possible.

### Illustrative country examples

In *Germany, North Rhine-Westphalia*, Police firearms training is called: “Schiessen/Nichtschießen” (Shoot/Don’t shoot) which already sets the spirit of the training, i.e. not only to learn how to shoot, but, more importantly, learning how to avoid the need to resort to a firearm.

The *Human Rights Manual of the Nigerian Police Force (2014)* clearly states in section 3.5 that:

“Lethal force should not be used except when strictly unavoidable in order to protect your life or the lives of others” and furthermore states: “In today’s police paradigm, which considers the protection of human lives as the primary operational objective, the death of a person (whether that person is a criminal, suspect, victim hostage or innocent bystander) resulting out of a police intervention is generally considered an operational failure; [...]”<sup>63</sup> [emphasis added]

As far as possible, the operational framework should provide instructions on how to address different types of situations that law enforcement officials may face in their daily work.

### Illustrative country example

For instance the *Interministerial Ordinance No. 4.226 of 31 December 2010 in Brazil* does not only confirm that firearms should only be used against a threat to life or of serious injury (Art. 3), but also provides precise instructions for two critical situations: a fleeing person, even if armed, should not be shot at, if this person does not present a risk to the life of the law enforcement official or third persons (Art. 4); a car breaking through a police check point should only be shot at if there is an imminent risk of death or serious injury to law enforcement officials or third persons (Art. 5). As already mentioned above, it also stipulates explicitly that pointing with a gun at a person in stop and search situations may not be a routine behaviour (Art. 7).

The operational framework should also make clear that not each and every potentially lethal attack requires a response with lethal force. Depending on the circumstances, less lethal options may well be just as effective or even more effective (a person hit by a bullet in an area of muscle mass may well be able to continue to act, whereas pepper spray in the eyes or an electric shock may instantly stop the person from acting). This is one important weakness of many of the frequently used models of the “use-of-force-continuum” [see **Chapter 4.4**]: these models often seem to imply that in any situation of a potentially lethal attack, law enforcement officials may resort to a response with lethal force, without contemplating other less lethal options. In particular where the threat emanates from a person armed with a knife, depending on the situation (physical strength of the person, distance etc.), there may be many more options than simply resorting to a firearm.<sup>64</sup>

Another difficult aspect is assessing the level of danger a person presents. This assessment is less difficult if a person is armed and directly threatens the law enforcement official or another person.<sup>65</sup> However, the assessment is quite problematic when a law enforcement official is trying to prevent a person from fleeing

63 However, it is important to mention that Police force order 237 of the Nigeria Police Force, which – in violation of international human rights law and standards particularly with regard to the right to life – allows for the use of a firearm against any fleeing person suspected of a felony irrespective of whether this person presents any danger to the life of any other person [see above, **FN 39 Chapter 2.3.1 b**] remains in force at the time of writing of the present Guidelines and is in urgent need of amendment in the light of the Human Rights Manual cited here.

64 See for such situations the already mentioned example of the **Armenian** Guidelines for Police in Public Order Management [see **Chapter 4.4**].

65 Of course, there might be situations where the perceived threat is not a real one as the “weapon” later turns out to be an imitation or without ammunition. In such situations, however, it is the reasonable perception of the law enforcement official at the moment of the threat that matters and not any information obtained after the incident.



arrest or escaping from custody, in particular if that person is not armed at that moment. As already mentioned, in accordance with Basic Principle No. 9 and the “protect-life”-principle, the use of a firearm in such a situation can only be acceptable if the person presents an ongoing threat to the lives of other people. Without compelling indications that this person presents such an ongoing threat, a law enforcement official may not resort to use of a firearm [see Chapter 2.3.1 b)].

In view of the practical difficulties in making the appropriate decision and the need to ensure full respect for the “protect-life”-principle, in a number of countries the use of a firearm to stop a fleeing person is prohibited by law or in operational procedures, if the person is unarmed at that particular moment.

#### **Illustrative country example**

**Brazil: Law No. 13.060 of 22 December 2014** prohibits shooting at an unarmed person running away.

At minimum, as a rule, law enforcement officials should be instructed *not* to resort to using a firearm unless they have *compelling* indications that the fleeing person – if remaining at large – will present an ongoing threat to the life of other persons that can be realized at *any* time. **The “protect-life”-principle dictates that in case of doubt, law enforcement officials should not make use of their firearm.**

## **5.2 Warnings to be given**

### **Basic Principle 10**

”In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.”

### **Basic Principle 11**

“Rules and regulations on the use of firearms by law enforcement officials should include guidelines that: [...]

e) Provide for warnings to be given, if appropriate, when firearms are to be discharged [...].”

The obligation to issue a verbal or visual warning is a clear expression of the principle of necessity: when there is a chance that the person may readily comply with the order as a result of the warning, then there is no necessity to resort to the use of a firearm. Rules and regulations on the use of force should include an obligation to issue a warning before using a firearm and only allow for exceptions in line with Basic Principle No. 10.

Situations in which law enforcement officials may choose to resort to the use of a firearm will usually be highly stressful. It is for this reason that Basic Principle No. 11e) requires that the warnings to be issued are set down in the rules or regulations of the law enforcement agencies. The issuing of these warnings should then be repeated in practical training exercises to such an extent that they become an automatism and there is no need to reflect over the wording to be used.

#### **Illustrative country examples**

**Croatia: Code of Practice for Police Officers, 2009**

Art. 143 (3) provides for a precise wording of the warning to be given: “After issuing the order: ‘Stop, police!’ and the order and warning: ‘Stop I will shoot!’ and immediately prior to using fire arms, the police officer referred to in Paragraph 2 of this Article shall fire a warning shot into the air, if this does not bring people and property in danger.”

**Peru: Human Rights Manual for Police, 2006**

Use of firearm – warning, p. 77:

Police officials must “(1) Fully identify themselves as police, even when wearing an uniform. STOP POLICE! or THIS IS THE POLICE!

(2) Give the alleged offender a clear warning of their intention of discharging his/her firearm, giving the person enough time to understand it and take a decision. THROW DOWN THE GUN! Or DROP THE GUN! DO NOT MOVE! or DO NOT REACT!, WE ARE ARMED!, WE CAN FIRE!”

A critical question is whether warning shots can be considered an appropriate warning in the sense of Basic Principles No. 10 and 11e). In fact, there are still many domestic laws and operational procedures that require a warning shot prior to a targeted use of a firearm.<sup>66</sup>

However, a warning shot actually already constitutes the use of a firearm [see the definition of “use of firearm” in **Chapter 5.1.1** above], and therefore – in line with Basic Principle No. 10 – a warning would be required before the warning shot is fired. Moreover, the decision on whether or not to fire a warning shot has to be weighed against two important elements:

1. The protection of third persons: when firing a warning shot in the air, the bullet will come down with a potentially lethal velocity at quite a distance from the place of firing. Its trajectory cannot be controlled so there is no way of knowing whether it will accidentally hit somebody. When warning shots are fired onto the ground or horizontally in any direction there is a high risk of potentially lethal ricochets, especially where the ground or walls consist of solid materials such as brick or concrete.
2. Escalation vs. de-escalation: a warning shot could be perceived not as a warning, but as a direct attack. This could trigger an immediate violent reaction by the person the shot was meant to warn (or even from other persons, including other police officers, in the area), which would worsen the situation instead of improving it by obtaining compliance.

Because of the inherent risks of firing warning shots, there are many domestic laws and operational documents that prohibit warning shots:

**Illustrative country examples****Brazil: Interministerial Ordinance No. 4.226 of 31 December 2010**

Art. 6: “Warning shots are not acceptable in view of their unforeseeable effects.”

**Paraguay: Manual on the Use of Force by the National Police, 2011**

Sect. III.j.: “Prohibited acts regarding the use of force: The following acts are prohibited since they are considered inappropriate use of force: [...] 3. Resorting to warning shots”

Sect. V:

“b) Warning shots

Warning shots are potentially lethal to third parties, hence are considered inappropriate in any level of resistance. Therefore, its use is under no circumstances allowed.”

**Philippines: National Police Operational Procedures, 2013**

Rule No. 6.3: “The police shall not use warning shots during police intervention operation.”

**United States: San Francisco Police Department General Order, Use of Firearms, 2011**

Art. 4: “It is generally prohibited to discharge firearms as a warning.”

<sup>66</sup> Obligatory: **Serbian** Law on Police (2005), Art. 106; **South Africa**, Correctional Services Act, 1998: Section 34 (4b). In other countries warning shots are at least considered as an option: **Germany, Lower Saxony**, Law on Public Order and Security, 2005, Art. 74 §1 (3). **Indonesia**, Regulation of the INP on the Use of Force in Police Action No. 1/2009: Art. 15 §1 allows warning shots, (§2) provided this is done in a safe and reasonable manner and does not create a threat or danger to other people. (3) Warning shots are to be fired in the air or ground in a highly cautious manner. **The Netherlands**, Official Instruction for the Police, Royal Constabulary and other Investigative Officials, 1994, Art. 10a, allows for a warning shot and only requires to avoid danger to persons or objects as much as possible.

If warning shots are considered an option for a warning in the operational framework, due consideration must be given to these risks and how to mitigate them, e.g.:

### **Illustrative country examples**

#### **Portugal: Law No. 457/99 on use of firearms during police operation**

Art. 4 (2): “A warning can consist of a shot in the air, as long as it can be assumed that nobody will be harmed, and if intimidation or previous warning is not clear and immediately understood.”

#### **United Kingdom: College of Policing (2013): Discharge of firearms [Internet].**

<https://www.app.college.police.uk/app-content/armed-policing/armed-deployment/discharge-of-firearms/>

#### **Accountability for all rounds fired:**

“AFOs [Armed Firearms Officers] are accountable for all the rounds that they discharge and they should be aimed so as to minimize risk (either directly or by ricochet) to any person other than the subject.

Where, in exceptional circumstances, a round is discharged in a direction where it is not intended to strike a person or defined area, officers must take account of potential unintentional harm being caused as a consequence. This could also include death or serious injury of a person not in the immediate proximity.

Officers should be aware that any discharge of a firearm may lead a subject or other officer to believe that they are under fire.”

[see also earlier in this section Art. 143 (3) of the *Code of Practice for Police Officers, Croatia, 2009*]

Such precautions could be for instance firing into soft ground or deep water, or only where there are no other persons around (e.g. outside urban settings).

## **5.3 How to use a firearm**

### **Basic Principle 11**

“Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

[...]

(b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm; [...].”

The operational framework must clarify the distinction between *potentially* lethal and the *intentional* lethal use of it. Intentional lethal use [see **Chapter 2.3.2**] refers to the use of the firearm in a manner that will definitively lead to the immediate death of the person, e.g. a police sharp-shooter, also called “sniper”, aiming at the head of the hostage taker in a critical hostage situation, or a police officer firing multiple shots into a person’s central body mass until the person stops moving. Potentially lethal use refers to other ways of using a firearm, which may still have lethal consequences, but where the firearm is used in a way that allows for the survival of the person.

Such intentional lethal use of a firearm might only be justified in the exceptional situation that a lethal attack is already ongoing and can only be stopped by an intentional lethal use of a firearm. The reason is that a person hit by a bullet, even if fatally wounded, may still be able to continue a deadly attack (e.g. pulling a trigger if they have a firearm). Under these circumstances, aiming at the head or firing multiple shots at the central body mass may be the only way for the law enforcement official to interrupt the action of the person and to save the life in danger. The operational framework must be very clear that intentional lethal use of a firearm is only allowed in such situations of extreme urgency and only when it is strictly unavoidable for the protection of life.

However, there are many other situations, which do not present such a level of urgency, though still present a serious threat as referred to in Basic Principle No. 9. For such situations the operational framework must provide clear instructions on how to use the firearm in order to balance the inherent risk of the firearm to cause death with the threat it seeks to counter.

### **Illustrative country example**

#### ***Czech Republic: Act Regulating the Police, 2008***

Sect. 56 (4): “When using a weapon, a police officer must take the necessary care, in particular, not to endanger other persons’ life and to spare as much as possible the life of the person against whom the action is being taken.”

A very difficult question is whether law enforcement officials should be instructed and trained to aim at the legs whenever possible. This is common practice in many police forces and may increase the chance of survival for the targeted person.

### **Illustrative country examples**

#### ***Peru: Human Rights Manual for Police, 2006***

Instruction on use of firearm, p. 78: “However, if circumstances allow, the police must give priority to a targeted shot aimed at certain areas of the body, in order to minimize injuries without putting their own security at risk, taking into account the intensity and danger of the aggression, as well as the legitimate objective pursued.”

#### ***Portugal: Regulation on Limits to the Use of Coercive Means by the National Police, 2004***

Chapter 3, Sect. 4 e): “When using a firearm against individuals, police officers should first try to use it in a less lethal manner to cause minimal harm on the suspect or alleged offender, in accordance with this regulation.”

Sect. 5: Types of effective use of firearms against persons

- a. The discharging of a firearm against individuals can present a higher or lower risk, depending on the body part targeted at the moment of shooting;
- b. Any shot targeting other body parts than the upper or lower limbs of the suspect is considered high risk;
- c. Any shot targeting the upper or lower limbs of the suspect is considered lower risk;
- d. Any shot described under the previous paragraph must – obligatorily – target the bottom half of the lower limbs, if the situation allows it.”

#### ***South Africa: Correctional Service Act, 1998***

Sect. 34: “[...] 4) Before a firearm is fired, the following procedure must be adhered to, if circumstances permit: [...]

- (c) if the warnings are of no effect, the line of fire should be directed in such a manner that the probable result will not be a fatal injury.”

Nevertheless, it must be clear that when law enforcement officials are instructed and trained to attempt to aim at the legs in certain situations, this does not mean that the firearm can be considered a less lethal weapon which may be used at a lower level of danger: even a shot in the leg can easily be lethal if a central blood vessel is hit, and the risk of the shot still hitting a vital organ even though it was aimed at the legs is equally high – particularly in stressful situations or if the targeted person is moving. Thus, *any* discharge of a firearm is a use of lethal force and may only be applied if the threshold of Basic Principle No. 9 is met, and the operational framework should be very clear about this. Aiming at the legs, but hitting a vital organ in a situation where there was no imminent threat to life or of serious injury cannot be justified on the basis that the law enforcement official was trying to shoot at the legs. In such a situation, a shot should not have been fired in the first place – whatever body part was targeted.

Other police forces only train to aim at the central body mass, because of the increased risks if the shot misses the target or does not have the immediate stopping effect.

### **Illustrative country example**

#### ***United States: Georgia Association of Chiefs of Police, Sample Law Enforcement Operations Manual, 2014***

Chapter 11 (Use of force) S.O.P 11-1 Critical incident investigation and review:

“Once the officer has determined that the use of deadly force is necessary; the Department’s policy is to shoot to stop. An officer shall not discharge a weapon to kill, but rather to stop and incapacitate an assailant from completing a potentially deadly act as described in this policy. For maximum stopping effectiveness and minimal danger to innocent bystanders, the officer should shoot at ‘center body mass’.”

The decision on where law enforcement officials should aim also depends on the type of ammunition used, the threshold of danger for the use of firearms established in domestic legislation and the overall situation in the context:

- Shooting at the legs (or at the arm holding a weapon) might be more likely to achieve the intended result when ammunition with a stronger immediate stopping power is used **[on different types of ammunition: see Chapter 5.5]**.
- The higher the threshold of danger established in domestic legislation for the use of firearms (even beyond international human rights standards), the more likely it is that shooting in the legs will not make sense in such a highly dangerous situation, because it is unlikely to effectively stop the threat.
- In countries where law enforcement officials are not routinely armed and are only deployed in already critical situations, targeting shots outside the central body mass (and being trained to do so) may not be very relevant, given the threat level of the situations such specially deployed officials are likely to face.

### **Illustrative country example**

#### ***United Kingdom: College of Policing (2013): Discharge of firearms [Internet]***

<https://www.app.college.police.uk/app-content/armed-policing/armed-deployment/discharge-of-firearms/>

#### ***Discharge of firearms***

“The primary intention of the police, when discharging a firearm, is to prevent an immediate threat to life by shooting to stop the subject from carrying out their intended or threatened course of action. In most circumstances this is achieved by aiming to strike the central body mass (ie, the torso).”

#### ***Physical response***

“The physical response of a person to having been shot is unpredictable – there are a range of physical and psychological moderators which can contribute to the nature and extent of any response. Only shots striking the central nervous system (which is largely located in the brain and spinal cord) and the major organs (which are contained in the upper body), are likely to result in rapid incapacitation.”

In any case, in order to leave the targeted person with a chance of survival, a series of shots should never be fired (this way of shooting should be restricted to the extremely critical situations described at the beginning of this sub-section). Law enforcement officials should only fire a single shot after which the situation has to be reassessed whether there is still a threat, before making another shot.

Operational instructions must describe the different ways in which law enforcement officials are supposed to use their firearm, in response to different types of scenarios (and how they should not use them). Training of law enforcement officials should make sure that they obtain the necessary skills to effectively apply the instructions in practice **[see Chapter 5.6.2 and 9.2 on training]**.

It should be noted that the criteria and considerations mentioned above equally apply to all other devices that are designed to kill (e.g. guided armed drones or explosives devices), in particular the requirement of absolute necessity, i.e. that the use of weapons of this kind which will inevitably lead to a person's death is only permitted in situations of extreme urgency when strictly unavoidable to protect life, as described above. Such weapons also present a considerably increased risk to injure or kill third persons and thus require even more precautions to be taken for their protection [see also below Chapter 5.4]. Ultimately, there will be very few situations of such an extreme character that the use of such devices can be justified in light of the "protect-life"-principle.

## 5.4 Protection of third persons

The protection of third persons must be given the utmost attention. As mentioned above [see Chapter 2.5], the concept of "collateral damage" (unintentional death or injury) to a third person is not accepted in law enforcement. Law enforcement officials who may find themselves in a situation in which they may consider the use of their firearm must take all possible precautions that by doing so they will not endanger the life of other persons, e.g. as a result of a missed shot, a ricochet, or a bullet passing through the body of a targeted person to hit another. These considerations are particularly relevant in crowded public spaces. Operational instructions must ensure that priority is given to the protection of the lives of third persons.

### Illustrative country examples

#### ***Paraguay: Manual on the Use of Force by the National Police, 2011***

Sect. II.j.: "Prohibited acts of use of force:

The following acts are prohibited as they are considered inappropriate use of force: [...]

8. Shooting while there is an imminent risk to third parties."

#### ***Portugal: Regulation on Limits to the Use of Coercive Means by the National Police, 2004***

Chapter 3, Sect.2: "General principles on the use of firearms [...]

f. The use of a firearm is only allowed if it is manifestly unlikely that, apart from the individual(s) concerned, any other person will be hit; [...]

8. Risk of hitting third parties

- a. The use of a firearm is prohibited whenever the concrete circumstances raise or must raise any doubts in the police official's mind regarding the possibility of hitting third parties;
- b. A verification of the circumstances mentioned above must be based on the skills acquired during the regular training;
- c. In particular, third parties are considered in imminent danger, when:
  1. The distance between police and suspect is considerably reduced, and the suspect's exposed body surface is small;
  2. The suspect is found at a distance from the police officer that is too great, considering the capacity and technical specifications of the weapon or ammunition used;
  3. The suspect moves rapidly behind or in front of third parties."

The high number of people killed by stray bullets in high violent crime areas during confrontations between law enforcement officials and armed groups causes great concern and is an unacceptable outcome of police operations. Law enforcement officials, when operating in such areas, must be instructed to give the utmost priority to the protection of third persons. This does not only apply to their own use of a firearm, i.e. that they should make sure that they do not accidentally hit third persons. Highly dangerous suspects who use firearms in order to escape will often not give any consideration to third persons. The mere fact of engaging in an exchange of fire with heavily armed persons may therefore in itself carry a high risk for third persons. It must be clear that their death is a totally unacceptable outcome of a law enforcement operation. It may therefore be

required to stop the pursuit and the attempt to arrest such a highly dangerous suspect in order to avoid such an outcome.

A similar situation can be found in the so-called “hot pursuits”, e.g. when law enforcement officials pursue a suspect either on foot or in a vehicle, or in situations in which a driver refuses to stop at a checkpoint. When moving fast, it is almost impossible for the law enforcement official to aim shots correctly and therefore the risk of third persons being hit by a stray bullet is extremely high. Besides, when running or driving in pursuit of a suspect, the situation in the surrounding area may change unexpectedly, with passers-by suddenly appearing as if out of nowhere.

When driving, this risk will often be uncontrollable and, as a rule, it should be prohibited to open fire at a suspect in such circumstances.

### **Illustrative country example**

#### ***Paraguay: Manual on the Use of Force by the National Police, 2011***

Sect. III.j.: “Prohibited acts of use of force:

The following acts are prohibited as they are considered inappropriate use of force: [...]

5. Shooting from or into moving vehicles, except in cases where lack of action will clearly lead to serious injuries to the police officer or third parties and there is no other way to avoid it.”

Even during a pursuit on foot, the use of the firearm may only be allowed after the law enforcement official has stopped running, has a clear view of the surrounding area and can make sure that no third persons will be hit.

At checkpoints, it is important to stress that the mere fact a driver does not stop at the checkpoint does not allow the law enforcement official to conclude that the driver is a dangerous person. And firing at a moving vehicle (even if aiming at the tyres) carries a great risk to the car’s passengers. In this regard, it is important to stress that firing at a moving vehicle must be considered as the use of lethal force against a person and not simply as the use of force against an object. Thus, the use of a firearm in such a situation can – if at all – only be justified by considerations other than simply disrespecting the checkpoint, i.e. there must be an imminent threat of death or serious injury to third persons.

### **Illustrative country example**

#### ***Brazil: Law No. 13.060 of 22 December 2014***

“The use of firearms is forbidden in cases when a car disrespects a police checkpoint without presenting any additional risk for police agents or third persons.”

Furthermore, passengers in the car must be considered to be third persons who should be protected from harm: the purpose of the use of force is to stop the car, thus the only legitimate target in that situation – if at all – would be the driver and the utmost care must be taken to not put the lives of passengers in danger.

At minimum, operational instructions should oblige law enforcement officials to take all possible precautions not to harm third persons or passengers<sup>67</sup> – including the risk of the car hitting other people in the street, if it

67 See for instance the list of considerations mentioned in the **United Kingdom**, College of Policing (2013): Discharge of firearms [Internet], <https://www.app.college.police.uk/app-content/armed-policing/armed-deployment/discharge-of-firearms/>, under the heading “Moving vehicles”, in relation to the risks involved in shooting at a driving vehicle. Under no circumstances should there be a blanket authorization to shoot at a person or a car refusing to stop, such as is for instance provided in the **Armenian** Law on Police 2001, Art. 32 §2 (1), which allows the use of a firearm in case of a dangerous person refusing to stop, but without any indications for precautions to be taken to prevent endangering third persons. At least, Art. 32 § 3 of the same law explicitly prohibits the use of firearms in crowded spaces, which somewhat reduces the risks. Still, the use of firearms at police check points is in need of further restrictions and regulations regarding the protection of third persons and the required threshold of danger the driver presents to other persons.

goes out of control (for instance after a shot in the tyres or when the driver gets injured or killed). Or they should prohibit the use of firearms at all in such situations.

### Illustrative country examples

#### **Portugal: Regulation on Limits to the Use of Coercive Means by the National Police, 2004**

“3. Use of firearm during motorised pursuit.

- a. During a motorised pursuit, as a rule, any use of firearms is prohibited;
- b. Exceptionally, it is allowed to use firearms against a person, if in accordance with legal provisions and this regulation (NEP), in particular those exceptions stated in sub-paragraph d, 2 of Chapter 3 [i.e. against a lethal threat].”

#### **United States: Department of Justice, Investigation of the Cleveland Division of Police, 2014**

p. 15/16: “Shooting at a fleeing suspect violates the Constitution when the fleeing suspect does not pose a threat of serious bodily harm to the officer or others. [...] Shooting at vehicles creates an unreasonable risk unless such a real and articulable threat exists. First, it is difficult to shoot at a moving car with accuracy. Missed shots can hit Bystanders or others in the vehicle. Second, if the driver is disabled by the shot, the vehicle may become unguided, making it potentially more dangerous.”

## 5.5 Types of weapons and ammunition

### Basic Principle 11

“Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

- (a) [...] prescribe the types of firearms and ammunition permitted; [...]
- (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk; [...]”

As already mentioned above [see Chapter 2.5], no law enforcement operation may be planned in a way that, from the outset, it accepts that third persons may be killed by a law enforcement official.<sup>68</sup> In this regard, the choice of weapons and ammunition issued to law enforcement officials also becomes particularly relevant for the protection of third persons.

The right choice of weapons and ammunition to be used by law enforcement officials is crucial. All weapons have advantages and disadvantages (risk of being fired unintentionally, their accuracy depending on the distance, capacity to effectively stop an imminent lethal threat, risk of causing more injury than necessary, risk of hitting more than one person, risk of injury to the law enforcement official discharging the firearm etc.). It lies outside the scope of these Guidelines to enter into the technical details of these questions. However, there are some important considerations to take into account when deciding on weapons and ammunition:

- A law enforcement agency should have different types of firearms available: one that is suitable for the great variety of situations law enforcement officials may face in ordinary daily policing, as well as specific weapons for specific law enforcement operations (e.g. hostage situations).
- While they should be easy to use, the risk of being discharged unintentionally must be reduced to a minimum.
- Their accuracy needs to be thoroughly tested to avoid missing the target and the risk of stray bullets.

<sup>68</sup> Exceptional situations such as hostage situations or school shootings certainly present particular challenges in this regard [see Chapter 2.5 and 4.3.5] and loss of life may well occur in such circumstances. Still the intervention should be conducted with a view to preventing the loss of any life as much as possible, and in particular of persons who do not present any threat.



- As a rule, fully automatic firearms are not suitable for daily law enforcement practice: in law enforcement, each single shot needs to be accounted for and justified. This is not possible with automatic fire: a fully automatic firearm continuously fires rounds as long as the trigger is pressed and held and there is ammunition in the magazine/chamber. They are also grossly inaccurate and do not allow for the carefully targeted firing required by the “protect-life”-principle. Law enforcement officials should only be provided with them in exceptional situations of extreme danger where multiple exchanges of fire might occur and therefore only be distributed in anticipation of such situations, e.g. when multiple exchange of fire is expected, or when a country is in a situation of armed conflict in which law enforcement officials might be under attack.<sup>69</sup>

#### **Illustrative country example**

##### ***United Kingdom: Police Ombudsman of Northern Ireland investigative report on the circumstance of the death of Mr. Neil McConville on 29 April 2003 (2005)***

##### **Recommendation 5:**

“It is recommended that all operational weapons be immediately adapted to remove the automatic capability with the exception of a number of weapons kept in an armoury for which specific authorization for their use should be given (if it were felt that capability was required).”

Furthermore, the design of such weapons should conform to the law enforcement scenario in which they are supposed to be used, i.e. the normal switch should be on safety mode (no firing possible), the second switch on “single-shot”-mode. The option of “multiple-shot”-mode should be reserved for exceptional situations of extreme danger. Some weapons have a so-called “burst mode”, i.e. where with one pull of the trigger three bullets are automatically fired in immediate succession, a mode which allows for more controlled shooting than the continuous rapid firing that is the case with “multiple-shot”-mode.

In any case, the deployment of automatic weapons must be accompanied with specific precautionary measures to protect third persons, including thorough training [see Chapter 9.2], to avoid law enforcement officials erroneously switching to the wrong mode – therefore, they should – as a rule – be switched to single mode. They may only be turned to “burst mode” or “multiple-shot”-mode if required by the concrete – exceptional – situation and, when fired in such mode, law enforcement officials must be able to justify and should be accountable for each pull of the trigger.

- As mentioned above [see Chapter 2.3.2], there is no room for the use of Lethal Autonomous Weapons/Robotic Systems.
- The decision about which type of firearms and ammunition a law enforcement agency will be issued must only be taken after thorough testing and carefully balancing the different aspects (requirements of the possible scenarios faced, degree of effectiveness and accuracy, possible risks).
- Their use must be continually monitored and the decision about their selection be revised in view of their effectiveness and/or the emergence of unexpected/excessive risks.
- All of the criteria and considerations mentioned above equally apply to all devices that are designed to kill, in particular the requirement of their accuracy and the protection of third persons.
- Law enforcement officials should only be authorized to use officially provided and forensically traceable weapons. The use of private weapons should be prohibited as these have neither been sufficiently tested and approved nor do they allow for the indispensable accountability (identifying from which weapon a bullet has been fired, how many shots a law enforcement official has fired etc.).

<sup>69</sup> Still, it is important to underline that even in times of armed conflict, law enforcement officials in the fulfilment of their law enforcement duties remain bound by international and domestic human rights law, and not by international humanitarian law.

### Illustrative country examples

#### **Armenia: Law on Police, 2001**

Art. 32, part 5: “The list of the types of firearms and ammunitions included in the armament of the Police shall be approved by the Government of the Republic of Armenia. The inclusion of the types of firearms and ammunitions into the armament of the Police which cause graver injuries or constitute a source of unjustified risk, shall be prohibited.”

Part 6: “The procedure for allocating registered service weapon and ammunitions to a police officer under the right to keep and carry them, as well as the procedure for keeping and carrying the allocated weapon, shall be established by the Government of the Republic of Armenia.”

#### **Uruguay: Law on Police Procedures, 2008**

Art. 160: “(Prohibited firearms) – The use of firearms not provided by the State competent authorities is expressly forbidden [...].”

An equally difficult question is the choice of ammunition. Three interrelated elements are crucial in this regard:

- the risk of hitting more than one person;
- the degree of effectiveness in stopping a person from moving/acting; and
- the type of injuries it will cause.

Depending on the size and type of ammunition, bullets will deposit more or less energy when hitting a body (e.g. full metal jacketed bullets vs. semi-metal jacketed/expanding bullets<sup>70</sup>). This will influence both the type of injuries a bullet will cause and the degree to which it will effectively stop a person from moving or acting. The more energy a bullet deposits at the moment of impact, the larger the injury will be and the greater the overall effect on the body (including on the ability of the person to act). Even a shot in the leg might then be effective to immediately stop a person (whereas bullets which deposit less energy when hitting the body might be quite ineffective in stopping a person when hitting the leg). Moreover, when expanding bullets are used, which deposit a high amount of energy early on, there is a lower risk of the bullet passing through the body and hitting somebody else at a dangerous velocity. There is also a lower risk of dangerous ricochet when the shot misses target, as the bullet will lose a large part of its energy and velocity when it hits a wall or the ground.<sup>71</sup>

### Illustrative country examples

Expanding bullets are used in e.g. the **United Kingdom, France, The Netherlands, Sweden, and Denmark**. In **Norway** they were introduced in 2005 because they provide greater protection for third persons [see: <http://theforeigner.no/m/pages/news/norway-police-get-green-light-for-expanding-ammunition/>]. In view of their greater impact they were also allowed to be used by police sharpshooters [Justice-Department 14/2796-VBJ, June 2014].

The decision on the ammunition provided needs to be informed by these effects and must be taken after carefully balancing the different elements of use: minimizing the injury to the person, while still being effective enough to stop the person from acting (in particular if the person is already carrying out a potentially lethal attack) and protecting third persons from ricochets and bullets passing through the body of the targeted

70 “Full metal jacketed bullets consist of a soft core (usually made of lead) encased in a shell of harder metal. Such bullets generally pierce through a human target and will not expand. An expanding bullet is designed to expand on impact with soft tissue. Most semi-jacketed bullets do this and have an exposed lead core at the tip.” <https://www.icrc.org/eng/assets/files/other/wound-ballistics-brochure.pdf>.

71 Often, expanding bullets are referred to as “Dum-dum”-bullets, that were first developed for elephant hunting in the 19th century, then used in armed conflict and were subsequently prohibited in the Hague Declaration of 1899. Two important aspects deserve to be mentioned here: (1) Today’s expanding bullets used in law enforcement are much smaller in size and cause less serious injury than those used in 1899. (2) Expanding bullets are still prohibited under international humanitarian law – but for distinct considerations (causing unnecessary suffering); considerations for or against their use in a law enforcement context have to follow different parameters. See for more details: Coupland / Loye (2003), *Revue Internationale de la Croix-Rouge/International Review of the Red Cross*, vol. 85, pp 135-142.

individual. Law enforcement officials must know the effects of the type of ammunition they are provided with, so they can anticipate the results and consequences of firing a shot and to take appropriate precautions where possible [see Chapter 9.2].

## 5.6 Who may use a firearm: authorization, certification, training

### Basic Principle 11

“Rules and regulations on the use of firearms by law enforcement officials should include guidelines that: (a) Specify the circumstances under which law enforcement officials are authorized to carry firearms [...]”

### Basic Principle 19

“Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.”

### 5.6.1 Authorization of firearms for different law enforcement duties

A law enforcement agency must decide under which circumstances and for which type of duties law enforcement officials may carry a firearm. A first decision in this regard is whether or not law enforcement officials should carry a firearm in ordinary day-to-day policing. Across the world, countries have adopted different approaches in this regard and to a large extent the decision depends on the overall situation of the particular country in relation to the existing level of violence. In most countries, ordinary police officers are armed with firearms. However, there are also a number of countries where the decision was taken only to appoint specific firearms officers and not to issue firearms to law enforcement officials on routine patrol (e.g. The United Kingdom, New Zealand, Norway).

There are also specific duties for which particular and careful consideration regarding the use of a firearm is necessary:

Inside places of detention, carrying a firearm usually does not provide greater safety for personnel. On the contrary, there is a high risk of staff members being overpowered by inmates and threatened with their own weapon, or simply of the weapon being stolen by an inmate in a moment of distraction. This can lead to extreme and uncontrollable risks for the overall safety and security of the entire facility. It is in view of such risks that staff members inside places of detention should not be equipped with firearms.<sup>72</sup>

### Mandela Rules

[Revised Standard Minimum Rules for the Treatment of Prisoners, E/CN.15/2015/L.6/Rev. 1, 21 May 2015] Art. 82 “3. Except in special circumstances, prison staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, prison staff should in no circumstances be provided with arms unless they have been trained in their use.”

This standard is followed in most countries, including in countries where law enforcement officials are usually armed (whereas in such countries staff members who are in charge of external security or escort detainees to external appointments are often armed).

<sup>72</sup> This would also apply to staff members of private security companies who are contracted by the state to manage detention facilities.

### **Illustrative country examples**

#### ***Council of Europe: The European Prison Rules, 2006***

“69.1 Except in an operational emergency, prison staff shall not carry lethal weapons within the prison perimeter.”

#### ***United States: Georgia Association of Chiefs of Police, Sample Law Enforcement Operations Manual 2014***

Detention facilities operations (Chapter 20)

II. [...] B. Weapons [...]:

“Firearms are strictly prohibited within the detention facility.”

Public assemblies present another critical situation: the mere presence of police officers equipped with firearms may already increase tension and lead to escalation. Furthermore, the crowded situation may easily allow participants to steal a firearm, with all the serious risks involved. But, more importantly, while it is possible that law enforcement officials may face situations mentioned in Basic Principle No. 9, the crowded situation of a public assembly requires additional considerations: not only is there a high risk of non-violent persons being harmed, the use of firearms also can create such a level of escalation and violence that it will cause more death and injury than the use of the firearm originally sought to prevent. Such considerations possibly led to the new public order policy in Argentina: police officials (who are routinely armed in Argentina) are prohibited from carrying firearms when they are in direct contact with the participants of a public assembly:

### **Illustrative country examples**

#### ***Argentina: Minimum Criteria for the Development of Protocols for Police and Security Forces at Public Demonstrations, 2011***

“10. It shall be expressly forbidden for all police or security forces personnel to carry firearms when in the exercise of their functions they directly engage with demonstrators. Police and security forces personnel in charge of public order management will not carry lethal ammunition.”

A similar provision is contained in **Venezuela**, Resolution No. 113/2011 on maintenance of public order, Art. 21 (No. 9).

Whatever the case may be, a careful decision needs to be taken as to the situations and types of duties in which law enforcement officials may be allowed to carry and use a firearm, and these law enforcement officials need to be aware of the inherent risks in each of these situations, as well as the precautions required to mitigate such risks. In public order situations, this requires also very clear instructions as to who decides when a firearm may be discharged and it should be made clear that a firearm is not a public order management tool (e.g. for the dispersal of an assembly), but remains a means of lethal force only to be used in situations of a threat to life or of serious injury [see **Chapter 7.4.3**].

### **5.6.2 Certification and training**

Every law enforcement official authorized to carry a firearm must have passed a thorough certification process. This certification process should be conducted specifically for the type of weapon he or she will be provided with.

Law enforcement agencies must provide thorough, realistic practical training, covering all the types of duties the law enforcement official is supposed to carry out. Simple shooting drill exercises are largely insufficient in this regard. Apart from purely physical requirements (physical strength and condition; good vision), mental capacities need to be tested as well.

***Gorovenky and Bugara v. Ukraine (36146/05 and 42418/05), European Court of Human Rights Fifth Section (2012)***

“34. For the Court, and having regard to its case-law, the State’s duty to safeguard the right to life must be considered to involve the taking of reasonable measures to ensure the safety of individuals and, in the event of serious injury or death, having in place an effective independent judicial system securing the availability of legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress [...].

35. In this respect the Court notes that, although D.’s [a police officer] guilt in murdering two persons cannot be denied, it was acknowledged by the national authorities on several occasions that D.’s superiors had failed to appropriately assess his personality and, despite previous troubling incidents involving D., had allowed him to carry a weapon, which had led to the incident in question.” [emphasis added]

And, most importantly, the training must expose the law enforcement official to very realistic scenarios and stressful situations in which the appropriate reactions can be trained and evaluated; these should include communication skills with a view to de-escalating a situation, and decision making [see Chapter 9.2].

**Illustrative country example*****Germany: North Rhine-Westphalia, Operational training – Teachers’ manual, 2012***

The operational training module Schiessen/Nichtschießen (Shoot/Don’t shoot) is made up of a large number of sub-modules that contain various scenarios and skills development exercises: e.g. communication during a police intervention, use of firearms in darkness or while wearing special clothing, use of firearms after physical exercise and in stressful situations, e.g. under time pressure, the use of pepper spray and first aid after use. The following learning objectives are explicitly formulated:

p. B\_III.3: “Developing awareness for danger in typical police intervention situations, combining of tactical and communication elements, warning of the use of force appropriate to the situation, awareness of the use of firearms as a means of last resort and proficiency in the use of the firearm in typical conditions of police intervention.”

Moreover, the law enforcement official must be aware of the effects of the weapon and ammunition issued to them, the inherent risks of using a particular type of weapon and ammunition and the possible/necessary precautions to be taken. They must also be trained in how to give first aid assistance to those with gunshot wounds.

The training and certification process must be renewed at regular intervals to ensure that the law enforcement official still possesses the required capacity and skills after a certain time.

**Illustrative country examples*****Brazil: Interministerial Ordinance No. 4.226 of 31 December 2010***

Art. 18 establishes an obligatory re-certification for firearms at least every year.

***Germany: North Rhine-Westphalia, Handbook on operational training, 2014***

B8 (p. 26): Certification training exercise for the police weapon P99 must be done twice a year. Failure to comply means the authorization to carry a firearm expires automatically.

## 5.7 Control and reporting

### Basic Principle 11

“Rules and regulations on the use of firearms by law enforcement officials should include guidelines that: [...]

(d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;

(f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.”

### Basic Principle 22

“Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.”

The issue of firearms and ammunition needs to be fully controlled and be an integral part of a functioning accountability system [see Chapter 3]. This means that an individually registered weapon is given to each law enforcement official authorized to carry a firearm as part of an effective and auditable system for the storage and issuing of firearms and related equipment. It furthermore requires a law enforcement agency only to choose and distribute a type of weapon that is forensically traceable, i.e. having rifling in the barrel that leaves an identifiable trace on the bullet.

### Illustrative country examples

#### ***Ecuador: Regulation on the Use of Force by the National Police, 2014***

Art. 7 requires:

- the registration of ammunition as well as of the specific rotation marks and other individual characteristics of any weapon issued, and
- the personal data of all personal to whom weapons are issued to be recorded.

**Mexico: Law on the use of force by law enforcement in the Federal District (2008)**, Art. 7 contains a similar rule.

The number of rounds of ammunition issued to the law enforcement official should also be recorded at the beginning and the end of every work shift. There should be clear rules and regulations with regard to where a firearm and the ammunition is stored while the law enforcement official is off duty. As a rule, this should be in a secured place within the premises of the law enforcement agency.

### Illustrative country example

#### ***United Kingdom: College of Policing (2014): Weapons and equipment [Internet]***

<https://www.app.college.police.uk/app-content/armed-policing/weapons-and-equipment/>

#### ***Storage***

“Weapons and ammunition should be physically separated within the armoury.”

#### ***Storing weapons***

“Weapons organization in an armoury should segregate operational and training weapons, and weapons stored for other reasons.”

**Administration and Record Keeping**

“The system of accounting for weapons and ammunition (including Taser) must provide an audit trail for the movement of weapons, and of the issue and use of ammunition.”

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The decision to allow law enforcement officials to take a firearm home must be based on a thorough assessment of the risks involved and the possible operational need that may justify this.

**Illustrative country example****United Kingdom: College of Policing (2013): Issue and carriage of firearms [Internet]**

<https://www.app.college.police.uk/app-content/armed-policing/issue-and-carriage-of-firearms/>

**Authorization****“[...] Northern Ireland**

In recognition of the special circumstances prevailing in Northern Ireland, the chief constable has given standing authority for all officers, subject to successful training, to be issued with a personal issue handgun which may be carried when officers are both on and off duty.”

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In any case, there must be clear instructions on the handling and storage of the weapon and its ammunition in such situations and there should be an obligation to separate the weapon from all ammunition, when the weapon is not being carried by the authorized law enforcement official.

**Illustrative country example****Portugal: Regulation on Limits to the Use of Coercive Means by the National Police, 2004**

Chapter 3, sect. 15: establishes clear responsibility of the law enforcement official for his or her weapon with some obligatory precautions to be taken:

- “c. Regardless of the choice of the police officer with regard to weapon possession [he or she may decide whether or not to carry them while off-duty], the police officer is fully responsible for storing it, except when weapons are in police installations for this purpose;
  - d. Firearm possession is prohibited when it is foreseeable that alcohol consumption will go beyond the maximum blood alcohol limits allowed for police personnel;
  - e. Firearm possession is prohibited when it is foreseeable that the officer will often be involved in actions that would lead to physical separation from the weapon or otherwise the loss of effective possession; an exception applies when it is possible to store the weapon in the premises of public entities where this is the usual proceeding against a duly signed and dated storage receipt;
  - f. When police officer is off duty, the general rules regarding weapon possession apply to them.”
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A close system of reporting and control even during training exercises should make sure that there is full accountability for ammunition used. Any loss of weapons or ammunition must be reported immediately to the competent superior. Superiors should regularly check the records and compare them with the weapons and ammunition actually in the hands of their subordinates.

In view of the high risks involved, *any* drawing of a firearm as a means of warning and any pointing of a firearm against a person (except where such actions take place in the context of training) must be reported by the officer (as well as by any witnessing officer) to the competent superior – irrespective of whether or not the weapon has been discharged in the end, and irrespective of whether or not there was any harm, damage or loss of life [see Chapter 3.5.1, 5.1.1 and 10.3].

In a case in which a firearm has been discharged by a law enforcement official, there should be an obligation to immediately inform the superior of this fact, i.e. as soon as a situation has stabilized sufficiently to allow for contact with the superior [see also Chapter 3.5].

### **Illustrative country examples**

#### ***Portugal: Regulation on Limits to the Use of Coercive Means by the National Police, 2004***

Chapter 3, Sect. 16: establishes obligatory reporting for any discharge of a firearm. In case of use of firearms against persons, and regardless of the outcome of this use, it is obligatory to send a copy of the report to the Public prosecutor.

In **Kenya**, police are obliged to inform the Independent Police Oversight Authority (IPOA) whenever a firearm has been discharged (Kenya, National Police Service Act No. 11A, 2011, Sixth schedule [Sect. 61(2)], A.5.).

A similar rule exists in the **United Kingdom**, Police Reform Act 2002 (Chapter 30), Schedule 3.

As soon as possible, the concerned law enforcement official should then make a detailed report about the incident. Any witnessing officer should make a separate report.

### **Illustrative country example**

#### ***United Kingdom: College of Policing (2014): Post-deployment [Internet]***

<https://www.app.college.police.uk/app-content/armed-policing/post-deployment/>

#### ***Criteria for post incident investigations***

“Post incident investigations will commence in all situations where there has been a discharge of a weapon by the police (including those involving a conventional firearm or less lethal weapon), whether intentional or unintentional which has or may have:

- resulted in death or serious injury – these will be subject to mandatory referral to the IPCC [Independent Police Complaints Commission], or another independent investigative authority (IIA)
- revealed failings in command
- caused danger to officers or the public.”

These reports should allow for the full assessment of whether the use of the firearm was justified in light of the duty to protect life and whether all requirements of internal procedures were respected. The following minimum elements must be included:

- that a firearm was discharged (by whom, time and place, how many shots, the result in terms of casualties, if there were any);
- the reason for using the firearm, precisely describing the perceived threat or danger and if the objective was achieved;
- the procedure followed (was it in accordance with the operational instructions or standing orders for such type of situations?);
- whether attempts were made to de-escalate the situation with a view to avoiding the use of force at all or at least to avoid the use of the firearm (and if not: why not) and what was the result of such attempts;
- if other, less lethal, means or methods of use of force were attempted (and if not: why not) and what was the result;
- if a warning was given prior to the firing (and if not: why not) and what was the response to the warning;
- what the situation was with regard to third persons and what type of precautions were taken in order to prevent any harm to them;
- if medical assistance was given to any injured person;
- the presence and identity of any witnesses;
- any other relevant information that may explain how the situation unfolded (e.g. weather conditions, visibility etc.).



The firearm and remaining ammunition should immediately be handed over to the superior to allow for a thorough investigation of the incident.

Reporting is not an end in itself; it is intended to allow superiors to determine what appropriate actions must be taken following the incident. These may include:

- gathering of further information if needed;
- measures to ensure the well-being of the officer (counselling, stress management, medical leave);
- starting an investigation and suspending the officer from duty until the conclusion of the investigation or, at the very least, transferring him or her to a function where he or she does not have direct access to the public and is not issued with a firearm;
- initiating a process of reviewing operational procedures or equipment if either or both were found to be inadequate;
- assigning the officer to refresher training if he or she was found to lack the skills and competence to handle such situations appropriately.



# 6 | LESS LETHAL WEAPONS: TESTING AND DEPLOYMENT

## Chapter outline

### 6.1 Terminology and scope of this chapter

### 6.2 Decision making process

6.2.1 Definition of operational needs and gaps

6.2.2 Testing

a) Accuracy and precision

b) Reliability, including reproducibility of critical attributes and life span

c) Possible pain, harm and/or injury caused

d) Unwarranted risks

e) Compliance with international and domestic human rights standards

### 6.3 Instructions

### 6.4 Training

### 6.5 Piloting, re-evaluation and reporting

## Relevant provisions of the Basic Principles for this Chapter:

### Basic Principle 2

“Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.”

### Basic Principle 3

“The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.”

## Guidelines for implementation of these Basic Principles

**Guideline No. 6:** Law enforcement agencies should have a range of less lethal equipment at their disposal that allows for a differentiated use of force in full respect of the principles of necessity and proportionality, and ensures that harm and injury are kept to the minimum.

a) New law enforcement equipment should be developed and introduced based on clearly defined operational needs and technical requirements (and not just because of its availability on the market), with a view to reducing the amount of force used and the level of harm and injury caused.

b) Any equipment must be subjected to thorough testing as to whether it meets the required operational needs, technical requirements in terms of accuracy and precision, reliability, life span, and the degree of possible harm and suffering it may cause as well as possible unwarranted/unintended effects. Testing should be carried out by an independent body.

c) Each device should be subjected to an independent assessment as to its compliance with international human rights law and standards, in particular in meeting the requirements of the principle of proportionality, the prevention of risks for third persons and the prevention of misuse or abuse in practice.

d) Any equipment should be excluded which:

- is found to be inaccurate enough to carry a great risk of causing significant injury including to persons other than the targeted person (e.g. pellet firing shot guns, certain kinetic impact projectiles such as rubber balls);
- causes harm which is disproportionate to the objective (e.g. carries a high risk of causing death, despite being considered to be less lethal, such as rubber coated metal bullets);
- aims to achieve an objective that is equally achievable with a less harmful device (e.g. thumb-cuffs vs. ordinary handcuffs, spiked batons vs. ordinary batons);
- is highly abusive (electric shock devices that do not have a cut-off point, electric stun guns that act as a direct contact weapon) or the use of which would violate the prohibition on torture and other cruel, inhuman or degrading treatment (e.g. body-worn electric shock belts).

e) Given the potentially grave consequences of fully autonomous weapons systems (AWS) and their inability to replace indispensable human judgement in the decision to use force, the development, production, and use of such technology – even if only equipped with less lethal weapons – should be pre-emptively banned.

f) Each device should be accompanied by clear instructions as to the situations in which, and how, it should be used, explaining the effects and risks of the device and the necessary precautions to be taken, as well as warnings on the circumstances or situations in which the device may not be used. Law enforcement officials must have received adequate training and certification on the device as a precondition for being allowed to use the device.

g) Any new device should undergo and be subject to a legally constituted and publicly available piloting process that allows confirmation of whether the device meets the operational needs and technical requirements, the adequacy of instructions and training, as well as of the absence of any unexpected unwarranted risks.

h) The use of any device must be subject to thorough and rigorous reporting, supervision and control mechanisms with a view to continually evaluating the device with regard to its effectiveness and effects, including unwarranted ones.

## 6.1 Terminology and scope of this chapter

In the course of performing their duties, law enforcement officials may face a great variety of situations in which they may have to resort to the use of force. Therefore, the equipment they are provided with should enable them to respond to these situations in an appropriate manner and in line with the principles of necessity and proportionality. The choice of equipment to be used in law enforcement needs to be based on a careful evaluation of the benefits and the sometimes considerable risks – including to life – involved in the use of such equipment.

**i**

**Explanatory note:** In this regard it is important to clarify the terminology used in the Basic Principles: in Basic Principle No. 2, the term used to describe such equipment is “non-lethal incapacitating weapons”. However, although not designed to kill, almost any device, depending on how it is used, can potentially be lethal [see **Definition of terms**]. Hundreds of people have died, for instance, after being targeted with an electric shock device,<sup>73</sup> many deaths have also occurred as a result of direct impact by tear gas canisters. It is therefore recognized today that the term “less lethal” is more appropriate and it is widely used in law enforcement for any device that is not specifically designed to kill.

### Illustrative country example

**United Kingdom: College of Policing (2013): Use of force, firearms and less lethal weapons [Internet]**

<https://www.app.college.police.uk/app-content/armed-policing/use-of-force-firearms-and-less-lethal-weapons/>

#### **Less lethal weapons**

“As no technology can be guaranteed to be non-lethal, ACPO [Association of Chief Police Officers], in conjunction with the Home Office, have adopted the term ‘less lethal’ to denote weapons and ammunition designed to be used without a substantial risk of serious or permanent injury or death to the subject on whom they are applied. While the actual outcome may, on occasions, be lethal, this outcome is less likely than if conventional firearms are used.”

It would go beyond the scope of these Guidelines to discuss all possible types of weapons and equipment that are available in law enforcement and to cover all relevant aspects of each of them.<sup>74</sup> This chapter therefore only looks at a few categories of weapons and equipment and it only aims to outline the key considerations that should inform the decision of law enforcement agencies on the equipment they are going to issue, how instructions on their use and training should be developed, and what type of precautions need to be considered. The considerations for the use of some specific less lethal weapons are discussed in more detail in the chapters on Public Assemblies [see **Chapter 7.4**] and on Detention [see **Chapter 8.2**].

## 6.2 Decision making process

Different less lethal weapons and means of restraint present a range of different issues and have a different portfolio of risks, therefore requiring different ways of mitigating these risks. Some of these issues can be addressed by a robust, independent testing and selection process for less lethal weapons and means of restraints. The selection and testing process is crucial in ensuring that the weaponry and restraints selected for use by law enforcement officials are in keeping with the Basic Principles, the Code of Conduct for Law Enforcement Officials, the revised Standard Minimum Rules for the Treatment of Prisoners (“Mandela Rules”), the Convention against Torture, and other international standards. The Basic Principles state that less lethal weapons should be developed to “increasingly restrain ... the application of means capable of causing death or injury to persons”, i.e. there should be a constant search to develop new weapons that are less injurious than other measures currently available.

This is, for instance, not the case for the use of knives, which can both increase the risk of serious injury compared to other types of equipment such as batons and may even be used as a lethal weapon; therefore, as a rule, knives, such as a pocket knife which may often be carried by police, should be excluded as a device for the use of force (to be distinguished from their use for cutting or repairing objects).

<sup>73</sup> <http://www.amnestyusa.org/news/press-releases/amnesty-international-urges-strict-limits-on-police-taser-use-as-us-death-toll-reaches-500>

<sup>74</sup> More details on the requirements, human rights concerns and recommendations with regard to the use of certain types of equipment in law enforcement operations can be found in “The human rights impact of less lethal weapons and other law enforcement equipment”, report by Amnesty International and Omega Research Foundation, 12 April 2015, ACT 30/1305/2015.

### Illustrative country example

#### **Uruguay: Law on Police Procedures, 2008**

Art. 162 (2), prohibits the use of knives and similar devices (“armas contundentes”) in the framework of law enforcement, except for special forces such as fire workers or tactical units, when required by the nature of their operational work.

If agencies are to ensure that the deployment of less lethal weapons does indeed reduce the likelihood of death or serious injury occurring, then they need to perform, or have access to the results of, rigorous, independent testing of the various weapons under consideration.

However, this is rarely the case in practice. At present, some states accept donated equipment (sometimes even from the military of the same country) or are subject to lobbying by manufacturers, both of which can mean that equipment is selected without going through the necessary checks and procedures.

**i**

**Explanatory note:** Here it is important to stress that many weapons and equipment used by the military armed forces are not suitable for law enforcement, as they were designed to neutralize an enemy in the course of conduct of hostilities. Other equipment might indeed be of a more general nature, and could therefore be possibly used by both the military and by law enforcement agencies. Still, even if this is the case, such weapons and equipment must be subjected to specific testing and control in view of their suitability for the specific law enforcement purpose they are intended for – and one should also bear in mind the importance of appearance: for instance, when law enforcement officials are driving around in vehicles the general population recognizes as military vehicles, this may unnecessarily cause tensions and fear.

Even in states which do have recognized selection and testing processes, few, if any, are legally constituted (i.e. required and regulated by law). To meet the requirements of the Basic Principles to minimize damage and injury and to protect life, a testing and selection process should include the following stages:

#### **6.2.1 Definition of operational needs and gaps**

The process of selecting and testing less lethal weapons and means of restraint should be based on a clear assessment of the law enforcement agency’s needs.

Any new equipment should fulfil a specific operational need or fill a gap that the law enforcement agency has identified. New equipment should be introduced to respond to new challenges, to improve effectiveness and/or to reduce possible harm and injury, compared to the equipment previously used. A law enforcement agency must clearly define the purpose of this equipment, for example, the need to temporarily incapacitate a violent individual at longer range or to apply handcuffs during a struggle without causing injury.

The practical problems and challenges faced by law enforcement officials in such situations need to be taken into account (for example, the inaccuracy of existing long range kinetic impact projectiles, or the incompatibility of certain chemical irritants with projectile electric shock devices such as Tasers). This will help to ensure that new equipment effectively addresses existing problems and contributes to an overall reduction in the amount of force used or the risk of serious injury; for example, adapting kinetic impact projectiles in order to reduce their potential harm.

Having identified the needs and gaps that have to be addressed, law enforcement agencies should set down the minimum technical standards the equipment must meet in order to fill this gap (for example, a requirement that chemical irritant spray should have reduced toxicity, or that a kinetic impact projectile weapon should be accurate over a distance of 25 metres). In the absence of such an analysis, agencies may end up introducing weaponry simply because it is available. However, that new weaponry or equipment might not

address the specific problems law enforcement agencies face, and might even increase the amount of force used, instead of reducing it.

### **6.2.2 Testing**

After the operational needs have been identified, an independent body of scientific, legal and other experts should then test or otherwise assess equipment against the technical and operational requirements, barring the adoption of equipment that does not meet the criteria.

#### **Illustrative country example**

A detailed instruction on the acquisition process for less lethal weapons can be found in: **United Kingdom, College of Policing (2014): Weapons and equipment [Internet].**

<https://www.app.college.police.uk/app-content/armed-policing/weapons-and-equipment/>

The selection and testing process must be fully independent of manufacturers or traders seeking to promote such products. Furthermore, drawing conclusions from the test results and deciding on the selection of the tested weapon should not be left solely to the law enforcement agency that seeks to introduce it.

The nature of the testing regime may differ depending on the equipment being assessed. For example, in testing a projectile for use at a stand-off distance, a critical attribute is the ability of the projectile to hit the target accurately and consistently. A baton would have different critical attributes and therefore undergo a different series of tests. However, the overall aim of the testing regime would be to provide a complete assessment of the weapon system against a set of criteria in order to ascertain that the device not only fills the gap identified in the operational needs analysis, but also can be legitimately and safely used in law enforcement in line with specific operational rules that are consistent with human right standards.

The technical assessment process should study the whole weapon system: for example, with regard to a water cannon vehicle, the testing would not only have to look at the water jet (power, direction, quantity, duration), but also at the driving speed of the vehicle, its ability to stop fast enough, the effective sight control of the driver over the immediate surroundings, the communication system, etc.

The following criteria are of particular importance in the testing process of any less lethal weapon:

#### *a) Accuracy and precision*

Accuracy can be defined as how close a projectile impacts to the target point. Precision seeks to measure how consistently the required degree of accuracy is met (or the deviation from it) in a number of testing exercises. As well as testing the theoretical, or best case, performance of the equipment, it is vital that testing also simulates conditions of use, for example use with full protective gear and gloves, and under stressful conditions such as simulated riot conditions, in poor weather conditions with low visibility or at night.

Lack of accuracy is a particular problem of kinetic impact projectiles, which come in various sizes and materials: rubber bullets, plastic bullets, big rubber balls etc. It would go beyond the scope of these Guidelines to discuss all the details of the different types and devices. However, in general, there are some fundamental issues to be addressed when deciding which type of projectile to use in which type of situation and how.

These projectiles are designed to be less lethal and thus to be deployed in circumstances that do not reach the threshold of an imminent threat to life or of serious injury as is the case for the use of firearms (see Basic Principle No. 9). However, in practice, some of them have caused serious injuries and even death, including of third persons, either as a result of their design or of the way they were used or a combination of the two.

Particularly problematic in this regard are rubber-coated metal bullets. In fact, though they might be perceived as less lethal weapons, they have proved to present such serious risks to the lives of people that they must be considered lethal weapons and as such may only be used in circumstances similar to those established for the use of firearms.<sup>75</sup>

Other types of kinetic impact projectiles can cause such serious damage and injury that they are not supposed to be used at less than a certain distance.

#### **Illustrative country example**

##### ***South Africa: Correctional Services Act, 1998***

Section 34: “(5) Weapons equipped for firing rubber-type ammunition may only be issued to trained correctional officials and then only for training purposes or during emergency situations.

(6) (a) Rubber-type ammunition may as a general rule only be fired at a distance of more than 30 metres from a person.

(b) If such ammunition is fired at less than 30 metres from a person, the line of fire must be directed at the lower body of the person.

(c) Rubber-type ammunition may not be fired within a building.”

However, the greater this distance is, the greater the risk of inaccuracy and of hitting a third person or hitting parts of the body such as the eyes, which can cause serious injury, for instance loss of eyesight. In some cases the recommended distance might even be so unrealistically great that one cannot reasonably assume a well targeted shot can be fired without undue risk for third persons. The technical assessment must therefore establish whether, given the combination of the projectile’s capacity to cause serious injury below the minimum distance and the (lack of) accuracy above that distance, it can still be used to achieve the operational objective without causing harm disproportionate to the objective.

It is for this precise reason, that, for instance, the Parliament of the autonomous region of Catalonia decided to prohibit the use of big rubber balls:

#### **Illustrative country example**

##### ***Spain: Catalanian Parliament, Report on Public Order and Security Models and the Use of Equipment during Demonstrations, 2013***

“... The shot is totally arbitrary, unforeseeable and, therefore, inaccurate. In these circumstances it is difficult to control the ultimate impact which increases the likelihood of any part of someone’s body being hit or even reaching third persons.

52. Therefore, with regard to rubber balls, the solution is not just to agree on compensation to be paid in the future, but to avoid this [from the outset], given that the injuries they cause are uncontrollable, indiscriminate and fatally random.”

In addition, depending on the circumstances in which they are meant to be used (in particular in public order situations [see **Chapter 7.4.2**] the volatility of the situation may lead to continuously changing distances in which it will be difficult for law enforcement officials to decide whether to resort to this weapon or not from one moment to the next.

#### ***b) Reliability, including reproducibility of critical attributes and life span***

A minimum number of tests is required to ascertain the reliability of the device over time, and to exclude failures and malfunctioning. Design flaws or problems in manufacturing quality may need to be detected as well.

<sup>75</sup> Amnesty International, Trigger-Happy: Israel’s use of excessive force in the West Bank, MDE 15/002/2014, p 37.



A particular concern is the compatibility of such weapons with the test for necessity and proportionality, if the 'dose' or level of force they deliver cannot be varied, or is found to be unreliable.

Also the life span of the equipment and its consequences need to be evaluated. For example, some rubber projectiles harden over time, which increases the risk they will cause serious injury or even death. Chemical irritants may lose their effect over time, leading to potentially dangerous situations for law enforcement officials if the weapon is ineffective and they might then need to resort to lethal force.

*c) Possible pain, harm and/or injury caused*

The degree of pain and/or injury caused (or potentially caused) by the weapon should not be more than strictly necessary and it should be evaluated whether the weapon could achieve similar results with less suffering. The concentration of chemical irritants, for instance, should be as low as possible with a view to minimizing the possible harm caused. Furthermore, as a rule, law enforcement agencies should not deploy a device if the same objective can be reached by other means which cause less pain, harm or injury. This is, for instance, the case with thumb-cuffs. Their objective to control a resisting person can easily be achieved using ordinary handcuffs without the severe pain and discomfort inflicted by thumb-cuffs and the serious risks of permanently impairing the use of the thumbs. Similarly, the design of spiked batons can only be considered as intended to increase the risk of injury compared to ordinary batons. Therefore, in both cases, this equipment should be prohibited in law enforcement. Given its inherently abusive nature, and in view of the fact that in most cases its use would amount to torture or other cruel, inhuman or degrading treatment, the production, use and transfer of this equipment should be prohibited.

The testing process should also consider design features that could be incorporated to minimize the risk of excessive force being applied. For example, electric shock weapons should have a mechanism to cut off after a few seconds to prevent prolonged exposure to the electric impulse. Such an approach may also be more broadly applicable to other weapon systems (e.g. the spray mechanism of chemical irritants).

*d) Unwarranted risks*

The technical assessment must include the evaluation of all possible unwarranted risks, i.e. risks of causing more harm than may be expected under ordinary circumstances:

For instance, the fact that particular groups and individuals with specific risk factors (such as people with heart disease and asthma) potentially have a heightened sensitivity to the effects of particular equipment needs to be clearly established. The evaluation must assess whether, when this is taken into consideration, the equipment can still meet the technical requirements outlined by the law enforcement agency.

Unwarranted risks can also arise from incorrect use of the device, in particular in situations of danger and when law enforcement officials are highly stressed. The technical evaluation should also examine the likelihood of incorrect use and the risks involved in terms of unwarranted harm and injury. The risk of incorrect use will increase with the degree of sophistication and complexity of equipment. For instance, weapons firing kinetic impact projectiles that need to have their firing power adjusted depending on the distance may inflict serious injury if, in the stress and volatility of the situation, the law enforcement officials firing the weapon fail to make the required adjustment.

The combination of the likelihood of incorrect use and the degree of unwarranted risks involved should be a relevant factor in the decision whether the device passes or fails the technical evaluation. This is, for instance, the case with electric shock devices that do not have a cut-off point. The risk that a law enforcement official might inflict an excessively long electric shock with potentially fatal consequences is almost impossible to prevent and therefore devices without an automatic cut-off point should not be used.

*e) Compliance with international and domestic human rights standards*

Once the technical performance of the equipment has been assessed as acceptable, the equipment “and its potential legitimate uses ... [should] be proven consistent with international human rights standards before any operational deployment of such equipment or technology in law enforcement. This requires rigorous independent investigations of each type and sub-type of such devices and technologies by suitable medical, legal and other experts using relevant international human rights and other standards. The results in each case should be placed in the public domain and then considered by the legislature or parliament before any decision is made to deploy the equipment in law enforcement or allow it to be sold.”<sup>76</sup> This last stage should also include public consultation.

Specific human rights considerations should include:

– The degree of possible harm

The degree of possible harm needs to be proportionate to the purpose of the use of force. As mentioned above, any device, even if it was designed as a less lethal tool, has the potential to be lethal. The greater this unwarranted potential risk to life, the higher must be the threshold of danger that would allow for the use of the device. Depending on the degree and seriousness of the risk, law enforcement agencies have to assess whether the device may still be considered a less lethal weapon.

Such a high risk to life is, for instance, the reason why the rubber-coated metal bullets mentioned above should be considered a lethal weapon. Similarly, given the risks of using electric shock weapons, which have in the past inflicted serious injuries, and in some instances even death, they should therefore only be considered for situations in which law enforcement officials would also be allowed to resort to their firearm.<sup>77</sup>

**European Committee for the Prevention of Torture (CPT), Report to the Government of the United Kingdom, CPT/Inf (2009) 30**

“12. [...] The CPT considers that the criteria for any use of electro-shock weapons by police officers at least closely correspond to those governing the use of firearms; their use must therefore be thoroughly regulated and monitored. Furthermore, only specially selected and trained police officers should be allowed to use such electro-shock weapons and all necessary precautions should be taken when such weapons are used. The CPT recommends that the authorities of the United Kingdom take due account of the above remarks in their guidance on the use of Tasers.

13. It should be noted in this context that, while DOMILL [i.e. the Sub-Committee on the Medical Implications of Less lethal weapons] has said ‘the risk of death or serious injury from the use of M26 and X26 Tasers within ACPO Guidance and Policy is very low’, it has also stated clearly that the risk, however, is not zero. DOMILL has made two clear recommendations to reinforce the need for prompt medical review and, if necessary, hospital referral of individuals who suffered head injury from Taser-induced falls, and that the requirement for in-custody Forensic Medical Examiner evaluation of all persons who have been subject to Taser discharge be re-emphasised. The CPT concurs and it would like to be informed about what steps have been taken to implement these recommendations.”

Pellet-firing shot guns fire a large number of small pellets (“birdshot”) which spread over a wide area. By their nature they present a high risk of causing serious injuries (e.g. eye injuries) to the person targeted as well as to third persons. These serious risks are almost impossible to control while the objective – e.g. dealing with violent persons in a crowd control situation – could be achieved in a less harmful way with other type of devices that

<sup>76</sup> Quote taken from Amnesty International, *The Pain Merchants: Security Equipment and its use in torture and other ill-treatment*, ACT 40/008/2003, p. 74.

<sup>77</sup> European Committee for the Prevention of Torture (CPT), CPT/Inf/E (2002) 1 – Rev. 2015 [CPT Standards], p. 109; **United Kingdom**, Northern Ireland, *Guidelines on the Operational Use of Taser, Service Procedure*, 2008.

allow for better targeting or more control over the harm caused (e.g. targeted shots with kinetic impact projectiles aiming at violent persons). Therefore, pellet firing shot guns should be prohibited in law enforcement.

– The degree of risk for third persons

As a rule, third persons should not be affected by the use of force by law enforcement officials. Nevertheless, this may occur either accidentally (e.g. due to the inaccuracy of a device, see above on kinetic impact projectiles) or as an unwarranted side-effect of the nature of the device (e.g. devices that to some extent have an indiscriminate effect, such as chemical irritants). These risks must be reduced to the very minimum and where this is not possible, a decision should be made not to deploy such a device.

The impact of devices with an indiscriminate effect such as chemical irritants, water cannon, or acoustic devices must be designed (e.g. in terms of degree of concentration, pressure, range) so as to reduce to a minimum the risk of causing harm and injury to third persons and as far as possible to restrict the impact to the person(s) targeted.

– Preventing misuse and abuse of equipment in law enforcement practice

Even if accompanied by adequate instructions and training, law enforcement equipment is sometimes misused (i.e. used in a technically incorrect way) or used in an abusive manner (i.e. in an unlawful way). This is the case for many types of less lethal equipment which have been misused, and even abused, in a way which amounts to excessive use of force, or in a manner which violates the prohibition on torture and other cruel, inhuman or degrading treatment. When developing and deploying less lethal weapons and equipment, authorities should take all possible measures to prevent misuse and abuse of these devices. Where they are not able to prevent misuse and abuse, they should not deploy the device. Especially in places with a culture of excessive use of force and of impunity, there is a risk of “function creep”, i.e. weapons being used in ways, and for purposes, not originally intended by law enforcement policy makers. This needs to be anticipated, and where possible, mitigated.

For instance, with regard to shields used in public order situations, instructions should make clear that only the flat side of the shield, never the edge, should be used against protestors.

In the case of electric shock devices (including Taser), their use in “drive stun” mode as a direct contact electric shock stun gun poses a substantial risk of torture or other cruel, inhuman or degrading treatment, and should therefore be expressly forbidden. With regard to dart firing electric shock weapons, only weapons that maintain an electronic record of every use should be permitted.

Obviously, law enforcement agencies should not have any equipment or weapons of which the use is inherently cruel, inhuman or degrading. This is, for instance, the case with body-worn electric shock belts, which are so intrinsically abusive, in violation of the prohibition on torture and other cruel, inhuman or degrading treatment, that these devices must be prohibited in law enforcement.

– The overall compliance with the principles of necessity, proportionality and accountability in each individual situation

The decision to use force, as well as which type and degree of force to be used, has to be made for each individual situation. It must be based on the concrete circumstances of this situation together with an assessment on how it will develop, e.g. if there are indications that a violent person might stop his or her aggression. At the same time, attempts have to be made to de-escalate and defuse the situation and even the option of retreat must be considered carefully. Such a decision can only be made by a human being. Fully autonomous weapons systems (AWS) are therefore highly problematic. The question is whether lethal and less lethal AWS – (i.e. weapons which, once activated, are capable of selecting targets and initiating attacks without effective or meaningful human control), could ever comply with human rights standards regarding the use of force, even if they are ‘only’ equipped with less lethal weapons.

Given the current status of the technology and the unlikelihood that AWS could ever reach the human levels of judgement required in the lawful conduct of law enforcement, it is improbable that AWS could comply with international standards governing the use of force. It is particularly doubtful whether the guiding human rights principles of legality, necessity and proportionality could be observed by AWS. Without human control, they are unlikely to have the capacity to correctly assess complex policing situations. Unlike highly trained and strictly accountable law enforcement personnel, robots cannot by themselves distinguish between legal and illegal functions, or make decisions regarding the use of force, thereby seriously undermining accountability and remedy for arbitrary, abusive and excessive uses of force. Given the potentially serious consequences of such technology, the development, production, and use of fully autonomous weapons systems should therefore be pre-emptively banned.<sup>78</sup>

### 6.3 Instructions

If the equipment is deemed suitable, agencies must establish clear instructions for its use, in order to minimize the risks of unwarranted harm or injury.

Such instructions must:

- clearly explain the effect of the weapon or device and the way it is supposed to be used;
- indicate what precautions have to be taken before it is used;
- include clear prohibitions for the circumstances and manner in which it must not be used;
- warn of possible risks if used inappropriately, as well as unwarranted effects that may occur in exceptional circumstances.

With regard to instruments of restraint, instructions should be very clear that they are only intended for security purposes and must not be used for other purposes such as punishment. They should emphasize the risks of using restraints in specific situations (e.g. when the person on whom they are going to be used is in poor physical condition) and of using them for a longer period of time. Also, they should include the necessary precautions for preventing unintended harm and pain.

Where there is an increased risk of “function creep”, instructions must include a warning on the possible disciplinary and penal sanctions, and establish particularly rigorous reporting obligations for any use of such equipment as well as any unintended harm caused.

#### **Illustrative country examples**

##### ***Armenia: Law on Police, 2001***

Art. 29, part 4: “The application of special means [e.g. rubber clubs, handcuffs, tear gas etc.] against women with noticeable signs of pregnancy, obviously disabled persons and minors (with the exception of cases their armed attack, armed resistance, and group attacks endangering the life and health of people) [...] shall be prohibited [...]”.

##### ***France: Code on Internal Security, 2012***

Art. R. 434-17: “[...] The use of handcuffs or other forms of restraint is not justified unless the person arrested is either [considered dangerous for others or him/herself or is likely to attempt an escape.]”

##### ***Germany: North Rhine-Westphalia, Operational training – Teachers’ manual, 2012***

This manual contains detailed instructions with regard to the use of pepper spray, including on the appropriate distance, the number and duration of spraying instances, and the risks involved if these instructions are not followed (overdose, direct eye injury etc.), the prohibition of its use against children and visibly pregnant women, the possible behavioural and physical reaction of the targeted person

<sup>78</sup> Conclusions drawn from Amnesty International, Autonomous weapons systems: Five key human rights issues for consideration, ACT 30/1401/2015.

(including possible medical complications), as well as the immediate first aid response to be given after its use.

**Peru: Human Rights Manual for Police, 2006**

Instructions on use of baton, p. 66:

“Starting from the defensive position:

- If the aggression is definitive and unavoidable, issue a warning to the aggressor of the intention to use the baton, while taking 2 steps back.
- If he maintains the aggressive attitude, advance by one step with the leg on the side where the baton is held, striking twice in a criss-cross-motion, from the top down and from the outside to the inside.
- Strike the parts with maximum muscle volume (legs, buttocks, arms), avoid strikes at the head, neck or thorax.
- When the person gives up the aggressive attitude, avoid further use of the baton; remember that the purpose is to dissuade the citizen from attacking the police officer, not to injure him nor to attack him to overcome him.

It is crucial to keep communicating in order to control the situation, and to try to persuade rather than seeking physical control.”

**Portugal: Regulation on Limits to the Use of Coercive Means by the National Police, 2004**

Chapter 2, sect. 6, §6: Baton strikes to certain areas of the body (RED areas such as head, neck and spine) are prohibited in view of their potential lethal consequences, unless there is a potentially lethal threat.

**South Africa: Correctional Services Act, 1998**

Sect. 33: “Non-lethal incapacitating devices. – (1) Non-lethal incapacitating devices may only be issued to a correctional official on the authority of the Head of the Correctional Centre.

(2) Such devices may only be used by a correctional official specifically trained in their use.

(3) Such devices may be used in the manner prescribed by regulation and then only –

(a) if an inmate fails to lay down a weapon or some other dangerous instrument in spite of being ordered to do so;

(b) if the security of the correctional centre or safety of inmates or others is threatened by one or more inmates; or

(c) for the purpose of preventing an escape.

(4) Whenever such devices are used, their use must be reported in writing and as prescribed by regulation.

(5) Tear-gas grenades and cartridges fired by firearms or launch-tubes may not be fired or launched directly at a person or into a crowd.

(6) Whenever a correctional official decides to use tear-gas he or she must be convinced that its use in the specific situation meets the requirements of minimum and proportionate force as required by section 32 (1) (b).

(7) If an inmate has been affected by tear-gas he or she must receive medical treatment as soon as the situation allows.”

**United Kingdom: Northern Ireland, Guidelines on the Operational Use of Taser, Service Procedure, 2008**

“8.7 Further risk has been identified from use of Taser in proximity to a number of explosive formulations, which are sensitive to electrical discharge. One such group is the ‘organic peroxide explosives’ [...]. Items that produce an electrical discharge (such as Taser) will set off peroxide explosives and other sensitive explosives. Other explosive materials may also be sensitive to electrical discharge, depending on how the material is packaged, its age, storage conditions and other factors. The heightened risk, in relation to subjects who may be holding or in close proximity to an improvised explosive device, must also be factored in when assessing the ‘appropriateness’ and ‘necessity’ of using a Taser. The potential threat of the subject being able to initiate the improvised explosive device, should the use of the Taser be ineffective, must also be taken into account.

8.8 The Taser should not be utilised in an environment where, due to the presence of a flammable substance in the atmosphere or escaping gas, its use is likely to result in an even more hazardous situation.”

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## 6.4 Training

Law enforcement agencies must ensure that officials have received adequate training on the use of any equipment they are issued.

### Illustrative country examples

#### **Brazil: Interministerial Ordinance No. 4.226 of 31 December 2010**

Art. 8: “Any law enforcement official, likely to be involved in a situation where the use of force might become necessary, should have at least 2 (two) less lethal devices available, as well as the protective equipment necessary for the operation.” Art. 16 requires the development of specific instructions and training modules for each weapon and device, to train the technical, psychological and physical skills required as well as a periodic review. Art. 17 prohibits police officers from carrying any weapon they are not certified to use.

#### **Uruguay: Law on Police Procedures, 2008**

Art. 165 only allows trained officers to use special equipment.

When providing such training (or outsourcing training to external providers), agencies should ensure the training is “independent of any company or commercial interests involved in the manufacture and marketing of such weapons”,<sup>79</sup> as there is a risk that companies and individuals who stand to benefit commercially from the wider uptake of a weapon may not fully disclose potential problems with the weapon in the training they provide. In 2011, for example, a jury ruling on the death of Darryl Turner in the United States of America in 2008 found the manufacturer Taser “liable in negligence for failure to adequately warn about the cardiac risks of X26 shots to the chest” in its product warnings and training materials.<sup>80</sup>

There should be an obligatory certification process in which law enforcement officials are required to obtain a certain standard of proficiency to be allowed to use the weapon, with initial training followed by regular refresher courses.

### Illustrative country examples

#### **Armenia: Guidelines for Police in Public Order Management**

(<http://www.police.am/images/Uxecuyc-N2-eng.pdf>)

Sect. 38: “The Head of the structural unit is authorized to issue those special means classed as ‘active protection’ for the use of police to safeguard their safety and the safety of citizens. The prescribed types are subject of independent medical assessment before approval and must be supported through suitable training and periodic recertification.”

#### **France: Code on Internal Security, 2012**

According to Art. R. 511-19, attending the equipment specific training is obligatory for any officer before being authorized to carry any of the weapons mentioned in Art. R. 511-12 of the Code (firearms, electric shock devices, chemical irritant sprays, baton, etc.). A law enforcement official must undergo periodic

79 Amnesty International, USA: ‘Less than Lethal’? The use of stun weapons in US law Enforcement, AMR 51/010/2008. NB: This does not mean that companies may not be involved in some aspects of the training – for example, explaining the technical features of the equipment – but that they should not be involved in designing the curriculum and should not influence what should be considered appropriate and inappropriate methods of use, or situations in which the equipment should be used. These are decisions for law enforcement agencies to make.

80 Note that the quote is not taken directly from the Jury’s Verdict but is taken from the following document: **United States** District Court for the Western District of North Carolina Charlotte Division 3:10cv125-RJC-DCK Tammy Lou Fontenot, as Administrator of the Estate of Darryl Wayne Turner, deceased Plaintiff, v. Taser International Inc., Defendant. Order. P10. Prior to the verdict, Taser had issued a training bulletin (in 2009) amending its targeting advice so that “the new preferred target zones for TASER Electronic Control Devices (ECDs)... are lower center of mass... and below the neck... (as) by avoiding the chest, the officer can avoid the controversy about whether or not the ECD could have caused a cardiac event.”(Guilbault, R (undated) Taser Preferred Target Zones <http://www.taser.com/training/training-resources> accessed 30/08/2011).

re-training, and failure to do so can lead to the withdrawal of the authorization to carry the weapon [R. 511-21].

**Germany: North Rhine-Westphalia, Handbook on operational training, 2014**

B8 (p. 26): For any weapon, police officers must undergo certification training exercises once per year. If not done, the authorization to carry such a weapon expires automatically.

**United States: Georgia Association of Chiefs of Police, Sample Law Enforcement Operations Manual, 2014**

Chapter 11 (Use of force), S.O.P 11-2 Less lethal weapons:

III. TRAINING

- A. Officers must successfully complete an Agency approved training course and demonstrate proficiency in the use of any less lethal weapon prior to its being issued. [...]
- B. Training must be provided by this agency’s training staff, a certified law enforcement instructor, or the training staff of a state approved academy. [...]
- C. Officers will, at a minimum, attend biennial refresher training in the use of each issued less lethal weapon. Training on Electronic Control Devices (Taser) will be conducted yearly. [...]
- D. Officers who fail to attend the required refresher training or who are unable to demonstrate proficiency in the use of any less lethal weapon will not be allowed to carry it until such time as they attend remedial training and are able to demonstrate proficiency. [...]  
ATTENTION CEO: Any officer who fails to maintain proficiency in intermediate weapons will be removed from duty until proficiency is demonstrated. (You do not want deadly force as the only option available.)
- E. Training will be documented in each officer’s training file. [...]

Instructions and training for any equipment should also sensitize law enforcement officials on the underlying principles for the use of force as outlined above [see Chapter 4.1 and 4.2], regarding the need to assess each individual situation as to whether the device may or may not be used in the actual circumstances – thus preventing the use of a device just because it is available:

**Illustrative country example**

**Armenia: Guidelines for Police in Public Order Management**

(<http://www.police.am/images/Uxecuyc-N2-eng.pdf.pdf>)

“Sect. 25, Example: The hand-held CS dispenser and rubber baton have been approved for use in circumstances where an offender is resisting arrest. Just because they are approved does not justify their use. That must be an individual decision at the time and for which the individual is accountable. The intensity of that resistance to arrest may not justify the use of baton strikes but a less intrusive use of force could be the CS dispenser, which has no long-term physical effect. This is a fine balance between the permission to use and the actual decision to use special means.” [emphasis added]

Ideally, the training should sensitize users to think of less lethal systems in a similar way as they would think of a firearm, i.e. a potentially lethal weapon. This was a recommendation made in what became colloquially known as the “Patten Commission”<sup>81</sup> with reference to plastic baton rounds (i.e. the kinetic impact projectiles used at the time), but it has much broader relevance in view of the lethal potential of less lethal weapons [for more details on training see Chapter 9.2].

81 The Independent Commission on Policing for Northern Ireland (1999) A New Beginning: Policing in Northern Ireland. The report of the Independent Commission on Policing for Northern Ireland 9.12.

## 6.5 Piloting, re-evaluation and reporting

Once the instructions and the training programmes have been drafted, governments and/or agencies should conduct a pilot roll out of the weapons system that is strictly monitored and evaluated by an independent body. The monitoring and evaluation system should identify any issues that might raise doubts on the initial technical and/or human rights assessment, the appropriateness of the accompanying operational instructions, and the extent to which the weapon is being used in keeping with these instructions. The findings of this pilot phase should be fed back to the body that conducted the selection and testing process in order to identify weaknesses or incorrect assumptions and where necessary, amend the guidelines for use of the weapon. This body should also conduct spot-checks on the equipment to ensure that it is indeed being manufactured to the standards agreed. Based on prior experience in the United Kingdom, where the required percentage of the chemical irritant CS in spray canisters was set at 5% but where canisters were later found to contain up to 6.8%, it can be concluded that consistency in manufacturing standards cannot be assumed.<sup>82</sup>

Governments should publish details of the assessment process, as well as of the technical and human rights assessments of the equipment and ensure they are made publicly available. This will help build public confidence in policing, and inform public debate on the risks involved in the use of less lethal weapons and restraints. It is also crucial that the whole deployment process is legally established and constituted; i.e. that there is a legal requirement for all less lethal weapons and restraints used by the police to go through this process [see already Chapter 1.1].

As with any use of force, the use of less lethal weapons and means of restraint should be subject to the requirement of obligatory reporting to the superior. The higher the risk of serious injury or even death resulting from the use of the device, the more thorough the reporting process should be. Electric shock devices should be equipped with a control system which records every mode of use<sup>83</sup> in order to allow effective control over their use.

### Illustrative country examples

#### **France: Code on Internal Security, 2012**

According to Art. R. 511-28, all conducted energy devices (Art. R. 511-12 (1) letter d)) are equipped with a control system that records any use of the device. In addition, each use of these electric shock devices must be reported to the civilian authorities. All instances of use of the device must also be evaluated with a view to improving the training in the use of this weapon where necessary.

#### **Brazil: Interministerial Ordinance No. 4.226 of 31 December 2010**

Art. 24: "Public security officers must submit an individual report every time they have fired a firearm and/or have resorted to the use of less lethal equipment which has led to injuries or death. The report should be forwarded to the internal commission referred to in Guideline 23 and should contain at least the following information:

- a. circumstances and reasoning that led to the use of force or firearm by the public security officer;
- b. measures taken before resorting to the use of force, firearm or less lethal means, or the reasons why it was not possible to consider these measures;
- c. type of weapon and ammunition, number of shots, distance, and person targeted;
- d. less lethal weapon(s) used, in particular the frequency, the distance and person targeted.
- e. number of public security officers injured or dead during the operation, type of injuries;
- f. number of persons injured and/or dead as a result of the use of firearm by public security officer;
- g. number of persons injured and/or dead as a result of the use of less lethal weapon(s) by public security officer;

<sup>82</sup> The Guardian (1999): British police face a CS gas attack 8th July.

<sup>83</sup> Amnesty International and Omega Research Foundation, The human rights impact of less lethal weapons and other law enforcement equipment, ACT 30/1305/2015, p. 21.



- h. total number of persons injured or dead as a result of the operation;
  - i. number of projectiles fired which affected individuals and the respective body parts hit;
  - j. number of persons affected by less lethal weapons and the respective body parts hit;
  - k. measures taken to provide medical assistance, if necessary; and
  - l. if the scene was preserved, and if not, provide a justification for this.”
- 

Superiors should regularly assess whether their subordinates are correctly using the device [see Chapter 10.3]. Continuous evaluation is indispensable to detect any shortcomings in technical requirements, in the ability of the device to fulfil operational needs, and in the content of the instructions and training or with regard to unexpected/unwarranted risks – e.g. previously unknown health effects in a specific group of people – and the circumstances that may affect the degree of harm caused by the device or its effectiveness.

#### **Illustrative Country example**

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##### ***Brazil: Interministerial Ordinance No. 4.226 of 31 December 2010***

Art. 22: “The use of less lethal techniques must be continuously evaluated.

Art. 23: “The public security bodies must establish internal control commissions on the monitoring of lethality, with a view to monitoring the use of force by their law enforcement officers.”

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If there are serious concerns about a particular device based on the findings of the continual evaluation, the law enforcement institution should consider removing such a device from its operational “tool box”.



# 7 | USE OF FORCE IN PUBLIC ASSEMBLIES

## Chapter outline

### 7.1 General concept: facilitation and dialogue

### 7.2 Unlawful assemblies

### 7.3 Dealing with violence

### 7.4 Tactical options and limits

#### 7.4.1 Containment

#### 7.4.2 Less lethal weapons

##### a) Kinetic impact projectiles

##### b) Chemical irritants

##### c) Water cannon

#### 7.4.3 Firearms

#### 7.4.4 Deployment of military forces

### 7.5 Reporting, accountability and lessons learned

## Relevant provisions of the Basic Principles for this Chapter:

### Basic Principle 12

“As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.”

### Basic Principle 13

“In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.”

### Basic Principle 14

“In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.”

## Guidelines for implementation of these Basic Principles

**Guideline No. 7:** The overall approach to policing of assemblies should be guided by the concept of facilitation of the assembly and should not from the outset be shaped by the anticipation of violence and use of force.<sup>84</sup>

a) The policing of assemblies should always seek to prevent the need to resort to force. As a rule, there is no room for the use of force in assemblies, except when dealing with individuals committing offences or seeking to prevent the assembly from taking place.

84 See for more details about the approach to facilitation Amnesty International, Dutch Section, Policing Assemblies, 2013.

b) Even if an assembly is considered unlawful under domestic law, police should not resort to the use of force just because of the fact of its unlawfulness. Only when there are other compelling reasons – e.g. regarding public safety and security or the prevention of crime – should police consider resorting to the use of force.

c) When using force in response to violence, law enforcement officials must distinguish between the individuals who are engaged in violence and those who are not (e.g. peaceful demonstrators or bystanders) and carefully aim such force only at those engaged in violence. The violence of a few individuals must not lead to a response which treats the entire assembly as violent.

d) Due consideration must also be given to the protection and well-being of the law enforcement officials deployed (availability of protective equipment, prevention of excessive length of duty, possibility for rest breaks, food, water etc.).

e) In the decision whether or not to resort to the use of force, law enforcement agencies must carefully consider the risks of contributing to further escalation of an already tense situation.

f) The containment of groups of protestors by a police cordon to prevent them from leaving a certain area is a highly problematic tactic which carries a number of risks for those being contained and for the proper policing of the assembly. If at all, this tactic should only be used to contain the violence of a smaller group and to allow the peaceful protestors to proceed with the assembly. It should never be used as a preventive measure based on prior intelligence that some people might engage in violence. It may only be used for the shortest time possible. Persons in need of assistance, those who are not part of the assembly, and participants who are not involved in violence must be allowed to leave. The containment may not be used for the purpose of preventing people from peacefully participating in an assembly, even if the assembly is considered unlawful.

g) Kinetic impact projectiles must not be fired randomly at the crowd but must be aimed exclusively at persons who are engaged in violence against persons, and only when other means have failed to stop the violence. They should be aimed at the lower part of the body so as to minimize the risk of serious injury. They should never be fired in skip fire (re-bouncing off the ground).

h) Devices that have indiscriminate effects and a high potential of harm, such as tear gas or water cannon, may only be used in situations of more generalized violence for the purpose of dispersing a crowd, and only when all other means have failed to contain the violence. They may only be used when people have the opportunity to disperse and not when they are in a confined space or where roads or other routes of escape are blocked. People must be warned that these means will be used and they must be allowed to disperse. Cartridges with chemical irritants may never be fired directly at a person.

i) Firearms must never be used as a tactical tool for the management of public assemblies: they may only be used for the purpose of saving another life in line with Basic Principle No. 9. If firearms are discharged during public assemblies, there are additional risks, such as injuring or killing peaceful participants or bystanders or causing further escalation of the violence with even more casualties. These risks need to be taken into account and require particular consideration in the decision making process.

j) Any public assembly during which police resorted to the use of force, in which there was violence or in which injury or loss of life occurred, must be subjected to a thorough investigation with a view to establishing responsibilities and accountability of the officers involved, and must be followed by a proper lessons learned process to improve the policing of future events.

k) When military armed forces are tasked with the handling of public assemblies, they must be fully acquainted and able to comply with all the Guidelines and principles on the use of force mentioned above. This requires a complete shift in the operational approach, from a “fight-the-enemy” approach to a law enforcement approach. To achieve this, clear instructions must be given, appropriate law enforcement equipment must be available, and soldiers must be fully trained in operational public order management. When authorities are not in a position to ascertain the capability of the military to carry out such a law enforcement operation in compliance with international human rights rules and standards, they should not deploy military armed forces in public order situations.

l) Full accountability must be ensured for any use of force during public assemblies, in particular when firearms were used or death or injury occurred. In particular the various levels of the command structure in charge during the assembly must be held accountable.

## 7.1 General concept: facilitation and dialogue

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**Explanatory note:** In line with the Basic Principles No. 12-14, this Chapter looks at public assemblies in the sense of Art. 20 UDHR and Art. 21 ICCPR (as well as the similar provisions in regional human rights treaties). It therefore does not deal with other sorts of public gatherings such as football matches, commercial events or music concerts. The right to freedom of peaceful assembly is a key human right and this implies specific obligations for the State, including for law enforcement agencies and officials: the possibilities to restrict the exercise of this right are considerably limited compared to the restrictions which may be placed on other sorts of events. Nevertheless, during events that are not public assemblies, the overall principles governing the use of force still apply. Even if such events can more easily be restricted than public assemblies in this sense, the rights to life, liberty and security of person as well as to physical integrity need to be fully respected and protected. Therefore, the considerations in this Chapter regarding the use of force fully apply to all such events in so far as they apply irrespective of any specific link to the exercise of the human right to freedom of peaceful assembly.

International human rights law guarantees the right to peaceful assembly. This right can only be restricted if it is strictly necessary and only for legitimate reasons such as national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. It is a positive duty of public authorities, including police, to facilitate and protect peaceful assemblies and to enable people to exercise their right to peacefully assemble. It would go beyond the purpose of these Guidelines to go into all the details of public order management and how authorities must comply with their obligation to facilitate the enjoyment of the human right to freedom of peaceful assembly, but what must be clear is that public order management is much more than just considering different options for the use of force.

Furthermore, the provisions of the Basic Principles cited at the beginning of this chapter should be read in conjunction with all other provisions of the Basic Principles. This means that police should first approach any situation with non-violent means such as de-escalation, negotiation, and mediation.

### **Inter-American Commission on Human Rights, Report on the situation of human rights defenders in the Americas, 2006**

“68. [...] the Commission deems that states should establish administrative controls to ensure only exceptional use of force in public demonstrations, in cases where it is necessary, through measures for planning, prevention, and for the investigation of cases in which an abuse of force may have occurred. In particular, the Commission recommends measures such as the following:

- a) implementation of mechanisms to prohibit, in an effective manner, the use of lethal force as a recourse in public demonstrations;
- b) implementation of an ammunition registration and control system;
- c) implementation of a communications records system to monitor operational orders, those responsible for them, and those carrying them out;
- d) promotion of visible means of personal identification for police agents participating in public law enforcement operations;
- e) promotion of opportunities for communication and dialogue prior to demonstrations and of the activities of liaison officers to coordinate with demonstrators concerning demonstration and protest activities and law enforcement operations, in order to avoid conflict situations;
- f) the identification of political officials responsible for law enforcement operations during marches, particularly in the case of scheduled marches or prolonged social conflicts or circumstances in which potential risks to the rights of the demonstrators or others are anticipated, so that such officials are tasked with supervising the field operation and ensuring strict compliance with norms governing the use of force and police conduct;
- g) the establishment of an administrative sanctions regime for the law enforcement personnel involving independent investigators and the participation of victims of abuses or acts of violence;
- h) the adoption of measures to ensure that police or judicial officials (judges or prosecutors) directly involved in operations are not responsible for investigating irregularities or abuses committed during the course of those operations.”

Public order management requires careful and thorough planning by persons experienced in the handling of large events or conflict situations and it should be driven by an approach of facilitation, rather than containment or even confrontation. Unfortunately, more often than not, the policing of assemblies is focused more on responding to possible trouble, violence and the need to resort to force, rather than on how to facilitate the full enjoyment of the right to freedom of peaceful assembly – despite the fact that most assemblies are peaceful, or at least start out peacefully.

In this regard it is important to acknowledge that when a public assembly ends in violence, this should to a certain extent be considered a failure of the state: it has failed in facilitating the assembly, failed in preventing violence, failed in protecting those who wished to participate peacefully and failed to effectively engage in a conflict resolution process with those who were likely, or even intending, to engage in violence.

### **Illustrative country example**

#### ***South Africa: Police Standing Order 262 on Crowd Management, 2004***

Sect. 11: “(1) The use of force must be avoided at all costs and members deployed for the operation must display the highest degree of tolerance. [...]

(3): If the use of force is unavoidable it must meet the following requirements:

- a) the purpose of offensive actions are to de-escalate conflict with the minimum force to accomplish the goal and therefore the success of the actions will be measured by the results of the operation in terms of cost, damage to property, injury and loss of life. [...]” [emphasis added]

Already in the planning phase, the approach to policing public assemblies should be guided by the objective to prevent violence and to avoid the need to resort to the use of force. Dialogue and negotiation should be the overall approach with a view to solving problems, anticipating possible conflict situations, and finding ways to prevent them from happening or to resolve them immediately in a peaceful manner.

### **Illustrative country example**

#### ***Argentina: Minimum Criteria for the Development of Protocols for Police and Security Forces at Public Demonstrations, 2011***

“6. All available means must be exhausted to reach the peaceful settlement of conflicts that does not lead to harm to those involved or not involved in the demonstration. For this purpose, measures must be taken to deal with conflict situations, to ensure a gradual police intervention, which must start with a dialogue with the organizers of the demonstration.”

Many police forces have followed such an approach: meetings with organizers prior to an assembly, use of social media for communication with the public, distribution of leaflets etc.

### **Illustrative country example**

#### ***Sweden: Dialogue Police, 2010***

“After the violent demonstrations in Gothenburg in 2001, the Swedish police realized they needed a new tactical approach to manage protests and crowds, which would be more focused on communication instead of confrontation and repression. Starting in early 2002 the Swedish police now deploy specially trained dialogue police officers who deal with demonstrations.

Dialogue police play an important part in de-escalation. Their task is to establish contact with the demonstrators before, during, and after the demonstration and to act as a link between the organizers of the events and the police commanders. They wear specially designed fluorescent vests with ‘dialogue police’ written on the back which enhances their visibility. By negotiating, dialogue police officers facilitate compromises and agreements between police and demonstrators.”

First of all, law enforcement officials must have the professional skills for handling assemblies. This applies to both those in charge of the planning and preparation of such events (how best to facilitate an assembly, how to establish a dialogue with organizers, how to prevent problems from occurring, how to anticipate risks, and how to avoid them or prepare for them, etc.), and to those who will be in direct contact with participants on the ground (how to communicate with participants, to reduce tension, to negotiate in case of problems occurring, to peacefully settle conflicts, to assist people in need etc.) [see Chapter 9.2.2].

The physical appearance of the police during the assembly should not contribute to creating or increasing existing tensions. An option chosen by some police forces is therefore to deploy only a limited number of police officers dressed in standard police uniform directly on the spot and have greater numbers stay out of sight to provide back up – if necessary with protective gear and other crowd control equipment.

### **Illustrative country examples**

#### ***Armenia: Guidelines for Police in Public Order Management***

(<http://www.police.am/images/Uxecuyc-N2-eng.pdf.pdf>)

Sect. 34: “Where disorder is a possibility and shields and helmets, as approved within the Law on Police, are to be available they should not be deployed too early or if held in reserve must not be visible as this will increase tension and the information will spread rapidly throughout the crowd. Therefore, the policing style, the operational plan and how the situation is managed by commanders will influence the way the incident is policed and how reactive the police will need to be e.g. use of force and special means.”

#### ***Peru: Human Rights Manual for Police, 2006***

Chapter IV.B. “1. The physical presentation or general appearance of the police force influences the way they are perceived by demonstrators: shields, helmets, tanks etc. could be interpreted as a hostile action, even if its main purpose is self-protection.

2. The classical way of thinking, that police when fitted out with their complete anti-riot equipment, with water cannons, tear gas and dogs, present a dissuasive factor during demonstrations and contributes to calm down violence, is not at all correct.”

Still, many police agencies only contemplate different options of the use of force in their procedures. Some mention negotiation and dialogue but even then, the largest part of their procedures is dedicated to the various options for the use of force (i.e. weapons and other types of equipment) which might be considered in public order management.<sup>85</sup> This reveals a problematic mind-set of those in charge to define the operational approach to public order management [**on command responsibility see Chapter 10**], which increases the likelihood that law enforcement officials will use force instead of trying to avoid the need to do so.

## 7.2 Unlawful assemblies

Under domestic legislation, public assemblies may be considered unlawful for a number of reasons, e.g. not having respected certain procedures, having been prohibited, not respecting certain restrictions imposed on the time, place or manner of the assembly, unlawfully preventing other people from exercising their human rights, etc. Many such reasons, in particular failure to respect administrative procedures, would not allow an assembly to be considered unlawful under international human rights law, while others – e.g. attempting to prevent another assembly taking place, thereby preventing other people enjoying the right to freedom of peaceful assembly – may lead to such an assembly being considered as unlawful and not protected – including under international human rights law).

It lies outside the scope of these Guidelines to discuss in detail in what circumstances and to what extent the exercise of the right to public assembly may or not be restricted in compliance with international human rights law and standards. **In any case, the mere fact that an assembly is considered unlawful under domestic legislation does not justify the use of force by law enforcement officials.**

The decision to resort to the use of force (and what level of force) must comply with the principles of necessity and proportionality. Where the unlawful behaviour of organizers or participants is only related to administrative aspects of the gathering, the appropriate response should be administrative too (e.g. initiating a procedure that may result in a fine); therefore the use of force in this regard would be disproportionate.

### Illustrative country example

#### *Armenia: Law on Freedom of Assemblies, 2011*

Art. 31 §2: “If the assembly is conducted in violation of the notification requirements enshrined in Chapter 2 of this Law, then the Police shall be obliged to inform by a loudspeaker that the assembly is unlawful and that the participants may be held liable. If the [unlawful] assembly is peaceful, then the Police shall be obliged to facilitate the assembly.”

In other circumstances, the unlawfulness may relate to more relevant aspects: e.g. participants intentionally seeking to prevent another assembly from taking place or to obstruct other people in the exercise of other human rights. In these circumstances, a moderate use of force may be justified. However, as long as police are not met with violent resistance, they may not resort to any use of force that can result in injury (e.g. they

<sup>85</sup> For instance, in the Manual on Public Order Management (2009) of **Colombia**, two thirds of the entire document relates to the deployment of the anti-riot unit (“escuadrones móviles antidisturbios”) and its defensive and offensive equipment. Art. 26 of the **Mexican** Law on the use of force by law enforcement in the Federal District (2008) requires security forces, when learning about a possible public assembly, to immediately plan for operational needs in case the assembly turns violent. Art. 27 contains a number of obligations for the security forces in view of any public assembly, focused exclusively on possible situations of violence, without any reference to a duty to facilitate an assembly.



may not resort to the use of batons). What level of force is considered necessary and proportionate, in such circumstances, depends on the importance of the objective: when protestors try to prevent people from entering their workplace, this act, even though unlawful, may only be met with a lower degree of force than a situation in which protestors block the emergency entrance of a hospital. In any case, when the behaviour of protestors is just one of passive resistance (i.e. not following an order to disperse), police should avoid resorting to any force that carries the risk of serious injury: whenever possible, the choice should be to push people aside or carry them away in order to free the required space, instead of, for instance, using batons to force people to move.<sup>86</sup>

### 7.3 Dealing with violence

There is no mathematical definition of a “violent” assembly. However, in the great majority of cases assemblies are not entirely violent from the outset. Violence usually gradually spreads, as a result of the actions and reactions of demonstrators and law enforcement officials. It is important that the police bear in mind that they are an actor with direct influence on such a situation – and that this influence can either lead to de-escalation and improvement of the situation, or contribute to the escalation and deterioration of the situation.

If some individuals engage in violence, this does not affect the right of others to peacefully continue with the assembly. A necessary and proportionate response must therefore focus on the few violent individuals.

#### **Illustrative country example**

##### ***Armenia: Guidelines for Police in Public Order Management***

(<http://www.police.am/images/Uxecuyc-N2-eng.pdf.pdf>)

“Sect. 55. The guiding principle for the use of any specific means or tactic is that every effort should be made to ensure that wherever possible police action is in a discriminate rather than indiscriminate way. [...]

Sect. 59 Where special means are used against a crowd that impact upon them i.e. baton rounds, would be an excessive use of force unless the ferocity of the crowd is such that it is impossible to identify individual(s).

Sect. 60 [...]: Example: where a group of individuals within a crowd are so violent that the use of cartridges with rubber bullets is justified but due to poor lighting recognition is difficult then lighting must be provided to illuminate the offenders/location before the tactic is used. To arbitrarily discharge cartridges with rubber bullets at the group will breach the Human Rights of the others.”

This has a direct bearing on the choice of the means to be used in such situations: devices which are too inaccurate or which, by their very nature, have an indiscriminate effect because they may affect both violent and peaceful persons alike, such as tear gas or stun grenades, should therefore not be used in situations in which only a small number of people behave violently.

There are also a number of precautionary measures that must be taken to reduce the need to resort to force and to minimize the amount of force needed:

- The availability of protective equipment can reduce the need to resort to force in self-defence. However, law enforcement officials need to be well instructed and trained in their use. And it should be clear that protective equipment should be exclusively used as a defensive tool and not as an offensive one (for instance, shields are supposed to be a purely defensive tool, but may also become a potentially lethal weapon if used

<sup>86</sup> Nevertheless, very often, merely disrespecting an order to disperse without any signs of violence is considered sufficient to allow for dispersal by the means of force, often with very little precision as to the level of force that may be used; e.g. **Albania**, Law No. 8773 on Demonstrations (2001), Article 23: “2. If after three clear calls by the police to disperse, the participants do not leave, the officer of the police orders the dispersal of the demonstration by force. 3. In every case, the use of force should always be limited to the minimum.”

with the edge pointed forward; also, police officers have even been seen taking off their helmet, which is supposed to protect them, in order to hit demonstrators).

- Being deployed in a public assembly can be a highly stressful situation for law enforcement officials. Having sufficient numbers present and also as back up in order to avoid excessive length of time on duty, opportunities for rest breaks, as well as provision of food and water may prevent overreaction by law enforcement officials as a result of exhaustion and accumulated stress.

Finally, it should go without saying but seems to need constant reminding that medical assistance needs to be available at any large event and at any event where violence is likely (see also Basic Principle No. 5c).

Whatever the reason for the decision to resort to force, police must anticipate the possible effects of the use of force. In particular where there are only isolated and minor incidents of violence (e.g. violence against property not causing major damage), the use of force may be perceived as a provocation and lead to more serious acts of violence, whereas showing a certain degree of tolerance may help to prevent the further escalation of a situation – and such tolerance would not preclude the possibility, at a later stage, of prosecuting persons who have committed offences.

### **Illustrative country example**

#### ***Armenia: Guidelines for Police in Public Order Management***

(<http://www.police.am/images/Uxecuyc-N2-eng.pdf>)

Sect. 18: “Just because a citizen remains non-compliant does not justify the police use of force. Communication and explanation should always be the first approach with force as a last resort and if applied it must be to the minimum level possible. An abrupt behavior of ‘compliance to rules’ by police will not support peaceful resolution and [is] likely to escalate the incident unnecessarily.”

In other circumstances, there may be groups of people who want to make use of the situation to create a conflict. If the police fail to prevent this (e.g. through dialogue, planning and preparation together with the peaceful participants of the assembly) this actually means the group has achieved what they wanted. Police officers must know that they are not in front of a homogenous mass. When facing incidents of violence, police officers may perceive the crowd as one hostile group and adopt some sort of combat mode. However, this will only contribute to the escalation of the situation. There will always be individuals they can talk to calmly, perhaps to ask them to back off so that just the “trouble makers” can be confronted by the police. The most effective response to such situations may be to enter into a constructive dialogue with those who wish to demonstrate peacefully (and who also might take the initiative to influence those who want to engage in violence).

When the police are perceived to have responded excessively during an assembly, such a situation is usually followed by a series of assemblies to protest against the police; these might mobilize a larger number of people ready to express their anger by means of violence or at least prepared to respond with violence to any police action. Therefore, the short term gain of successfully dispersing an assembly by use of excessive force often leads to a long term loss when even more public disorder puts a continued strain on resources to be deployed in subsequent events and increases insecurity for the public and for the police.<sup>87</sup>

87 In fact, the short-sighted intent of law enforcement agencies to end a protest by using excessive force has frequently proven to be ineffective and to lead to even more protest. Recent history has seen numerous examples in which a heavy police response to demonstrations, which initially had a completely different purpose, has led to repeated demonstrations in protest against the security forces. In Greece, every 6th December anniversary protests have been taking place since 2008, when a student was killed by a police bullet. In Brazil, Spain and Turkey initial protests against specific political decisions were followed by a series of much larger demonstrations to protest against the police conduct during the initial demonstration – and in some instances public anger was expressed by violent behaviour of some participants – also affecting the security of the police themselves.

This highlights the importance of having a proper command structure in place, with different levels of command and clearly assigned responsibilities, and in which the decision to resort to force (except for individual situations of self-defence which may arise) is taken at a level where the larger implications of this can be appreciated. Any decision taken in this sense also needs to be properly recorded to ensure full accountability of the command level concerned [see Chapter 4.1 and 10.2].

## 7.4 Tactical options and limits

### 7.4.1 Containment

In certain situations, law enforcement agencies resort to the tactical option of containment of protestors. This method, also known as “kettling”, consists of the use of police cordons to physically block people from leaving a certain area. In many instances, this technique has been used as a means to unlawfully prevent people from exercising their right to peaceful assembly and freedom of expression. In other situations, there has been at least a genuine intention to prevent violence spreading in the course of a larger event. However, even in such a situation, containment is a highly problematic form of use of force, as it carries a number of risks:

- Among those contained may be not only individuals engaged in violence, but also persons who wish to participate peacefully in an assembly and who should not be prevented from doing so. Even uninvolved bystanders may be caught in the cordon.
- Among those contained, there may be people who are in need of assistance (e.g. elderly people in need of a place to rest, children who have become separated from their parents, disabled people unable to care for themselves in the crowd) and people who have difficulties finding assistance in the crowded circumstances during containment.
- The crowded situation caused by the containment may create an atmosphere of claustrophobia and panic, provoking uncontrolled reactions which could eventually result in damage and injury.
- People who are contained may be exposed to harsh weather conditions (heat, sun, rain or snow, wind, cold) and they are likely to need access to sanitation facilities which may not be available.

In police practice, poor implementation of the technique has often made these problems even worse as a result of excessive duration of the containment,<sup>88</sup> lack of communication to explain the purpose of the containment (within the law enforcement agency itself as well as with the people being contained), lack of opportunities to leave the assembly for those who wish to, lack of assistance to persons in need, etc.<sup>89</sup>

All these aspects have led the **Special Rapporteur on Freedom of Peaceful Assembly (UN Doc. A/HRC/23/39/Add.1, 2013)**, to express his opposition to this technique, expressing his belief “37. [...] that this tactic is intrinsically detrimental to the exercise of the right to freedom of peaceful assembly, due to its indiscriminate and disproportionate nature.

38. The practice of containment also undeniably has a powerful chilling effect on the exercise of freedom of peaceful assembly, as also highlighted by the Equality and Human Rights Commission. In this connection, the Special Rapporteur was informed that many people refrained from exercising their right to freedom of peaceful assembly for fear of being ‘kettled’. Finally, it appears that ‘kettling’ has been used for intelligence gathering purposes, by compelling peaceful protestors, and even bystanders, to disclose their names and addresses as they leave the kettle, increasing the chilling effect it has on potential protesters.”

88 For instance, during the containment known as “*Hamburger Kessel*” in 1986 in Hamburg, **Germany**, police contained more than 800 people for a duration of up to 13 hours, even denying many of them access to sanitation facilities for several hours.

89 Such problems actually prompted the Head of the Toronto police (**Canada**) to declare, as a result of a problematic police operation, that this tactic would not be used any more: ([http://www.thestar.com/news/gta/2011/06/22/exclusive\\_toronto\\_police\\_swear\\_off\\_g20\\_kettling\\_tactic.html](http://www.thestar.com/news/gta/2011/06/22/exclusive_toronto_police_swear_off_g20_kettling_tactic.html)).

For the European Court, in order not to present an unlawful deprivation of liberty, this technique must be commanded by a pressing need (**Austin and Others v. The United Kingdom (39692/09, 40713/09 and 41008/09), European Court of Human Rights Grand Chamber, 2012, § 68**: “It must be underlined that measures of crowd control should not be used by the national authorities directly or indirectly to stifle or discourage protest, given the fundamental importance of freedom of expression and assembly in all democratic societies. Had it not remained necessary for the police to impose and maintain the cordon in order to prevent serious injury or damage, the ‘type’ of the measure would have been different, and its coercive and restrictive nature might have been sufficient to bring it within Article 5 [ECHR: the right to liberty and security of the person].”

In view of these serious problems, this option should only be considered, if at all, when the following elements are respected:

- The purpose of the operation must be to contain violence as a means to facilitate the rest of the assembly to continue peacefully. It should not be a means to prevent people from participating in an assembly – even if the assembly is considered unlawful. And it should not be carried out as a preventive measure based on some prior information that some people might engage in violence. This would unduly restrict the enjoyment of the human right to peaceful assembly – based on a mere suspicion. Because of the high likelihood of containing people who had no intention at all to engage in violence, it could be considered an arbitrary restriction of their right to freedom of peaceful assembly, arbitrary restriction on the right to freedom of movement, and could even amount to arbitrary detention.
- The operation must focus on violent persons and as far as possible seek to avoid the containment of uninvolved persons or peaceful protestors.
- People accidentally caught in the containment or those in distress must be allowed to leave.
- The containment must be lifted as soon as possible, and the police must start releasing people, individually or in small groups, as early as possible. As a rule, containment that lasts for several hours must be considered disproportionate.
- Proper communication must be established with participants in the assembly to inform them about the purpose of the containment, and to explain that this is a measure to allow those participating peacefully to continue to do so (otherwise, even peaceful participants who do not understand the police action might start to obstruct the containment, start protesting against the police, or even become violent themselves).
- Provisions need to be made for people who need to access sanitation facilities, medical care or other types of assistance.
- Law enforcement officials need to be properly instructed as to the purpose and duration of the containment and their obligation to provide assistance to people in need: medical assistance, access to sanitation facilities, and provision of shelter during cold weather for people with wet clothing (e.g. as a result of the use of water cannon).

### **Illustrative country example**

#### ***United States: District of Columbia, First Amendment Rights and Police Standards Act, 2004***

Sect. 108: “Use of police lines

No emergency area or zone will be established by using a police line to encircle, or substantially encircle, a demonstration, rally, parade, march, picket line, or other similar assembly (or subpart thereof) conducted for the purpose of persons expressing their political, social, or religious views except where there is probable cause to believe that a significant number or percentage of the persons located in the area or zone have committed unlawful acts (other than failure to have an approved assembly plan) and the police have the ability to identify those individuals and have decided to arrest them; provided, that this section does not prohibit the use of a police line to encircle an assembly for the safety of the demonstrators.”

## 7.4.2 *Less lethal weapons*

### *a) Kinetic impact projectiles*

Kinetic impact projectiles are one of the most frequently used devices to control public assemblies. They come in many various shapes and sizes: rubber bullets, plastic bullets, rubber balls – all different in size, shape and material. Some of the technical aspects of this type of weapons have already been discussed above [see Chapter 6]. Only those devices that have successfully passed the technical and human rights assessment should be used. With regard to their use in public assemblies the following rules should be observed:

- Kinetic impact projectiles may only be used as a tool to stop individuals engaged in violence against persons. They must not be used as a general tool to disperse a crowd, e.g. by general firing of these projectiles aiming at the larger crowd rather than specifically at individuals engaged in violence.

#### **Illustrative country example**

##### ***Argentina: Minimum Criteria for the Development of Protocols for Police and Security Forces at Public Demonstrations, 2011***

Section 10 (2) “Rubber bullets shall only be used for defensive purposes, when there is threat to the physical integrity of members of the security force, protesters or third parties. In no circumstances they shall be used as a means to disperse a demonstration.”

- They can cause serious injury, in particular when hitting the head or upper torso. Therefore, with a view to minimizing damage and injury, they may, as a rule, only be aimed at the lower part of the body (except in exceptional life threatening situations).
- Random shots carry considerable risks, e.g. the risk of striking smaller persons or where people are bending down (in order to assist other people, or on slippery ground). These types of projectiles may therefore only be fired in situations in which it is feasible to apply well targeted shots against specific persons engaged in violence. There must never be general firing into the crowd.
- There must be no skip firing off the ground, as this makes the projectiles highly inaccurate, which unacceptably increases the risk of hitting the wrong persons or causing serious injury when hitting the upper part of the body, or even the head, of the person at whom the projectile is aimed.

### *b) Chemical irritants*

It would go beyond the scope of these Guidelines to discuss all the technical aspects of these devices; however, their use must be subject to the following considerations:

- Chemical irritants used in public order situations, including those delivered by hand thrown grenades or weapon launched projectiles (as opposed to, for instance, small, hand-held pepper sprays used for self-defence), by their very nature have an indiscriminate effect with a high probability of affecting not only those individuals who are engaged in violence, but also bystanders and peaceful demonstrators. There is furthermore a high potential for use in an arbitrary manner. It must therefore be very clear that grenades and wide-area use of chemical irritants may only be used for the purpose of dispersal and only when the level of violence has reached such a degree that law enforcement officials cannot contain the threat by directly targeting violent persons only.
- The purpose of their use must be to disperse the crowd, they may therefore only be used in areas where people have the opportunity to disperse and not in confined spaces or where exit ways are blocked or restricted (e.g. football stadiums).
- Clearly audible warnings must be issued prior to their use, and people must be allowed sufficient time to leave the area.

### Illustrative country examples

#### **Chile: National Police, Regulations on Public Order Management, 2014**

Sect. 2.14: “3. Prior to the use of chemical irritants, offenders need to be warned – if possible – in order to make everybody aware of that decision (use of loudspeakers).”

#### **Turkey: Ministry of Interior Circular 2013/28, SGD Circular No. 55**

“Announcement concerning the use of gas ammunition shall be made before tear gas is used so that the people that intend to break from the demonstrative group and third people shall be given an opportunity to move away.”

- In any case, chemical irritants should only be used proportionately, lawfully and to the minimum extent possible. The discharge of such weapons must be carefully measured, targeted and controlled and take into account contextual factors (e.g. wind; hospitals or schools in the surroundings). Excessive generalized use, affecting to a large extent peaceful participants and uninvolved persons, would be disproportionate in this regard. Cartridges and canisters with chemical irritants may never be fired directly at a person.

### Illustrative country example

#### **Colombia: National Police, Manual on Public Order Management, 2009**

Sect. 7.2.8.3: “Instructions on the use of cartridges with chemical irritants

- 1) To be used only in operations taking place in open spaces.
- 2) May never be fired directly at persons. Can cause injuries to anybody hit by a cartridge.
- [...]
- 4) May never be fired in a closed premise or a premise without ventilation. [...]

- The use of any of these devices must stop immediately when people stop being violent and/or start to disperse.

### Illustrative country example

#### **Turkey: Ministry of Interior Circular 2013/28, SGD Circular No. 55**

“Unless any attack or resistance to the environment or security forces occurs, intervention with gas shall be avoided and gas shall not be used against the people or groups that put an end to their attacks and resistance in any means.”

#### *c) Water cannon*

The effects of water cannon are inherently indiscriminate and can affect bystanders as well as peaceful participants and persons engaged in violence. They can cause serious injuries: eye injuries (either by a direct hit with the jet, or if items on the ground fly up as a result of the jet) and injuries sustained when falling on the ground as a result of the jet or because of slippery ground, in particular in case of mass movements as a result of panic – just to name a few of the inherent risks.

### Illustrative country example

#### **United Kingdom: College of Policing (2014): Tactical options [Internet]**

<https://www.app.college.police.uk/app-content/public-order/planning-and-deployment/tactical-options/>

#### **Water Cannon**

“Criteria for use:

- when conventional methods of policing have been tried and failed or, because of the circumstances, are unlikely to succeed if tried

- in situations of serious public disorder, where there is the potential for loss of life, serious injury, or widespread destruction and whether such action is likely to reduce that risk
- must only be used by trained officers.”

The water cannon can deliver a mixture of water with marker dye and/or chemical irritants. If marker dye is used this can lead to later harassment or arbitrary detention. The use of a mixture of water and chemicals makes it impossible to control the precise doses of the irritant, which – in addition – may have a longer term impact on the individual person as clothing gets impregnated. In any case, water cannon should only be used proportionately, lawfully and to the minimum extent possible. They may only be used in those situations in which it is strictly necessary to contain or disperse individuals or a group participating in a public assembly and when the level of violence has reached such a degree that law enforcement officials cannot contain the threat by directly focusing on violent persons only. Any decision to use them must also take into account contextual factors, such as extremely cold weather, which may exacerbate the harm they may cause.

Again, the use of any of these devices must cease immediately when people stop being violent and/or are starting to disperse.

### **7.4.3 Firearms**

Basic Principle No. 14 clearly confirms that firearms may only be used for the purpose of saving life in line with the provisions of Basic Principle No. 9. They are therefore not a tactical tool for public order management and even the decision to have law enforcement officials armed with firearms present in an assembly needs to be carefully balanced against the potential risks [see also Chapter 5.6]: the presence of firearms may be perceived as a threat and provocation, and thus can lead to an unnecessary increase in tensions and escalation. In a situation of chaos, firearms may be lost or stolen, creating serious risks for all persons present. In stressful and chaotic situations, law enforcement officials may lose their temper and resort to using their firearm too quickly, which could not only lead to unnecessary injury or even loss of life, but also to an uncontrollable escalation of the situation, with widespread violence and casualties. In any case, firearms are not an appropriate tool to contain widespread violence. If deployed at all, their use must be limited to stand-off type situations that meet the threshold and criteria set out in Basic Principle No. 9 and law enforcement officials provided with firearms must be given clear orders on this. These orders must also caution against the serious risks for third persons in the crowded circumstances of an assembly.

#### **Illustrative country example**

##### ***South Africa: Police Standing Order 262 on Crowd Management, 2004***

Sect. 11: “(4) The following are prohibited or restricted during crowd management operations:

- a) [...]
- b) The use of firearms and sharp ammunition including birdshot and buckshot (prohibited) [...]”

In view of all these risks involved, when anticipating a situation in which firearms may have to be used, the command leadership in charge of policing the assembly should first consider all alternatives: less lethal weapons and devices may be a more appropriate response to the anticipated threats and carry a lower level of risk.

As stipulated in Basic Principle No. 22, situations of death and injury and when firearms were used should be subjected to reporting and investigation [see Chapter 3.5.1 and 5.7]. In addition, ideally, all public order situations should be carefully evaluated as to contribute to a professional lessons learned process [see Chapter 7.5].

### Illustrative country examples

Examples of such evaluations are for instance: **Canada**: G20 Summit, Toronto, Ontario, June 2010 – Toronto Police Service After-Action Review, June 2011; **Sweden**: Gothenburg Committee, Report (SOU 2002:122); **United Kingdom**: Adapting to protest – Her Majesty’s Chief Inspector of Constabulary, July 2009.

#### 7.4.4 Deployment of military forces

In many countries, authorities still decide to deploy the military to handle public order situations, when they consider the police not up to the challenges of the given situation.<sup>90</sup> However, this carries a considerable risk of human rights violations [see also Section B – Introduction]:

Military armed forces are instructed and trained to fight an enemy. Their operational mindset and modus operandi is the conduct of hostilities in which the use of force, including lethal force, is the first choice of action. Their equipment is designed to neutralize the enemy, and not to minimize damage and injury, nor to protect and preserve life.

As a result, deploying the military in situations of public order carries considerable risks, particularly of the use of excessive force, including lethal force. In order to prevent such serious consequences, a range of measures need to be taken:

- The operational mindset and procedures need to be revised (from “shoot to kill” to “non-violent means first”).
- The equipment needs to be changed (e.g. from fully automatic rifles to protective gear and baton).
- The training of those deployed for the management of public order needs to be fully revised and adapted to a law enforcement approach: de-escalation, communication, avoiding the use of force, and minimizing damage and injury need to be at the centre of training exercises, including the training on the correct use of the new equipment.
- To ensure full control over a proper law enforcement approach, military armed forces should only come in as a support to the ordinary law enforcement agency and be placed under the command of this agency.

#### ***Caracazo v. Venezuela (Series C No. 95), Inter-American Court of Human Rights (2002)***

“127. [...] The State must adopt all necessary provision [...] and specifically those for education and training of all members of its armed forces and its security agencies on principles and provisions of human rights protection and regarding the limits to which the use of weapons by law enforcement officials is subject, even in a state of emergency. The pretext of maintenance of public security cannot be invoked to violate the right to life. The State must, also, adjust operational plans regarding public disturbances to the requirements of respect and protection of those rights, adopting to this end, among other measures, those geared toward control of actions by all members of the security forces in the very field of action to avoid excess.”

This is not something that can be achieved in a short time frame and will always be a very challenging undertaking. When this proves too difficult, authorities should refrain from deploying the military armed forces. Indeed, the deployment of the military armed forces in public order is today prohibited in a number of countries.

<sup>90</sup> See for instance **Mexico**, Guidelines on the use of force by the Mexican Army and Air Force in the exercise of police functions, 2012; **Venezuela**, Regulation on Public Order Management by the Armed Forces (2015).



### **Illustrative country examples**

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Art. 87(a) of the *German Constitution* (1949) prohibits the use of the military armed forces for any purpose or task not explicitly mentioned in the Constitution (maintenance of public order is not part of the purposes and tasks mentioned).

In the *Republic of Guinea (Conakry), Code of Conduct for the Defence Forces, 2011*, it is clearly stated that the maintenance of public order is a police duty (Art. 17); only in exceptional circumstances may the military armed forces be deployed upon request of the civilian authorities and only as a support for the ordinary forces in charge of public order (Art. 18 (2)).

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## **7.5 Reporting, accountability and lessons learned**

Any public assembly should be followed by a proper debriefing and reporting process to aid the establishment of a lessons learned process within the law enforcement agency. In particular, when force was used during an assembly, as in any other circumstances, this should be reported to allow the command hierarchy to assess whether this was lawful and appropriate. As already explained above, when death or injury occurred or fire-arms were used, this should be followed by the same accountability processes – with particular attention given to the levels of the command structure responsible for the decisions made [see Chapter 3.5, 5.7, 6.5, 10.3].



# 8 | USE OF FORCE IN DETENTION

## Chapter outline

- 8.1 General concept
- 8.2 Means of restraint
- 8.3 Use of firearms
- 8.4 Dealing with large-scale violent disorder in detention facilities

## Relevant provisions of the Basic Principles for this Chapter:

### Basic Principle 15

“Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.”

### Basic Principle 16

“Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.”

### Basic Principle 17

“The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.”

=> Now reflected in the Mandela Rules (the revised Standard Minimum Rules), No. 43, 47, 48 and 82 adopted by the Commission on Crime Prevention and Criminal Justice, E/CN.15/2015/L.6/Rev. 1, 21 May 2015:

**Rule 43:** “1. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited:

- (a) Indefinite solitary confinement;
- (b) Prolonged solitary confinement;
- (c) Placement of a prisoner in a dark or constantly lit cell;
- (d) Corporal punishment or the reduction of a prisoner’s diet or drinking water;
- (e) Collective punishment.

2. Instruments of restraint shall never be applied as a sanction for disciplinary offences. [...]”

**Rule 47:** “1. The use of chains, irons or other instruments of restraint which are inherently degrading or painful shall be prohibited.

2. Other instruments of restraint shall only be used when authorized by law and in the following circumstances:

- (a) As a precaution against escape during a transfer, provided that they are removed when the prisoner appears before a judicial or administrative authority;
- (b) By order of the prison director, if other methods of control fail, in order to prevent a prisoner from injuring himself or herself or others or from damaging property; in such instances, the director shall immediately alert the physician or other qualified health-care professionals and report to the higher administrative authority.”

**Rule 48:** “1. When the imposition of instruments of restraint is authorized in accordance with paragraph 2 of rule 47, the following principles shall apply:

- (a) Instruments of restraint are to be imposed only when no lesser form of control would be effective to address the risks posed by unrestricted movement;
- (b) The method of restraint shall be the least intrusive method that is necessary and reasonably available to control the prisoner’s movement, based on the level and nature of the risks posed;
- (c) Instruments of restraint shall be imposed only for the time period required, and they are to be removed as soon as possible after the risks posed by unrestricted movement are no longer present.

2. Instruments of restraint shall never be used on women during labour, during childbirth and immediately after childbirth.”

**Rule 82:** “1. Prison staff shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Prison staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the prison director.

- 2. Prison staff shall be given special physical training to enable them to restrain aggressive prisoners.
- 3. Except in special circumstances, prison staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, prison staff should in no circumstances be provided with arms unless they have been trained in their use.”

#### Guidelines for implementation of these Basic Principles

**Guideline No. 8:** The fact that a person is deprived of freedom does not give authorities any greater power to resort to the use of force: the use of force and firearms in detention facilities is subject to exactly the same rules, particularly the principles of necessity and proportionality, which apply in any other law enforcement context.<sup>91</sup>

- a) The use of force, including the use of means of restraint, may never be employed as a means of punishment.
- b) Staff members need to have the personal competence and professional skills to reduce tensions that are likely to arise easily in the confined environment of detention facilities, rather than to resort too easily to the use of force. They also should be specifically trained to control aggressive or violent detainees.
- c) Means of restraint should not be used as a routine measure, but only if the concrete situation so requires and not for any longer than necessary. They may only be used in a way that does not cause injury. Prolonged use of means of restraint must be avoided. Means of restraint that are intrinsically abusive and degrading, or cause serious pain and injury, such as thumb-cuffs and body-worn electric shock belts, should be prohibited.<sup>92</sup>
- d) Firearms may only be used in circumstances involving a threat to life as described in Basic Principle No. 9. Carrying firearms in the confined space of a detention facility carries additional risks and, as a rule, staff members working inside such facilities who are in direct contact with detained persons should not be equipped with firearms.

<sup>91</sup> See also, in particular with references to judgements of international tribunals, Amnesty International, Fair Trial Manual, Second Edition, POL 30/002/2014, chapter 11.2.

<sup>92</sup> See already above, [Chapter 6.2.2. c)]. Furthermore: Amnesty International, Fair Trial Manual, Second Edition, POL 30/002/2014, chapter 11.3.

e) Situations of large-scale violent disorder in detention facilities must be guided by the same overall considerations as violent public order incidents. De-escalation must be the preferred mode of action, a distinction must be made between those inmates who are engaged in violence and those who are not, interventions must seek to minimize damage and injury, and firearms may only be used to protect against a threat to life or of serious injury.

## 8.1. General concept

The fact that a person is lawfully deprived of freedom – be it in a police station, a prison or any other detention facility – does not confer any greater powers on law enforcement officials to resort to the use of force and firearms. However, the confined environment of detention facilities carries an even greater risk for excessive, abusive or otherwise unlawful use of force, and therefore detention authorities must take particular precautions to prevent this:

### Illustrative country example

#### ***Colombia: Human Rights Manual for Prison Staff, 2006***

Use of force, p. 32: “Only in extreme circumstances, and when all other means have failed, is the use of force justified as a legitimate method to restore order. It must be absolutely the last resort. Given that detention facilities are closed communities where the abuse of authority can easily take place, specific and transparent procedures on the use of force must be adopted.” [emphasis added]

It must be made clear that the use of force in the context of arrest and detention is subject to exactly the same principles of legality, necessity, proportionality and accountability as for persons at liberty. Basic Principle No. 15 specifically reiterates the principle of necessity.

### Basic Principle 15

“Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.”

### Illustrative country examples

#### ***Armenia: Law on Penitentiary Service, 2005***

Art. 51: “1. A Penitentiary officer has the right to use physical force, special means and firearms in cases provided in Articles 48-50 of this Law, if other means do not ensure fulfilment of the duties vested on him.

2. When applying physical force, special means and firearms, a penitentiary officer has to  
 (1) warn about the intent to use them and provide the person in question with sufficient time to comply with his demands, except for cases when delay would create an immediate danger to the life or health of a penitentiary officer, or when such warning is impossible under given circumstances.  
 (2) to use them in proportion to the nature and degree of danger of the offence or resistance. [...]” [emphasis added]

#### ***Uruguay: Law on Police Procedures, 2008***

Art. 42: “Physical force, means of coercion or firearms may only be used by the police when all other dissuasive means have failed, and must stop immediately when the person to be detained no longer offers any resistance, in accordance with Chapter I, Title II of this legislation.”

In particular, force should never be used for the purpose of punishment. This must be considered a violation of the prohibition of torture and other cruel, inhuman or degrading treatment. As for the use of instruments of restraint, their use for the purpose of punishment is explicitly forbidden in the Mandela Rules:

#### **Mandela Rules**

[Revised Standard Minimum Rules for the Treatment of Prisoners adopted by the Commission on Crime Prevention and Criminal Justice, E/CN.15/2015/L.6/Rev. 1, 21 May 2015.]

**Rule 43:** “1. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited:

- (a) Indefinite solitary confinement;
- (b) Prolonged solitary confinement;
- (c) Placement of a prisoner in a dark or constantly lit cell;
- (d) Corporal punishment or the reduction of a prisoner’s diet or drinking water;
- (e) Collective punishment.

2. Instruments of restraint shall never be applied as a sanction for disciplinary offences. [...]”

Furthermore, the confined environment in detention facilities creates an atmosphere which can give rise to heightened tensions and emotions. In an environment where stress and emotions are already permanently at a higher level than normal, it is particularly important to try to keep everybody calm. Law enforcement officials working in places of detention must project a professional image and exercise excellent self-control. Therefore, their training on how to deal with aggressive detainees is of particular importance [see Chapter 9.2]. They should not respond to problematic situations with drastic measures, but must give priority to communication and the peaceful settlement of conflicts.

#### **Mandela Rules**

[Revised Standard Minimum Rules for the Treatment of Prisoners adopted by the Commission on Crime Prevention and Criminal Justice, E/CN.15/2015/L.6/Rev. 1, 21 May 2015]

**Rule 38:** “1. Prison administrations are encouraged to use, to the extent possible, conflict prevention, mediation or any other alternative dispute resolution mechanism to prevent disciplinary offences or to resolve conflicts. [...]”

**Rule 82:** “1. Prison staff shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Prison staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the prison director.

2. Prison staff shall be given special physical training to enable them to restrain aggressive prisoners.”

This must also include the possibility of withdrawing and giving a person a chance to calm down.

#### **Illustrative country examples**

##### ***United Kingdom: Prison Service Order on Use of Force, 2005***

“2.15 It has always been recognised that the best defensive weapon that staff have is their verbal and non-verbal communication skills. Staff who successfully adopt effective communication strategies (see Annex C) and interpersonal skills will find that they are usually able to defuse a potential conflict.”

##### ***United Kingdom: Ministry of Justice, Use of Force Training Manual for Prison Staff, 2006***

###### **D.1.4 MANAGING AGGRESSION**

The effective handling of aggressive prisoners is one of the most demanding aspects of working in a prison. It is an area where good interaction and communication skills are required.

The majority of situations where there is a potential for violence can be handled through communication.”

D. 1.5 Defusion strategy explicitly mentions the option of withdrawal, and states: “Don’t try to solve the problem prior to calming the prisoners.”

“D.2.1 COMMUNICATION/LONG RANGE

It is vital to use correct communication to defuse the situation in order to prevent the situation from escalating to a physical encounter.

Communication and the creation of distance/obstacles between the prisoner and ourselves may buy time to evade the situation. Distance will give time to assess and prepare for a personal attack on ourselves. [...]

E. Control and Restraint Basic Techniques – Introduction

It is not suggested that the appropriate response to disruptive or threatening behaviour is necessarily the use of force or that violence should necessarily be met by violence. Every opportunity should be taken to de-escalate the incident and only as a last resort should Control and Restraint techniques be used.”

When it is not possible to defuse a situation by means of communication, law enforcement officials need to be aware that aggressive or violent behaviour may be the result of medical conditions (illness and related medications, e.g. high blood pressure, or drug abuse etc.). They must therefore carry out techniques of physical control with great care as these may easily lead to serious harm, and even death, as a result of the medical condition of the detained person, and/or as a result of positional asphyxia.

**Illustrative country example**

***Paraguay: Manual on the Use of Force by the National Police, 2011***

Sect. II.j.: “Prohibited acts of use of force:

The following acts are prohibited since they are considered inappropriate use of force:

1. Bringing a person under control using self-defence techniques which restrict breathing or blood flow to the brain.
2. Putting a handcuffed person in a position that restricts breathing.”

**8.2 Means of restraint**

**i**

**Explanatory note:** In view of the specific reference to the corresponding Standard Minimum Rules for the Treatment of Prisoners in Basic Principle No. 17 (now the Revised Standard Minimum Rules “Mandela Rules”), means of restraint are dealt with in this chapter on the use of force in detention. However, the standards and considerations presented here also apply outside detention places, e.g. when making an arrest.

**Mandela Rules**

[Revised Standard Minimum Rules for the Treatment of Prisoners adopted by the Commission on Crime Prevention and Criminal Justice, E/CN.15/2015/L.6/Rev. 1, 21 May 2015]

**Rule 47:** “1. The use of chains, irons or other instruments of restraint which are inherently degrading or painful shall be prohibited.

2. Other instruments of restraint shall only be used when authorized by law and in the following circumstances:

- (a) As a precaution against escape during a transfer, provided that they are removed when the prisoner appears before a judicial or administrative authority;
- (b) By order of the prison director, if other methods of control fail, in order to prevent a prisoner from injuring himself or herself or others or from damaging property; in such instances, the director shall immediately alert the physician or other qualified health-care professionals and report to the higher administrative authority.”

**Rule 48:** “1. When the imposition of instruments of restraint is authorized in accordance with paragraph 2 of rule 47, the following principles shall apply:

- (a) Instruments of restraint are to be imposed only when no lesser form of control would be effective to address the risks posed by unrestricted movement;
  - (b) The method of restraint shall be the least intrusive method that is necessary and reasonably available to control the prisoner’s movement, based on the level and nature of the risks posed;
  - (c) Instruments of restraint shall be imposed only for the time period required, and they are to be removed as soon as possible after the risks posed by unrestricted movement are no longer present.
2. Instruments of restraint shall never be used on women during labour, during childbirth and immediately after childbirth.”

Means of restraint should never be used as a routine measure. Just as with any other type of force, their use must be justified by the requirement of the concrete situation and must be necessary and proportionate to the circumstances. The purpose of the use of means of restraint is to prevent a person from harming a law enforcement official, a third person or him/herself, or to prevent the person from escaping.

### **Illustrative country examples**

#### ***Colombia: Human Rights Manual for Prison Staff, 2006***

Chapter 4 Use of force, p 34:

“In this regard, the Constitutional Court has stated that ‘the use of handcuffs shall not be the general rule but rather an exception, that is, when special circumstances justify it in relation to a detainee, in view of his/her concrete behaviour.’”

#### ***India: Kerala Police Act, 2011***

Sect. 46 [...] “(2) Handcuffs shall not be used on an arrested person unless the Police Officer arresting the person has sufficient ground to believe that the arrested person shall escape from custody or injure himself or others if not handcuffed or the Police Officer has not recorded such grounds in writing.”

#### ***Mexico: Law on the use of force by law enforcement in the Federal District, 2008***

Art. 21 (5) obliges police officials to include the facts that led to the use of means of restraint in the detention report, (6) prohibits the use of any further force or means of coercion on a person controlled by means of restraint, (8) limits the use of means of restraint to the time strictly necessary.

#### ***Paraguay: Manual on the Use of Force by the National Police, 2011***

Sect. III: “c) The use of handcuffs:

The main purpose of handcuffing an arrested or detained person is keeping him/her under control and minimizing the possibility of escalation which would necessitate the use of more coercive means. Police personnel must consider the following circumstances:

- the likelihood the detained person will escape;
- the likelihood the incident will escalate;
- if the detained person represents a potential risk to the police personnel involved or others, including the likelihood of causing harm to him/herself; and
- previous knowledge on the level of aggressiveness of the arrested person.

Therefore, any decision to make use of handcuffs shall be based on specific facts.”

Means of restraint must be used in a way that does not amount to torture or other cruel, inhuman or degrading treatment, and that does not cause injury:

- As mentioned above, certain types of restraint should be prohibited, in view of their degrading and abusive character and their inherent risk of causing serious injury [see Chapter 6.2.2. c)]: these include notably thumb-cuffs, body-worn electric shock belts.<sup>93</sup>

<sup>93</sup> European Committee for the Prevention of Torture (CPT), CPT/Inf/E (2002) 1 – Rev. 2015 [CPT standards], p. 110.



- Prolonged use of mechanical means of restraint can lead to serious injury (e.g. affecting the flow of blood, the joints or the nerves); bruises and skin injuries may occur when the restrained person inevitably starts to make movements to alleviate the increasing discomfort of the position.
- Mechanical restraints should not be applied in a way that may result in injury or harm: handcuffs should not be fixed too tightly; the decision whether to handcuff somebody in front or behind the back must take into consideration the physical and medical condition of the person (e.g. being handcuffed behind the back might lead to breathing problems for an obese or overweight person). Special precautions need also to be taken during transportation of a restrained person.

#### **Illustrative country example**

##### ***Uruguay: Law on Police Procedures, 2008***

Art. 90: “During transfer in vehicles detained persons may never be handcuffed to fixed parts of the vehicles, to protect their physical integrity in the event of a traffic accident.”

- The use of restraints should be recorded and the individual restrained must be kept under constant supervision.<sup>94</sup>

### **8.3 Use of firearms**

#### **Basic Principle 16**

“Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.”

The use of firearms in relation to persons in custody is subject to the same rules and thresholds as in any other law enforcement situation. Basic Principle No. 16 actually does not establish a separate regime, but simply reiterates the principle of proportionality and the criteria and circumstances as established in Basic Principle No. 9 [see Chapter 2]. This means in particular that, as mentioned above [see Chapter 2.3.1b)], as a rule, an unarmed person escaping from custody may not be shot at. Only very extreme situations might warrant an exception if the character of the person and the threat he or she poses may lead to the loss of life of another person at any time (e.g. a serial killer trying to escape from custody), but these situations must remain the absolute exception and require the presence of objective facts which lead to the conclusion that there is an ongoing danger to the lives of others which may be realized at any time.

As mentioned above, staff members working inside places of detention should not carry firearms in view of the serious risks involved [see Chapter 5.6]:

#### **Mandela Rules**

[Revised Standard Minimum Rules for the Treatment of Prisoners adopted by the Commission on Crime Prevention and Criminal Justice, E/CN.15/2015/L.6/Rev. 1, 21 May 2015]

**Rule 82:** “[...] 3. Except in special circumstances, prison staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, prison staff should in no circumstances be provided with arms unless they have been trained in their use.”

<sup>94</sup> Amnesty International, Fair Trial Manual, Second Edition, POL 30/002/2014, p. 99 citing: Committee against Torture (CAT) Concluding Observations: New Zealand, UN Doc.CAT/C/NZL/CO/5, §9; European Committee for the Prevention of Torture (CPT), CPT/Inf/E (2002) 1 – Rev. 2015, p. 19.

## 8.4 Dealing with large-scale violent disorder in detention facilities

Too often, disorder or riots in detention facilities result in serious casualties – and in many cases these are not caused by the high level of violence exercised by inmates (though this may certainly be a contributing factor), but by the heavy-handed intervention by security forces.

### **Inter-American Commission on Human Rights, Report No. 34/00, case 11.291, Carandirú, Brazil, 13 April 2000**

“60 [...] the State, as the party responsible for establishments of detention is the guarantor of these rights of detainees. The living conditions of the inmates in the facility, which did not conform to international standards due to overcrowding and lack of recreational activities, created the conditions for an outbreak of friction between the inmates that could easily escalate into acts of general rebellion with an ensuing backlash of disproportionate force by agents of the State to bring the violence under control.

61. The illegal conditions in which the inmates lived, the previous riots at Carandirú, and the lack of any strategy to prevent or avoid the escalation of friction, as well as the absence of any negotiating capacity by the State which could have avoided or lessened the violence of the riot are themselves violations on the part of the State to honor its obligation to guarantee the life and personal integrity of individuals in its care. Furthermore, in violation of national and international law, most of the inmates at Carandirú at the time had not been sentenced (and must therefore be presumed innocent) and were compelled to live in highly dangerous conditions side by side with condemned convicts.

62. That the State has the right and the duty to put down a prison riot was maintained by the Court in the Neira Alegria case [...]. The riot must be suppressed through such strategies and actions as are needed to bring it under control with minimal harm to the life and physical integrity of the inmates and minimal risk to law enforcement officials.”

Bringing a disorder inside a detention facility under control should be carried out with the same considerations guiding the handling of public order incidents outside detention facilities:

- seeking to defuse a situation through communication;
- distinguishing between inmates involved in violence and those who are not;
- use of means with an indiscriminate effect such as tear gas must be avoided in the confined environment of a detention facility unless the situation has got to a level of violence that focusing on individual persons engaged in violence is no longer feasible. However, in such circumstances, a precondition must be that evacuation routes have been opened and immediate medical care is ensured to be on hand. (Given the exceptional character of such extreme situations, there is no justification for having permanent fixed installations that dispense chemical irritants inside detention facilities: they may too easily be used in less serious circumstances and even for the purpose of torture or other cruel, inhuman or degrading treatment. Such installations should therefore be prohibited.)<sup>95</sup>
- Firearms may only be used in the circumstances indicated in Basic Principle No. 9, i.e. when there is an imminent threat to life or of serious injury [see Chapter 2.3].

<sup>95</sup> See “The human rights impact of less lethal weapons and other law enforcement equipment”, report by Amnesty International and Omega Research Foundation, 12 April 2015, ACT 30/1305/2015, p. 19.

# 9 HUMAN RESOURCES MANAGEMENT

## Chapter outline

### 9.1 Selection

### 9.2 Training

- 9.2.1 Physical training and use of equipment
- 9.2.2 Communication skills
- 9.2.3 Risk assessment and decision making
- 9.2.4 Mental training and stress management
- 9.2.5 First aid training
- 9.2.6 Concluding remarks on training

### 9.3 Coaching and counselling

## Relevant provisions of the Basic Principles for this Chapter:

### Basic Principle 5

“Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall: [...]”

(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; [...]”

### Basic Principle 18

“Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. [...]”

### Basic Principle 19

“Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.”

### Basic Principle 20

“In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.”

### Basic Principle 21

“Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.”

### Guidelines for implementation of these Basic Principles

**Guideline No. 9:** Law enforcement agencies must ensure that their personnel are able to meet the high professional standards established in the Basic Principles.

a) The selection criteria for law enforcement officials should go beyond purely formal criteria (criminal record, level of education) and testing physical fitness. The criteria must also ascertain the moral integrity of the candidate and his or her psychological stability and ability to react appropriately to the highly stressful situations that law enforcement officials may face in their daily practice.

b) Training of law enforcement officials should be based on realistic scenarios, acquainting them with the wide range of situations and challenges they may encounter in their daily practice. Training should be conducted in such a way that law enforcement officials acquire:

- the physical capability to use equipment and weapons, in terms of fitness and weapon skills;
- the necessary professional skills in terms of communication, risk assessment and decision making;
- the mental and psychological strength needed to respond appropriately to the challenging, stressful and often dangerous situations in which they may have to decide whether or not to resort to the use of force.

All law enforcement officials should undergo first aid training at least at the basic level.

c) It should be acknowledged that situations in which law enforcement officials decide to use force and firearms (or not), may be highly stressful or even traumatizing and have a great impact on their mental well-being and health. Supervision, coaching and counselling mechanisms need to be in place to address such situations. Superior officers bear the responsibility for close supervision and for taking appropriate measures when their subordinates have experienced problematic situations (personal coaching, ordinary or medical leave, psychological evaluation and support etc.) – in particular when they were in a life threatening situation, had to resort to firearms, or were otherwise involved in situations in which serious injury or death occurred.

## 9.1 Selection

### Basic Principle 18

“Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. [...]”

#### European Committee for the Prevention of Torture (CPT), CPT/Inf/E (2002) 1 – Rev. 2015

p. 20-21: “Training of law enforcement personnel

[...]the CPT wishes to emphasise the great importance it attaches to the training of law enforcement personnel (which should include education on human rights matters – cf. also Article 10 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). [...]

In this connection, the CPT believes that aptitude for interpersonal communication should be a major factor in the process of recruiting law enforcement personnel and that, during training, considerable emphasis should be placed on developing interpersonal communication skills, based on respect for human dignity. The possession of such skills will often enable a police or prison officer to defuse a situation which could otherwise turn into violence, and more generally, will lead to a lowering of tension, and raising of the quality of life, in police and prison establishments, to the benefit of all concerned.”

In the recruitment process of law enforcement officials the selection criteria should allow an evaluation of whether an applicant possesses the personal abilities, skills and attitudes necessary to meet the high professional standards as demanded in the Basic Principles. These criteria should therefore include:

- personal integrity and a law abiding and human rights compliant attitude;
- absence of discriminatory attitudes and prejudices;
- stress resistance and psychological stability;
- physical fitness.

### **Illustrative country examples**

#### ***Brazil: Interministerial Ordinance No. 4.226 of 31 December 2010***

Art. 12: “In the selection process, consider the psychological profile in relation to handling stressful situation and use of force.”

In the **United Kingdom**, recruitment criteria are looking at a broad range of aspects:

- Biometric vetting – includes information on the speculative checking of DNA and fingerprints of applicants to the police service, as detailed in NPIA [National Policing Improvement Agency] circular 03/2012 [Note: to ascertain whether they have come to adverse police attention or their fingerprints or DNA are linked to any outstanding crime scenes]
- Eligibility criteria – this includes information about age, criminal convictions, financial checks, tattoos and swimming (in particular looking at past offences in relation to acts of violence, to discriminatory attitudes displayed for instance by certain tattoos etc.)
- A detailed assessment process with minimum pass marks – (NPIA Circular 06/2011) including minimum pass marks for specific elements such as conduct during an assessment centre, respect for race and diversity, oral and written communication
- Medical standards – as detailed in Home Office Circular 59/2004
- Eyesight requirements – as detailed in Home Office Circular 25/2003
- Fitness test – monitored by the ACPO Working Group on Fitness Standards

[For more detailed information cf.

<http://www.college.police.uk/What-we-do/Support/Recruitment/Pages/Police-recruitment-Standards.aspx>]

## **9.2 Training**

### **Basic Principle 18**

“Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.”

### **Basic Principle 19**

“Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.”

### **Basic Principle 20**

“In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.”

**OSCE, ODIHR Guidelines on Human Rights Education for Law Enforcement Officials, 2012**

p. 16: “Considering the pivotal role law enforcement officials play in respecting, protecting and fulfilling human rights, human rights should be an integral part of all training for law enforcement officials, such as in investigation and arrest, the use of firearms and force, and reporting and communication with the public. This is necessary in order to ensure human rights-based training does not become dissociated from operational reality. Thus, an integrated holistic approach, rather than just teaching human rights as a separate subject, is encouraged.”

p. 23: “Particular attention should be paid to the transformation of theoretical knowledge into operational, duty-related skills through relevant, human rights-related practical exercises.”

It is a fundamental responsibility of commanding authorities to provide law enforcement officials with adequate training so that they can carry out their duties in a professional, law abiding and human rights compliant way – also with a view to protecting their own safety.

**Illustrative country example*****Uruguay: Law on Police Procedures, 2008***

Art. 171: “The Ministry of Interior has the obligation to build the capacity and inform police personnel in an adequate manner for the fulfillment of the responsibilities established in this law.”

Training should make sure that law enforcement officials develop a range of professional skills, allowing them to respond to the variety of situations they may face in their day-to-day work. These skills include:

**9.2.1 Physical training and use of equipment**

Training should not just be about pure physical fitness, but also include self-defence techniques as well as empty-hand techniques to control aggressive persons **[more on empty-hand techniques in Chapter 4.4]**. During training, it is crucial also to create the full awareness of the possible harm that some of these techniques may cause. Although they are often considered to be at the lowest level of the use of force spectrum, they can cause serious injury or occasionally even death. Furthermore, law enforcement officials must be proficient in the correct use of the relevant law enforcement equipment and less lethal weapons and should have completed a formal certification process and refresher training with regard to the use of each type of weapon **[see Chapter 6.4]**. In this regard, it is important that law enforcement officials know and understand the possible effects of the various devices, and in particular the risks of causing harm and injury. Law enforcement officials who are to be issued with a firearm must have excellent shooting skills, including in difficult circumstances (e.g. after running, in bad light or weather conditions etc.).<sup>96</sup>

**Illustrative country example**

In ***The Netherlands***, (1) successfully passing an annual theoretical exam about legislation on use of force and firearms is a precondition for being admitted to the use of pepper spray, baton and firearm. Next to that a (2) practical exam has to be passed in self-defence and physical skills for arresting suspects, to be provided with pepper spray and baton. And only when these tests are passed, officers can be provided with a firearm, for which they (3) have to pass a practical test twice a year. At this moment (4) a physical test has to be done, but passing is not yet compulsory, although this is planned for the future. This is based on the assumption that a physically unfit law enforcement official who does not have sufficient running speed and perseverance and not enough skills in the use of less lethal weapons is more likely to find him- or herself in a situation of needing to resort to a firearm.

<sup>96</sup> See also above, **[Chapter 5.1]**, with regard to the challenges different situations may present for the decision whether or not to resort to the use of a firearm.

## 9.2.2 Communication skills

Law enforcement officials must be able to communicate with people in a way that prevents or reduces tensions and aggression. Peaceful settlement of conflicts, effective negotiation, de-escalation and mediation are the best way to avoid the need to resort to the use of force and to prevent harm and injury to others or to the law enforcement officials themselves. This also includes the ability to evaluate a person's state of mind and to understand and judge a person's actions and reactions.

### Illustrative country examples

#### **Germany: North Rhine-Westphalia, Handbook on operational training, 2014**

Annex 2: contains the evaluation criteria for the communication skills during police intervention in different scenarios (00-02-00, p. 6-11). One of the explicitly stated objectives is the ability to defuse a situation through appropriate communication.

In **The Netherlands**, the Police academy offers a specific 6-day training module "Crisis-Communication" that includes conversation techniques and teaching on the psychological aspects of crisis situations.

<https://www.politieacademie.nl/onderwijs/onderwijsaanbod/Pages/opleiding.aspx?code=9200982&interssegebied=2&thema=33>

The **United Kingdom, Use of Force Training Manual for Prison Staff, 2006** contains a specific module on communication (chapter D, section 1.1). It includes training on effective verbal and non-verbal communication with prisoners to achieve mutual understanding, while outlining potential "pitfalls" that may cause hostility and aggression, such as intrusion of personal space, underlying personal prejudices, and body language. The use of communication as a means to avoid the need to resort to force is further developed in section 1.4. of chapter D with a view to defusing a tense situation without the need to use force, acknowledging that ... "(t)he majority of situations where there is a potential for violence can be handled through communication" (p. 37).

Communication training should devote special attention to children<sup>97</sup>, drunk or intoxicated persons, mentally disturbed persons, or persons in a highly agitated state, and law enforcement officials must be trained to communicate and interact with these groups in an appropriate way.

### Illustrative country example

#### **United Kingdom, College of Policing (2014): Armed deployment [Internet].**

<https://www.app.college.police.uk/app-content/armed-policing/armed-deployment/>

#### **Dealing with individuals who are emotionally or mentally distressed**

"The term 'emotionally or mentally distressed' is used to describe individuals who may behave in an unexpected, extreme or challenging manner as a result of a mental health issue or emotional distress.

The fact that the subject is emotionally or mentally distressed does not in any way reduce the harm they may cause to themselves or others if the incident is not resolved. However, officers must be aware that an inappropriate or disproportionate response to someone experiencing emotional or mental distress could, itself, escalate the situation, causing greater harm to the subject or to others.

Individuals who are emotionally or mentally distressed may respond to the arrival of armed officers and Taser officers in an unexpected or unpredictable manner. This can be caused by a range of factors, for example, mental ill health or extreme distress, which may on occasions be aggravated or caused by drugs or alcohol, or the absence of prescribed medication. Failure to recognise and understand why someone may not be complying with instructions or communication could increase the tension of a situation.

<sup>97</sup> Regarding the use of force against children, see also United Nations, Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, UN Doc. A/C.3/69/L.5 (2014).

Negotiators, AFOs [i.e. Armed Firearms Officers] and Taser officers must have an understanding of how emotionally or mentally distressed individuals may respond to their presence and any visual or verbal contact made with them [...].”

Finally, language skills can be of particular importance for instance in a multicultural environment.

### **9.2.3 Risk assessment and decision making**

Law enforcement officials must develop the ability to properly evaluate the risks involved in any given situation, to determine the appropriate course of action, take the necessary precautions and choose the appropriate means and methods from the various options available as well as the right time and place for intervention [see **Chapter 4.3**]. They need to have a sound judgement as to whether a situation requires immediate action, careful observation and/or preparation, or even (temporary) retreat. Where they need to resort to force, they should have the ability to choose the most appropriate way of doing so – being effective while causing the least possible harm.

Developing professional judgement and decision making skills requires exposure to a wide variety of situations during training.

#### ***Nachova and Others v. Bulgaria (43577/98 and 43579/98), European Court of Human Rights Grand Chamber (2005)***

“97. Furthermore, the national law regulating policing operations must secure a system of adequate and effective safeguards against arbitrariness and abuse of force and even against avoidable accident [...]. In particular, law enforcement agents must be trained to assess whether or not there is an absolute necessity to use firearms, not only on the basis of the letter of the relevant regulations, but also with due regard to the pre-eminence of respect for human life as a fundamental value.”

### **9.2.4 Mental training and stress management**

Law enforcement officials must be able to remain calm and composed even in situations of stress, emotion and danger. To that end they must develop considerable mental strength and be able to control their own stress level. They must get to know and to critically reflect on their own reactions in a given situation; and the training must allow law enforcement officials to develop skills in how to deal with their own emotions and stress in a way that these do not impact on their professional judgement and decision making process.

#### **Illustrative country example**

##### ***The Netherlands***

In 2012, the Dutch police introduced a specific “mental resilience training” for all law enforcement officials that seeks to improve the ability of officials to react in a rational and controlled way even in situations of stress and danger.

(see: <https://www.politieacademie.nl/kennisonderzoek/kennis/kennisdossiers/pw/Pages/Mentaleweerbaarheid.aspx>)

### **9.2.5 First aid training**

It should go without saying, but far too often receives insufficient attention, that law enforcement officials should receive at least basic first aid training to enable them to assist injured persons (including their own colleagues). This training should also give special attention to helping persons affected by the use of certain types of weapons, such as chemical irritants, and should include emergency first aid for gunshot wounds.



### **Illustrative country examples**

#### ***Paraguay: Manual on the Use of Force by the National Police, 2011***

Sect. IV: “[...] e. Less lethal weapons – chemical irritants

Police officials are responsible for the monitoring and decontamination of all individuals affected by the use of tear gas or pepper spray, including third parties.

All specialized police officers must be trained in recognizing and handling possible secondary effects of chemical irritants.”

In the **United Kingdom**, the ACPO Police First Aid Learning Programme comprises 4 learning modules.

For custody officers, for instance, attending module 2 and 3 is obligatory:

- Module 1 Emergency Life Support
- Module 2 First Aid Skills – Police
- Module 3 First Aid Skills – Custody
- Module 4 First Aid Skills – Enhanced

### **9.2.6 Concluding remarks on training**

All the skills mentioned above can only be acquired if, during training, law enforcement officials are exposed to realistic scenarios in which they learn to make appropriate choices and to deal with their own mental state particularly in stressful or dangerous situations in which emotions run high. While dangerous situations will always produce considerable stress for a law enforcement official, regular exposure to realistic scenarios with a high stress level in training will enable law enforcement officials to better control their own reactions, despite the dangers or other forms of stress. It will strengthen their ability to properly identify the risks involved in a situation and to choose the most appropriate course of action from the range of options available. Firearms training should not be limited to the shooting range but include real life situations in which they have to decide whether or not to use their firearm (and, if so, in which way).

### **Illustrative country examples**

Today, many police forces have developed specific scenario based training programmes:

In some countries, mock villages have been built, providing a context for training in all sorts of policing operations (e.g. in **France** the training centre of the French Gendarmerie in St. Astier [Centre National d’entraînement des forces de Gendarmerie] allows for the training of a large variety of public order situations in a realistic set-up (<http://www.gendarmerie.interieur.gouv.fr/cegn/Autres-pages/Centres/Centre-national-d-entrainement-des-forces-de-gendarmerie-CNEFG>).

#### ***Germany: North Rhine-Westphalia, Handbook on operational training, 2014***

Annex 2 of the handbook lists a wide range of situations that may or not involve the use of force for which the professional skills of a police officer must be evaluated: body searches, searches of premises, arrest, identity control, pursuit on foot, car pursuit, handling collective violence etc.

Unfortunately, in too many countries training for law enforcement officials is still only basic and of very short duration (sometimes even only a few weeks) and primarily focused on physical training, or even military drill. This is, however, insufficient to prepare law enforcement officials for the challenges they will face in their daily duties.

Finally, law enforcement officials should attend refresher courses at regular intervals throughout their career; training should not just be limited to basic training at entry level. Subsequent training and refresher courses should also serve to evaluate the level of competency of each law enforcement official, so as to determine the need for any corrective measure (coaching, stress management, withdrawal of certification for certain equipment until the required test is successfully completed etc.).

### Illustrative country example

#### ***Brazil: Interministerial Ordinance No. 4.226 of 31 December 2010***

Art. 18 establishes that the training on the use of firearms must be repeated at least once per year (obligatory certification). According to Art. 19 and 20 this training must also include less lethal techniques.

## 9.3 Coaching and counselling

### Basic Principle 21

“Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.”

The work of law enforcement officials in general, but particularly in situations in which law enforcement officials may have to resort to force can be highly stressful and even traumatizing – e.g. when they were exposed to a life-threatening situation or when death or serious injury occurred in the course of an operation.

Unfortunately, all too often it is considered a weakness for law enforcement officials to acknowledge such psychological impact, in particular within law enforcement agencies that are highly militarized or in which a kind of “macho”-culture prevails. It is of the utmost importance for superior officers to take seriously such situations and their possible psychological impact, both in view of the mental health of the law enforcement official concerned and in view of his or her ability to react appropriately and professionally in future situations. Superior officers must therefore ensure that coaching, counselling and – if appropriate – psychological support is provided and should not leave it to the official’s own discretion to seek such support or not.

### Illustrative country examples

#### The *Austrian Police*

has established a system of peer support, in which a group of active police officers – specifically trained for the purpose – are assigned to provide support to police officers who have gone through traumatizing experiences, such as shooting incidents, incidents where death or serious injury occurred etc.

***Schäffer, Angelika/Schneider, Elisabeth, SIAK-Journal – Zeitschrift für Polizeiwissenschaft und polizeiliche Praxis (1), 2012, p. 19-28.***

#### ***Ecuador: Regulation on the Use of Force by the National Police, 2014***

Art. 31 (2), 32 and 33 – In case of serious injury, death or use of firearms medical and psychological evaluation is obligatory; the reintegration into the service is depending on the evaluation report.

#### In *The Netherlands*

Post-traumatic Stress Disorder was formally recognized by the police leadership as a profession-related illness, thus ensuring full recognition of the problematic consequences of traumatic situations in the law enforcement profession.

<https://www.politieacademie.nl/kennisenonderzoek/kennis/kennisdossiers/pw/Pages/Extratrainingsvoorwaardenagenten.aspx>

#### ***Paraguay, Manual on the Use of Force by the National Police, 2011***

Sect. V: “e. Reassignment or leave:

A police officer who has used force which led to serious injuries or the death of a person will be subject to the proceedings of the Institution. It is the responsibility of the direct superior to ensure his or her mental well-being.”

# 10 SUPERIOR AND COMMAND RESPONSIBILITY

## Chapter outline

### 10.1 General considerations

### 10.2 Chain of command

### 10.3 Reporting, supervision and control

## Relevant provisions of the Basic Principles for this Chapter:

### Basic Principle 6

“Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.”

### Basic Principle 11

“Rules and regulations on the use of firearms by law enforcement officials should include guidelines that: [...]

(d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them; [...]

(f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty. [...]

### Basic Principle 22

“Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). [...]

### Basic Principle 24

“Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use. [...]

### Basic Principle 25

“Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.”

### Basic Principle 26

“Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.”

### Guidelines for implementation of these Basic Principles

**Guideline No. 10:** The command leadership and all other senior officers or supervisors must be held accountable for ensuring that the agency and its members fulfil their law enforcement duties and responsibilities in compliance with the law, including human rights law, and in an effective and professional manner.

a) There must be a functioning and transparent system of command responsibility and command accountability and a pre-established chain of command with clearly assigned responsibilities. All decisions taken should be traceable and those who have taken them must be held accountable for them.

b) A pre-established supervision and reporting system within the law enforcement agency must allow for the assessment of the compliance of law enforcement officials with the law and internal regulations, as well as of their professional skills, competency and effectiveness. Superiors are responsible for correctly and appropriately supervising their subordinates.

c) Internal supervision and investigation should serve to assess the need for corrective measures (revision of procedures, equipment, training), the situation of the acting law enforcement officials (need for coaching, training, psychological support etc.), any failures in command responsibility and the need for disciplinary actions in case of any use of force that was in disrespect of the operational framework.

d) A detailed reporting system that allows for the evaluation of the lawfulness and appropriateness of the use of force needs to be in place, and should include reports by colleagues who may have witnessed the use of force. Obligatory reporting should be established not only for situations in which a firearm was discharged or in which death or serious injury occurred, but for *all* situations in which law enforcement officials have resorted to the use of force. Law enforcement officials who report on unlawful use of force by colleagues or on an unlawful order by their superiors must be protected against any retribution or other negative consequences.

## 10.1 General considerations

The quality of the work of a law enforcement agency, in particular its compliance with the law and respect for human rights, its effectiveness and professionalism, depends to a large extent on the command leadership and the senior officers of the agency. They are the key decision makers when it comes to such matters as:

- developing the operational procedures and instructions that law enforcement officials must respect and apply;
- deciding on the appropriate equipment and resources;
- determining the training needs of the members of the agency and defining training content;
- deciding on the deployments, strategies and tactics in major/large-scale operations;
- addressing violations of the law or breaches of internal regulations and procedures;
- taking corrective measures where needed on all points mentioned above.

These decisions, when relating to the use of force and firearms, can have important and direct consequences, including on questions of life or death, for the people against whom force and firearms are used, for third persons and for the law enforcement officials under their command. It is obvious that senior officials must assume their important responsibilities in a lawful and human rights compliant way and that if they fail to do so they must be held accountable for such failures [see Chapter 3].

## 10.2 Chain of command

For reasons of accountability, but also to ensure that law enforcement work is carried out in an effective, efficient and professional manner, a law enforcement agency must have of a clear chain of command. The various hierarchical layers need to be clearly defined, with responsibilities and decision making powers attributed in a transparent way to the level within the structure of the agency best placed to take these decisions. From the top level down to the supervisors at station level, it must be clear who has which responsibilities and tasks, and who may (and must) take which type of decisions.

Such a command structure should ensure that decisions are taken at the appropriate level and that it can be established which decision by whom led to what consequence. For this purpose, all relevant decisions should be traceable and should therefore be recorded, e.g. in writing or videoed. When decisions include orders to a level further down the chain of command, or when this level is in any other way affected by such decisions, a proper briefing must take place, which should be recorded.

The briefing should be conducted in such a manner that:

- each commander or supervisor knows what to do (and can be held accountable for not fulfilling his or her responsibility);
- decisions are fully understood at all levels concerned within the chain of command, contributing to their effective implementation;
- failings in the decision making and in the chain of command can be traced back, allowing for appropriate corrective measures and for accountability of the officer(s) within the chain of command.

### **Special Rapporteur on extrajudicial executions, UN Doc. A/HRC/26/36 (2014)**

“81. To enable investigations, accountability and redress for the victims, important measures, including the following must be put in place: States are obliged to provide a system of reporting for whenever firearms are used by law enforcement officials; investigations should also seek to establish command responsibility; and law enforcement officials must promptly report incidents where the use of force or firearms results in injury or death, to their superiors.” [emphasis added]

### **Illustrative country example**

#### ***United Kingdom: College of Policing (2014): Command [Internet]***

<https://www.app.college.police.uk/app-content/armed-policing/command/>

In the **United Kingdom**, where law enforcement officials are usually unarmed, the decision for the deployment of armed officers for specific, possibly critical, situations, as well as the control of the course of action, is embedded in a three-level chain of command:

The Strategic/Gold Commander determines the strategic objectives and sets any tactical parameters, retains strategic oversight and overall command and responsibility and [among other things]:

- has overall strategic command, with responsibility and accountability for directions given;
- must set, review, communicate and update the strategy based on the threat assessment and the available intelligence.

The Tactical/Silver Commander develops, commands and coordinates the overall tactical response in accordance with strategic objectives and [among other things]:

- is responsible for developing and coordinating the tactical plan in order to achieve the strategic aims, within any tactical parameters set;
- is responsible for ensuring that officers and staff are fully briefed;
- should consider the provision of medical support;
- should be so located as to be able to maintain effective tactical command of the operation;
- should ensure that all decisions are recorded, where practicable, in order to provide a clear audit trail.

The Operational/Bronze Commander commands a group of officers carrying out functional or territorial responsibilities related to a tactical plan and [among other things]:

- must have knowledge and clear understanding of their role and the overall aim of the operation;
  - must, where practicable, ensure that their staff are appropriately briefed;
  - should be located where they are able to maintain effective command of their area of responsibility;
  - ensures the implementation of the tactical firearms commander’s tactical plan within their territorial or functional area of responsibility.
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### 10.3 Reporting, supervision and control

It is the role of superior officers to ensure that their subordinates are in a position to carry out their duties in the best possible way – i.e. that they have the necessary professional skills, and are physically and mentally fit for duty. This requires an appropriate set-up of supervision, control and coaching.

#### Illustrative country example

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##### ***Australia: Victoria Police Manual, 2015***

p. 4 – Responsibility of managers and supervisors:

“Managers and supervisors play an influential role in creating an environment that upholds the professional and ethical standards and values of the organization. They do this through their own behaviour and through how they lead and support their employees.

If you are a manager or supervisor you are expected to:

- personally demonstrate ethical and professional behaviour, and reinforce these standards in your workplace
  - take action at the earliest opportunity if you believe an employee is not upholding the professional and ethical standards of the organization
  - provide your employees with adequate supervision and support, as is appropriate to their training, experience and duties
  - encourage employees to make lawful, professional and ethical decisions, and support these decisions. Supervisors are responsible for the actions and decisions of employees when they are under their management or supervision, especially regarding matters of integrity and ethical standards
  - acknowledge and reward good work performed by your employees
  - manage and support the performance and professional development of [your] employees. Address performance issues promptly and directly
  - create a working environment that fosters open and honest communication and the use of initiative
  - demonstrate a commitment to Victoria Police policies and strategies and communicate new policies or practices to employees
  - contribute to the development of the organization by identifying and implementing improvements to policy and practice and encouraging your employees to do the same
  - be proactive in your attitude, behaviour and performance to act against harassment, bullying and discriminatory activities and/or language; you must take all reasonable precautions to prevent such behaviour
  - delegate responsibility for particular functions or activities to other employees; however, you are still accountable for the decisions and actions of those employees within the scope of the delegation.”
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Supervision is a key responsibility of superior officers; ignorance may not be considered an excuse when they fail to duly fulfil their supervisory role.

### **Illustrative country examples**

#### ***United Kingdom: College of Policing (2014): Command [Internet]***

<https://www.app.college.police.uk/app-content/armed-policing/command/>

#### ***Occupational and operational competence within command roles***

“Chief officers are responsible for ensuring that individuals who have been assessed as occupationally competent are professionally developed to ensure that they can be classed as operationally competent. A commander or tactical advisor must remain operationally competent by regularly performing the roles for which they have been trained. Forces should consider implementing an auditable period of shadowing, mentoring and command performance review as a means of achieving operational competence. [...]”

#### ***Command and operational resilience***

“The management and command of situations involving the deployment of AFOs [Armed Firearms Officers] can be stressful and often involves fast, time-critical decision making. It is, therefore, essential that officers at command and support levels, as well as the AFOs involved in deployment, remain physically and mentally capable of undertaking these duties. Forces should have process in place to monitor officers’ fitness for duty. [...]”

#### ***College of Policing (2014): Post-deployment [Internet]***

<https://www.app.college.police.uk/app-content/armed-policing/post-deployment/>

#### ***Debriefing***

“Once an armed deployment has been concluded, a full debrief should be considered to identify opportunities for operational and organizational learning. Prior to officers finishing duty, the senior supervisory officer should also consider if there are any outstanding issues which need to be addressed.

Large or protracted operations should include arrangements for a specific debriefing session so that any aspect of the command structure, tactics or equipment used, which demonstrated good practice or caused a problem, can be identified and lessons learned. Debriefs should be documented.”

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Internal supervision and investigation processes should be conducted in the interest of a lessons learned approach within the law enforcement agency.

### **Illustrative country example**

#### ***United States: Department of Justice, Investigation of the Ferguson Police Department, 2015***

p. 82: “Through its system for taking, investigating and responding to misconduct complaints, a police department has the opportunity to demonstrate that officer misconduct is unacceptable and unrepresentative of how the enforcement agency values and treats its constituents. In this way, a police department’s internal affairs process provides an opportunity for the department to restore trust and affirm its legitimacy. Similarly, misconduct investigations allow law enforcement the opportunity to provide community members who have been mistreated a constructive, effective way to voice their complaint. And, of course, effective internal affairs processes can be a critical part of correcting officer behavior, and improving police training and policies.”

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A precondition for this is an effective system of reporting. Reporting should, of course, be obligatory for all situations in which a firearm has been discharged or in which death or injury has occurred.

### **Illustrative country examples**

#### ***Brazil: Interministerial Ordinance No. 4.226 of 31 December 2010***

Art. 10 (d): In any case of death or injury the individual officer must produce a report.

Art. 11 (e): Authorities (at least: the respective inspectorate of the concerned institution) must initiate an investigation in case of death or injury as a result of the use of force.

Art. 23: Public security organs must create internal commissions on control and follow-up on use of lethal force.

Art. 24: Law enforcement officials must give a detailed report when they have used their firearm or less lethal weapons when this has caused death or injury. Art. 24 furthermore provides a list of minimum elements that must be explained in the report, including which less harmful measures were attempted prior to the use of these means or – if not – why not.

***Obligatory reporting on use of firearms is also established in the following laws:***

- ***South African Correctional Services Act, 1998***, Sect. 34 (7).
- ***Uruguay, Law on Police Procedures, 2008***, Art. 24 (1).

However, with a view to constantly assessing the compliance with the law, as well as the performance, skills, and physical and mental capability of their subordinates, superior officers should seek to evaluate any use of force in view of its compliance with the law and internal regulations. Therefore, any use of force, irrespective of whether anyone was injured, should be reported to the responsible superior.

### **Illustrative country examples**

***Argentina: Administrative Guidelines on Use of Force by Federal Police officers, Resolution No. 437/2013***

Art. 7 obliges reporting of any use of force to the superior.

***Armenia: Law on Penitentiary Service, 2005***

Art. 51: “[...] 3. In case of the use of physical force, special means and firearms a penitentiary officer shall immediately report to his superior, and in all instances of the use of firearms he shall also report to a prosecutor.”

***Ecuador: Regulation on the Use of Force by the National Police, 2014***

Art. 31 (1): Any use of force must be reported to the superior. In case of serious injury, death or other important consequences: a detailed report must be sent to the competent authorities (Minister, judiciary)

***Kenya: National Police Service Act No. 11A, 2011***

Sixth schedule [Sect. 61(2)], A.4: “A police officer who uses any form of force shall immediately, report to the officer’s superior explaining the circumstances that necessitated the use of force and the supervisor shall judge the rightfulness and decide on the next step, subject to these regulations.”

***Mexico: Agreement 04/2012, General Rules on the Use of Force, 2012***

Art. 20: “The members of police institutions, when having participated in an action in which the use of force was necessary, will inform about the facts and establish an official police report.”

***The Netherlands: Official Instruction for the Police, Royal Constabulary and other Investigative Officials, 1994***

Art. 17: “1. The law enforcement official who has resorted to the use of force must report the facts and circumstances of this use of force, including the related consequences, immediately to his superior.”

***Paraguay: Manual on the Use of Force by the National Police, 2011***

Sect. V: “f. Report on the use of force:

Every time a police officer makes use of force (lethal or non-lethal), or when he/she draws a firearm with the intention to use it, he/she must immediately inform his/her superior, as well as provide a written report on the use of force. The report must include any case in which the police officer has fired (accidentally or intentionally), except in cases of training on the use of firearms. [...]

i. Annual summary of incidents:

Annually, the Headquarters of the Operational Units and the internal investigation bodies (Internal affairs and Police Justice system) must prepare a summary statistic of all incidents of the use of force reported by police officers, as well as complaints lodged by citizens with the Judiciary, human rights institutions or the police institution itself. The summary will also contain the results of the investigations conducted. The identified patterns and the analysis of this information will serve as a basis to review the manual on the use of force; the design of the training on the use of force; the rules of certification for each type of equipment; and the service weapons.”



***South Africa: Correctional Services Act, 1998***

Sect. 32: “[...] (5) If force was used, the inmate concerned must undergo an immediate medical examination and receive the treatment prescribed by the correctional medical practitioner.

(6) All instances of use of force in terms of subsections (2) and (3) must be reported to the Inspecting Judge, immediately.”

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Reporting is particularly important in the context of detention, where excessive use of force and other patterns of abuse can easily remain unnoticed if an adequate reporting system is not in place.

Reporting forms must be designed in such a way, in particular with sufficiently detailed questions, that they allow the assessment of whether the use of force was lawful and appropriate in the given situation and should therefore contain a number of obligatory elements, e.g. with regard to the attempt to use non-violent means first, attempts to de-escalate the situation, the warnings given and the response of the individual to these warnings, and whether consideration was given to the options of waiting or even retreat, etc.

***Illustrative country example******Example of information to be given after an incident when the use of force became necessary to control a prisoner (United Kingdom: Ministry of Justice, Use of Force Training Manual for Prison Staff (2006), sect. F 1.3.***

“It is important that all staff who were involved in any use of force complete Annex A of the Use of Force Form. The purpose of completing this form is for each member of staff to justify and explain their actions and the circumstances in which they took them. They must make as clear a picture as possible as to the facts as they saw them.

- Where the member of staff was when they became aware of the incident
  - Details of any briefing given to them by the supervisor
  - What circumstances they are aware of that led up to the use of force
  - Instructions given to the prisoner prior to force being used – this must include that the prisoner was made aware of the consequences of non-compliance
  - Their perception as to the behaviour of the prisoner and what he/ she was saying [and] doing
  - The names of others present (both staff and prisoners)
  - What their role was (e.g. position in C&R [control and restraint] team)
  - A detailed description of how they applied force
  - How the member of staff felt about the incident
  - Their perception of the resistance offered by the prisoner
  - Quote any instructions given to the prisoner and the response received
  - De-escalation efforts made (try to quote words used)
  - Whether ratchet handcuffs [i.e. a handcuff adjustable to the size of the wrist] were applied (and who authorized their use)
  - Where the prisoner was relocated to and how the relocation took place e.g. in locks, walking, in ratchet handcuffs
  - Any injuries observed to staff and/or prisoner.”
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Colleagues who witnessed the use of force must also be obliged to report, in particular when they have observed any unlawful use of force or unlawful orders given, and, if necessary, even to authorities outside the agency; whistle-blowing must be possible within a law enforcement agency.

### **Illustrative country examples**

#### ***Albania: Law No. 108/2014 on State Police***

Art. 89 – Other duties: “Employees of the Police have the following duties when exercising their competences [...]

d) to report to his respective supervisor or, in his absence to the supervisor of his supervisor, any complaint received in relation to the behaviour of another employee of the Police, and any violation, which he has sufficient grounds to believe has been committed by [another employee], regardless of whether he gained knowledge of this violation while performing his duties, or under other circumstances; [...]”

#### ***Australia: Victoria Police Manual, 2015***

p. 9 – Reporting misconduct and corruption – Obligation to report:

“Our integrity as employees depends on our personal conduct and willingness to act against misconduct. Employees are required to report any act or suspected act of corruption or serious misconduct committed by any other Victoria Police employee.

Police members are obliged under s.167(3), of the Victoria Police Act to report any act or suspected act of misconduct. Likewise, VPS [Victoria Police Service] employees are required to report any act or suspected act of misconduct. Employees who discharge this duty can expect support from their colleagues and from the organization.

You should report such acts or suspected acts directly to Professional Standards Command (PSC), but you may report them to the Independent Broad-based Anti-corruption Commission or to any supervisor. If you report to a supervisor, the supervisor must immediately notify PSC.

Support for internal sources

If you make a report as an internal source you will be fully supported by Victoria Police, regardless of the outcome of the investigation or any subsequent criminal or disciplinary process. The Internal Witness Support Unit will co-ordinate support and assist to ensure your local managers provide the support you are entitled to.

Employees are reminded that victimisation and interference of internal sources, or causing others to do the same, is a criminal offence, punishable by a fine, imprisonment or both.”

#### ***Paraguay: Manual on the Use of Force by the National Police, 2011***

Sect. V: “g. [...] The police officer, who has witnessed, whether on or off duty, use of force by another police officer which was inappropriate, unnecessary, irrational or excessive, must immediately inform his/her immediate superior.”

However, reporting on its own is not enough. There must be a thorough evaluation of the content of reports (or the absence of obligatory reports) which should lead to corrective measures from superiors.

### **Illustrative country example**

#### ***United States: Department of Justice, Investigation of the Cleveland Division of Police, 2014***

p. 47: “An early intervention system is a tool used by police departments to provide individualized supervision and support to officers and to manage risk. Specifically, an early intervention system is one or more databases that track various officer activities, including uses of force, civilian complaints, stops, and arrests. An effective early intervention system both tracks this activity and allows the department to analyze patterns of behavior by individual officers or groups of officers to identify those who might be in need of support or intervention from the department. An early intervention system is not a mechanism for imposing discipline. Instead, the goal of an early intervention system is to manage the potential risk to officers, the department, and the community by taking corrective action and providing officers with resources – such as counseling, training, additional supervision, or monitoring, and action plans for modifying future behavior – before serious problems occur.”

A system of reporting that does not go hand in hand with effective supervision and control becomes a purely bureaucratic exercise, and – even worse – could lead to a situation in which law enforcement officials consider the lack of effective supervision, control and corrective measures by their superiors as a tacit endorsement of their unlawful or unprofessional behaviour.<sup>98</sup>

### **Illustrative country examples**

#### **Indonesia: INP Regulation on the use of force, No. 01/2009**

Art. 14 (3) and (4): obliges police officer to produce an immediate report in writing using a pre-established form and provides the minimum content of the report.

Art. 14 (5): explicitly mentions the use of the report for the establishment of legal liability.

#### **Indonesia: INP Regulation No. 8/2009**

Art. 60: “(1) Every INP official shall

- a. undertake supervision on the implementation of human rights, particularly within his jurisdiction;
- b. conduct an evaluation on his staff in applying human rights principles and provide recognition for those with exemplary performance;
- c. effect corrective action to the conduct of his personnel which is not in line with the principles of human rights protection; and
- d. apply punishment on INP personnel committing an action which contravenes the principles of human rights protection in the performance of his duties.

(2) The punishment as referred to in paragraph (1) sub-paragraph d may be effected through disciplinary action, enforcement of police ethics and/or the criminal justice system.”

Effective supervision should also enable the detection of any possible discriminatory bias in the use of force by individual police officers or even patterns prevailing within the institution.

#### ***Nachova and Others v. Bulgaria (43577/98 and 43579/98), European Court of Human Rights, Grand Chamber (2005)***

“160. The Grand Chamber endorses the Chamber’s analysis in the present case of the Contracting States’ procedural obligation to investigate possible racist motives for acts of violence. The Chamber stated, in particular (see paragraphs 156-59 of the Chamber judgment):

‘... [W]hen investigating violent incidents and, in particular, deaths at the hands of State agents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. A failure to make a distinction in the way in which situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention [...] In order to maintain public confidence in their law enforcement machinery, Contracting States must ensure that in the investigation of incidents involving the use of force a distinction is made both in their legal systems and in practice between cases of excessive use of force and of racist killing. [...]’”

<sup>98</sup> The Report of the **United States** Department of Justice, Investigation of the Ferguson Police Department (2015) (in particular pp. 38-41, 82) reveals how easily the absence of adequate supervision can foster a culture of excessive use of force and discriminatory bias in law enforcement.

# CONCLUDING REMARKS ON SECTION B

This section highlighted the considerable task incumbent upon the command leadership of a law enforcement agency to develop a comprehensive operational framework regarding the use of force and firearms in order to ensure the full implementation of the Basic Principles.

This task is not an easy one. It needs time, the devotion of adequate resources, and the willingness and determination of the leadership to ensure that the use of force and firearms by the law enforcement officials under their command is governed by respect for international human rights law in general, and the Basic Principles in particular. This task is an ongoing one: operational procedures and instructions, decisions on equipment, training, the hierarchical set up, supervision and control mechanisms – all this needs to be constantly reviewed in the light of lessons learned and new challenges that might emerge.

Furthermore, as already stressed several times, one should not look for ready-made answers. Any measures taken must take the specific situation of the country into account, and the illustrative country examples presented here serve only to stimulate the necessary reflection.

And finally, whatever the operational framework looks like, it is not worth the effort if the command leadership of the law enforcement agency fails to enforce its respect. Any disrespect for the law, regulations or procedures must be followed by appropriate corrective measures – be they penalties, training, mentoring, coaching or other. Only this will ensure that law enforcement officials will only resort to the use of force and firearms in a law abiding, human rights compliant and professional manner.

## SECTION C

# FINAL RECOMMENDATIONS

### **Amnesty International recommends:**

#### **To the United Nations:**

- To promote the Basic Principles as reflecting international human rights law.
- To strengthen and re-affirm the “protect-life”-principle in all law enforcement scenarios, including in counter-terrorism.
- To give due respect to the Basic Principles and to implement them in line with the present Guidelines in all operations involving UN law enforcement contingents.
- As an essential and urgent measure, to correct the obvious mistakes in the official Spanish translation of the Basic Principles No. 5 and 9, in accordance with the English text.

#### **To the OSCE and other international bodies and institutions as well as human rights NGOs and activists who carry out monitoring work relating to law enforcement issues:**

- To evaluate the observed behaviour of law enforcement officials in light of the Basic Principles and the present Guidelines and recommend corrective measures where necessary.

#### **To government authorities:**

- To fully implement the Basic Principles in line with the present Guidelines.

#### ***In particular***

- To ensure that domestic legislation governing the use of force and firearms is in compliance with the international human rights law and standards as established in the Basic Principles and presented in these Guidelines.
- To ban the use in law enforcement of equipment which has no practical use other than for the purpose of inflicting torture or other cruel, inhuman or degrading treatment or punishment (e.g. spiked batons).
- To ban the use in law enforcement of equipment that cannot achieve a legitimate law enforcement objective (e.g. rubber coated metal bullets); or presents an unwarranted risk (e.g. rubber balls).
- To establish strict regulations to cover all aspects of law enforcement equipment, including its selection, testing and use, to ensure that this equipment is always deployed proportionately, lawfully and to the minimum extent necessary.

#### **To law enforcement authorities:**

- To fully implement the Basic Principles in line with the present Guidelines.

#### ***In particular***

- To make use of the present Guidelines in order to establish a comprehensive operational framework for the use of force and firearms in which the Basic Principles are duly implemented in all relevant areas: operational procedures and instructions, equipment, training (in particular professional skills development), as well as command and control.
- To give particular attention to the responsibility of commanders for ensuring the Basic Principles are implemented and applied in practice and to hold them accountable for this.
- To stop and prevent impunity for any unlawful use of force.

**To international or bilateral law enforcement cooperation or development programmes:**

- To use the present Guidelines to assess the human rights compliance of the legal and operational framework for law enforcement in the partner country and to provide recommendations for corrections where necessary.
- To focus on human rights compliant policing in practice rather than reliance on theoretical teaching exercises.
- To assist partner countries/agencies in developing human rights compliant operational instructions on the use of force and firearms that are tailored to the specific situation in the partner country (and to refrain from “copy-paste” exercises that do not give due consideration to the specific needs of the partner country).
- To assist partner countries/agencies in the development of comprehensive training curricula covering the acquisition of all relevant professional skills that are necessary for a lawful, human rights compliant, effective, and professional fulfilment of law enforcement duties, in particular in relation to the use of force.
- To assist partner countries/agencies in developing a professional and accountable command structure.

**To anybody working in the field of law enforcement:**

- To provide feedback to Amnesty International on the content of these Guidelines, including the country examples (in particular where corrections might be needed).
- To share any new documents (laws, operational procedures, training manuals etc.) with Amnesty International, so as to contribute to a lessons learned process and sharing of experiences.

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# ANNEX I – BASIC PRINCIPLES (BPUFF)

## Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

**Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990**

Whereas the work of law enforcement officials<sup>1</sup> is a social service of great importance and there is, therefore, a need to maintain and, whenever necessary, to improve the working conditions and status of these officials,

Whereas a threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole,

Whereas law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights,

Whereas the Standard Minimum Rules for the Treatment of Prisoners provide for the circumstances in which prison officials may use force in the course of their duties,

Whereas Article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty,

Whereas the preparatory meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Varenna, Italy, agreed on elements to be considered in the course of further work on restraints on the use of force and firearms by law enforcement officials,

Whereas the Seventh Congress, in its resolution 14, inter alia, emphasizes that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights,

Whereas the Economic and Social Council, in its resolution 1986/10, section IX, of 21 May 1986, invited Member States to pay particular attention in the implementation of the Code to the use of force and firearms by law enforcement officials, and the General Assembly, in its resolution 41/149 of 4 December 1986, inter alia, welcomed this recommendation made by the Council,

Whereas it is appropriate that, with due regard to their personal safety, consideration be given to the role of law enforcement officials in relation to the administration of justice, to the protection of the right to life, liberty and security of the person, to their responsibility to maintain public safety and social peace and to the importance of their qualifications, training and conduct,

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<sup>1</sup> In accordance with the commentary to Article 1 of the Code of Conduct for Law Enforcement Officials, the term “law enforcement officials” includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrestor detention. In countries where police powers are exercised by military authorities, whether uniformed or not, or by state security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

The basic principles set forth below, which have been formulated to assist member states in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by Governments within the framework of their national legislation and practice, and be brought to the attention of law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive branch and the legislature, and the public.

### ***General provisions***

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.
2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.
3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.
4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.
5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:
  - (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
  - (b) Minimize damage and injury, and respect and preserve human life;
  - (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
  - (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.
6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.
7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.
8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

### ***Special provisions***

9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly



serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.
11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:
  - (a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;
  - (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
  - (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
  - (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
  - (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;
  - (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

#### ***Policing unlawful assemblies***

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.
13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.
14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

#### ***Policing persons in custody or detention***

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.
16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.
17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.

***Qualifications, training and counselling***

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.
19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.
20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.
21. Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.

***Reporting and review procedures***

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.
23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.
24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.
25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.
26. Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.

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## The Police and Human Rights Programme of the Dutch section of Amnesty International

The area of policing and human rights presents a dynamic and constantly evolving field of study. The human rights discourse has in recent years broadened its attention to include not only the negative functions of the State and its agents as human rights violators but also the positive obligations of the State. This presents an opportunity for the police to be seen as human rights protectors. Both police and human rights advocates are (should be) striving for societies characterized by security and safety.

The Police and Human Rights Programme aims to enhance knowledge and understanding of the police & policing within the Amnesty International movement – and the wider human rights community – in order to become more effective when addressing the police or police related issues. At the same time, we seek to promote human rights in the policing work, based on the conviction that only human rights compliant policing is good and effective policing. It is a constant endeavour of the Police and Human Rights Programme to demonstrate in its work and publications – including the present *Guidelines* – that it is both possible and indispensable for human rights law and standards to be implemented in daily policing practice.

This is particular relevant for the use of force and firearms. The legitimacy of and public trust in the law enforcement authority and the state as a whole are at risk when force and firearms are used in an excessive, arbitrary, abusive or otherwise unlawful manner. Human rights must be upheld whenever law enforcement agents exercise their power to use force and firearms. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials were adopted in 1990 in the same spirit to ensure the respect and protection of human rights, while at the same time giving due consideration to the safety and security of law enforcement officials.

The present *Guidelines* are intended as a practical and authoritative guide to support authorities in the implementation of the UN Basic Principles in domestic legislation, in the operational set up of law enforcement agencies (i.e. in their regulations, procedures, training, equipment, as well as the command and control structure) and in the overall system of accountability.

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Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all. We reach almost every country in the world and have:

- more than 2 million members and supporters who drive forward our fight for rights
- more than 5 million activists who strengthen our calls for justice

[www.amnesty.nl/policeandhumanrights](http://www.amnesty.nl/policeandhumanrights)

