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Resource book on the
use of force and firearms
in law enforcement

CRIMINAL JUSTICE HANDBOOK SERIES

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS
UNITED NATIONS OFFICE ON DRUGS AND CRIME

Resource book on the use of force and firearms in law enforcement



UNITED NATIONS
New York, 2017

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United Nations publication issued by the United Nations Office on Drugs and Crime (UNODC) and the Office of the United Nations High Commissioner for Human Rights (OHCHR).

HR/PUB/17/6 (OHCHR)

Cover photograph: © iStock/kelvinjay

Publishing production: English, Publishing and Library Section, United Nations Office at Vienna.
This publication has not been formally edited.

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Acknowledgements

The resource book is the result of a joint effort by the United Nations Office on Drugs and Crime (UNODC) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), with the financial and substantive support of the Swiss Ministry of Foreign Affairs and the financial support of the Ministry of Foreign Affairs of Norway. The publication benefited from information gathered at an expert meeting held in Vienna in May 2015, as well as through two regional expert meetings organized by the Geneva Academy of International Humanitarian Law and Human Rights and UNODC, respectively in Buenos Aires, from 8 to 9 May 2014 and Tunis, from 26 to 28 January 2015.

The contributions received from the following experts are hereby acknowledged with appreciation: Otto Adang, Netherlands Police Academy; Stuart Casey-Maslen, Consultant to Professor Christof Heyns, University of Pretoria and former United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions; Neil Corney, Omega Research Foundation; Milena Costas Trascasas, Consultant; Omer Fisher, OSCE Office for Democratic Institutions and Human Rights (ODHIR); Chris Graveson, Consultant; Robert Grinstead, Consultant; Hilarius (Lars) Huybrechts, International Committee of the Red Cross (ICRC); Neil Jarman, Institute for the Study of Conflict Transformation and Social Justice, Queen's University Belfast; Chair, OSCE Panel of Experts on Freedom of Peaceful Assembly; Tim Mairs, Police Service of Northern Ireland (PSNI); Simon Martin, Consultant, former police officer (United Kingdom); Miriam Minder, Swiss Government; Ruth Montgomery, Consultant; Jacob Punnoose, India National Police; David Rosset, Office of the Police Commissioner, United Nations Mission in South Sudan; Matthew Sands, Legal adviser, Association for the Prevention of Torture; Olafimihan Adeoye, Deputy Commissioner of Police (DCP) Operations, Nigerian Police Force, Awka-Anambra State HQ; Ignacio Cano, Coordinator Laboratory for the Analysis of Violence, State University Rio de Janeiro; Maja Daruwala, Commonwealth Human Rights Initiative (CHRI), New Delhi; Uladzimir Dzenisevich, Commonwealth Human Rights Initiative (CHRI), New Delhi; Hugo Frühling, University of Chile; Roger Gaspar, Consultant, former police officer (United Kingdom); Rachel Neild, Open Society Justice Initiative (OSJI); Vivienne O'Connor, United States Institute of Peace (USIP); Ralph Price, Chicago Police Department; Darius Rejali, Reeds University; Colin Roberts, Universities Police Science Institute, former police officer (United Kingdom); Ralph Roche, Human Rights Advisor, Police Service of Northern Island (PSNI); Josiane Somdata Tapsoba, Legal Officer, African Commission on Human and Peoples' Rights (ACHPR) Secretariat, African Union Commission (AUC), and the International Network to Promote the Rule of Law (INPROL).

Special thanks and acknowledgement to Christof Heyns, former United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions; Maina Kiai, former Special Rapporteur on the freedoms of peaceful assembly and of association; Manfred Nowak, former Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and Eleanor Jenkins and Kathleen Hardy, consultants to the Special Rapporteurs.

UNODC wishes to acknowledge the substantive contribution of Anneke Osse, as consultant. Contributing throughout the development of the resource book were UNODC staff Anna Giudice, Claudia Baroni, Johannes (Joop) de Haan, Mohamed Hassani, Philip Meissner, Piera Barzano, Simon Charters, Simone Heri, Ulrich Garms and Valerie Lebaux, with the support of UNODC interns Viviane Damoiseaux, Rouzbeh Mouradi and Rohan Sinha. Further contributions came from Julien Chable, Hilarius (Lars) Huybrechts, Neil Davison (ICRC) and Mehdi Benchelah (UNESCO). On behalf of OHCHR, colleagues from the Rule of Law and Democracy Section were the main contributors.*

*The policy of OHCHR is not to attribute authorship of publications to individuals.

Contents

Acknowledgements	iii
List of standards cited and acronyms used	vii
Introduction	1
Key concepts and actors	1
PART I. SETTING THE BOUNDARIES FOR THE USE OF FORCE IN LAW ENFORCEMENT	5
1. The international legal framework for use of force in law enforcement	6
1.1. International human rights law, United Nations Standards and Norms on Crime Prevention and Criminal Justice and the use of force	6
1.2. From international law to day-to-day instructions	8
1.3. Key human rights standards related to use of force	11
1.4. Rights and obligations: respect, protect, fulfil	15
1.5. The obligations in practice: guiding principles for use of force in law enforcement	16
1.6. Use of firearms	20
2. Human rights-based approach to law enforcement: legitimacy, non-discrimination and accountability	24
2.1. Legitimacy: law enforcement by consent rather than force	24
2.2. Non-discrimination: providing fair law enforcement for all	28
2.3. Scrutiny	36
PART II. THE RESPONSIBILITY OF LAW ENFORCEMENT AUTHORITIES	41
3. Command and control	42
3.1. The role of governments and law enforcement agencies in creating the conditions necessary for professional law enforcement	42
3.2. An effective line of command	43
3.3. Orders and obedience	45
3.4. Planning for operations	47
3.5. Creating a culture of professionalism and respect for human rights	50
4. Human resources management	53
4.1. Recruitment, selection and promotion	53
4.2. Training	54
4.3. Performance management	58
4.4. Early intervention systems	60
PART III. INSTRUMENTS OF FORCE	63
5. A “range of means” to allow for a differentiated response	64
5.1. Introduction: apply non-violent means first	64
5.2. A range of means	64
5.3. Instruments of “less-lethal” force	66
5.4. How to decide when to use what type of force?	68
5.5. Use-of-force models and matrices	71
5.6. Protective gear, communication equipment and self-defence	73
5.7. Procuring instruments of force	74

6. Guidance for the most commonly used instruments of force in law enforcement	78
6.1. General principles for all instruments	78
6.2. Instruments of force	80
6.3. Control, storage, registration and issuance of instruments of force	100
PART IV. POLICING SITUATIONS	105
7. Public assemblies and protests	106
7.1. Introduction	106
7.2. Taking precaution: preventing the use of force	109
7.3. Use of force during assemblies	116
7.4. Allowing monitors and journalists	124
7.5. Accountability after the event	125
8. Criminal investigation	128
8.1. Introduction	128
8.2. Criminal investigation methods	128
8.3. The suspect interview	130
8.4. Measures to prevent coercion, ill-treatment and torture during a suspect interview	132
9. Stop and search, arrest and detention	135
9.1. Stop and search	135
9.2. Arrest	136
9.3. Use of force in detention	143
PART V. ACCOUNTABILITY FOR THE USE OF FORCE AND FIREARMS IN LAW ENFORCEMENT	151
10. Reporting, monitoring and review	152
10.1. Introduction	152
10.2. Collecting information: reporting afterwards and recording in “real time”	153
10.3. Collecting and analysing the data	157
11. Complaints and investigations	159
11.1. Introduction	159
11.2. Receiving and handling complaints	160
11.3. Investigations into (alleged) arbitrary or excessive use of force	162
11.4. Remedy	170
12. Independent oversight bodies	172
12.1. Introduction	172
12.2. Setting up an independent external body	173
12.3. Oversight over detention facilities	177
12.4. Report findings	179
References	180

List of standards cited and acronyms used

ACPO	Association of Chief Police Officers
AEP	Attenuating Energy Projectiles
APP	Authorized Professional Practice
Basic Principles	Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF)
Body of Principles	Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment
BPUFF	Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
DPKO	Department of Peacekeeping Operations
ECHR	European Court of Human Rights
EJE	Extrajudicial, Summary or Arbitrary Execution(s)
FOAA	Freedom of Peaceful Assembly and of Association
HRC	Human Rights Committee
IACP	International Association of Chiefs of Police
ICCPR	International Covenant on Civil and Political Rights
ICPAPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICRC	International Committee of the Red Cross
INP	Indonesian National Police
IPID	Independent Police Investigative Directorate (South Africa)
LEA	Law Enforcement Agency(ies)
LEO	Law Enforcement Official(s)
LGBTI	Lesbian, Gay, Bisexual, Transsexual and Intersex
Nelson Mandela Rules	Revised United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR Revised)
NGO	Non-Governmental Organization
NPM	National Prevention Mechanism
OHCHR	Office of the United Nations High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention Against Torture
OSCE	Organization for Security and Co-operation in Europe
PLAN	Proportionality, Legality, Accountability and Necessity
PSNI	Police Service of Northern Ireland
RCMP	Royal Canadian Mounted Police
SAPS	South African Police Service
SMR	United Nations Standard Minimum Rules for the Treatment of Prisoners
SOP	Standard Operational/Operating Procedure(s)
SR	Special Rapporteur
SWAT	Special Weapons and Tactics
UDHR	Universal Declaration of Human Rights
UN Code of Conduct	United Nations Code of Conduct for Law Enforcement Officials
UNESCO	United Nations Organization for Education, Science and Culture
UNODC	United Nations Office on Drugs and Crime
Havana Rules	United Nations Rules for the Protection of Juveniles Deprived of their Liberty

Introduction

This resource book relates to the use of force and firearms by law enforcement officials. Law enforcement officials' power to use force derives from the duty of the State to maintain public order, to protect persons within its jurisdiction, and ensure human rights and the rule of law. While the use of force may be lawful and necessary in certain cases, it can result in damage to property, injury, loss of life and may interfere with or violate human rights. Law enforcement officials have the authority to use force in situations where it is necessary in order to achieve a legitimate law enforcement objective. Force may, for example, be used to ensure compliance with lawful police instructions, to arrest non-cooperative or dangerous suspects, protect members of the general public or break up a violent crowd. However, such use of force should always respect a State's obligations under international law, which include conditions imposed by international human rights law, included in treaties or recognized as customary international law. The United Nations standards and norms on crime prevention and criminal justice, developed and adopted through consensus by the governing bodies of UNODC (the Crime Congress, the Commission on Crime Prevention and Criminal Justice, the United Nations Economic and Social Council and the General Assembly) through an intergovernmental process, provide an important benchmark for measuring the functioning of the criminal justice system, including law enforcement agencies.

In order to prevent the abusive use of force and violation of human rights in law enforcement, States should establish a carefully elaborated legal and policy framework, along with the adequate guidance and training that reflects the State's legal obligations, both domestic and international. Any use of force by law enforcement officials must be strictly compliant with that framework.

This resource book explores international law sources relevant to the use of force and the general responsibility of law enforcement authorities for the use of force. It discusses a number of instruments of force, including firearms, and the conditions under which these should be used. It further examines the possible use of force in a number of specific policing situations. Finally, it also outlines good practices for accountability in the use of force and firearms by law enforcement officials.

Key concepts and actors

Use of force

In this resource book, "use of force" refers to the use of physical means that may harm a person or cause damage to property.¹ Physical means include the use of hands and body by law enforcement officials; the use of any instruments, weapons or equipment, such as batons; chemical irritants such as pepper spray; restraints such as handcuffs; dogs; and firearms. The actual use of force has the potential to inflict harm, cause (serious) injury, and may be lethal in some instances.

¹ In a 2001 study the International Association of Chiefs of Police (IACP) defined "use of force" as "the amount of effort required by police to compel compliance by an unwilling subject." For more information on the definition of "use of force", visit IACP Police Use of Force in America (United States, 2001): <http://www.theiacp.org/Portals/0/pdfs/Publications/2001useofforce.pdf>.

In accordance with international law, force should only be used to the extent it is necessary² to achieve a legitimate law enforcement objective and be applied in accordance with domestic laws, regulations and training that, in turn, are compliant with relevant international obligations. Where this is not the case and the force applied is excessive or arbitrary, it is by definition also unlawful. In the case of allegations of unlawful or arbitrary use of force, there should be accountability mechanisms in place.

Firearms

There is no internationally agreed definition of the term “firearm”, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials does not provide a definition. In the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, 2001, firearm refers to “any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas”,³ and this resource book uses this definition as a reference. The different types of firearms relevant for this resource book are further explored in chapter 6.

Unlawful, excessive or arbitrary use of force

Unlawful use of force means force that violates the principle of legality, i.e. force that has an insufficient legal basis or that is used in pursuance of an objective that cannot be qualified as a legitimate law enforcement objective. Such legitimacy is determined by domestic law, which should be compliant with international human rights obligations. Excessive use of force applies to situations where the use of force was legal and legitimate, but the type and level of force was unnecessary and/or disproportionate. Use of force is arbitrary when resorting to force (or the specific type and level of force), is not legitimate in light of the specific circumstances, and presents an element of injustice, discrimination, unreasonableness, abuse of power, or exercise of unwarranted discretion. Arbitrary use of force may be both unlawful and/or excessive.

Law enforcement official

The United Nations Code of Conduct for Law Enforcement Officials⁴ defines the term “law enforcement official” as:

“All officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or 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”.⁵

² For more on the concept of necessity as well as other standards see chapter 1, 1.5.

³ The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, which supplements the United Nations Convention against Transnational Organized Crime, was adopted by General Assembly resolution 55/255 of 31 May 2001.

⁴ Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979, available from: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>

⁵ See Commentary to article 1 of the United Nations Code of Conduct for Law Enforcement Officials (GA/RES/34/169).

The Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials state that the “definition of law enforcement officials shall be given the widest possible interpretation”.⁶ This resource book adopts the definition set out in the above-mentioned instruments. However, for purposes of readability, it also uses the term “police” synonymously to “law enforcement officials”. Both terms are meant to cover all personnel involved in law enforcement, from border guards to immigration officials, if those officials are empowered to enforce laws. Whenever members of military forces execute functions of law enforcement, they should comply with the same international human rights laws as law enforcement officials, in addition to their responsibilities under international humanitarian law, where it is applicable. States should also ensure their laws address the use of force by private security providers, who are engaged by the authorities to carry out law enforcement functions, and hold them equally accountable.⁷

Objectives of this resource book

Over the past decades, a number of international standards on the use of force in law enforcement have been developed. The two most commonly cited instruments are the 1979 United Nations Code of Conduct for Law Enforcement Officials (United Nations Code of Conduct) and the 1990 Basic Principles on the Use of Force and Firearms for Law Enforcement Officials (BPUFF).⁸ The United Nations Code of Conduct and the Basic Principles both provide guidance to States on the use of force by any law enforcement official, including, but not limited to, the police. This resource book aims to provide further guidance to States on how to implement these standards and translate these instruments into law, policy and practice, and also in the light of standards set by international human rights law.⁹

This resource book focuses on four aspects of the use of force:

- How to use force in conformity with applicable United Nations standards and norms and international human rights law
- What can be done to reduce the need to resort to force
- How the abuse of force can be prevented
- What measures should be taken when unlawful, excessive or arbitrary use of force occurs

The resource book restricts itself to examining issues related to the use of force and firearms in the context of law enforcement operations and does not address the use of force that occurs in the conduct of hostilities.¹⁰

This resource book offers technical guidance for drafting domestic laws, policies on the use of force and firearms in law enforcement, as well as accompanying sample regulations and standard operating procedures (hereafter “SOPs”), which can then be translated into training and used when drafting tactical plans for specific operations and daily instructions. It draws upon the

⁶ See E/RES/1989/61 at: https://www.unodc.org/pdf/compendium/compendium_2006_part_04_01.pdf

⁷ See UNODC *Introductory Handbook on State Regulation concerning Civilian Private Security Services and Their Contribution to Crime Prevention and Community Safety*, 2014, p. 44.

⁸ The Basic Principles were adopted by the eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990; and reaffirmed by the GA (A/RES/45/166) during the sixty-ninth plenary meeting on 18 December 1990.

⁹ See Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, Guideline IB(1): Governments shall also promote education and training through a fruitful exchange of ideas at the regional and interregional levels.

¹⁰ For more on this, see for example ICRC, *Expert Meeting – The use of force in armed conflicts, Interplay between the conduct of hostilities and law enforcement paradigm*, 2013, available from: <https://www.icrc.org/eng/assets/files/publications/icrc-002-4171.pdf>

widely applied and recognized United Nations Standards and Norms on Crime Prevention and Criminal Justice and examples of national laws, regulations and practices from around the world.

It has to be noted, however, that the country examples referenced in this resource book are illustrative and their use in this resource book does not imply that these laws, regulations or practices are endorsed by the United Nations or considered best practice. Nor does this resource book suggest the adoption of these examples in other States without any further reflection as efficient laws and policies need to be adapted to the context in which they are to operate, having due regard to the political, social, economic climate, the security situation in the country, the legal traditions, etc. Moreover, no matter how good the legal or policy framework, their impact depends on the will and resources to implement them, with due respect for human rights and the rule of law.

Target group of this resource book

This publication is offered as a tool to support States in their efforts to develop more effective and human rights-based law enforcement. The target group for this resource book are policymakers, legal drafters, and staff at relevant government ministries, law enforcement agencies and training colleges responsible for drafting policies, regulations, SOPs and training manuals on the use of force and firearms, and for stakeholders exercising control and oversight functions over law enforcement agencies. It is also a useful tool for managers across the different command levels. In addition, it is a tool for bilateral and multilateral agencies and non-governmental organizations providing support to law enforcement reform and training initiatives.

PART I

.....
**SETTING THE BOUNDARIES
FOR THE USE OF FORCE
IN LAW ENFORCEMENT**
.....

Chapter 1. The international legal framework for use of force in law enforcement

The Basic Principles of the Use of Force and Firearms (BPUFF) reflect the basic standard that law enforcement officials should in carrying out their duty, as far as possible, apply non-violent means before resorting to the use of force and firearms. They define a set of parameters within which law enforcement officials may use force and firearms when carrying out their functions, and prohibit the use of force that does not comply with these parameters and which therefore is unlawful, arbitrary or excessive.¹¹

This chapter identifies the key human rights obligations and commitments applicable to the use of force in law enforcement, and how these are translated into guiding principles for law enforcement practice. All human beings are entitled to respect for their human rights and fundamental freedoms, including the right to life and to security of their person, and to be free from torture and other cruel, inhuman or degrading treatment or punishment.¹² These rights and freedoms need to be guaranteed in domestic laws, policy and practice. Guaranteeing respect and protection of human rights requires that States set up adequate rules and procedures governing whether, when, and in what manner the State is entitled to use force for law enforcement purposes.

1.1. International human rights law, United Nations Standards and Norms on Crime Prevention and Criminal Justice and the use of force

International human rights law is a body of law designed to regulate the relationship between States and individuals within their jurisdiction by setting out the rights individuals are entitled to, and the corresponding obligations of the State and other actors. By becoming parties to

¹¹ See the BPUFF and the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2006/53), 8 March 2006, para. 48: “Human rights law unconditionally prohibits the needless killing of suspected criminals, but it fully recognizes that lethal force is sometimes strictly necessary to save the lives of innocent people from lawless violence.”

¹² Key international instruments include the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Regional instruments include: European Convention on Human Rights; American Convention on Human Rights; African Charter on Human and Peoples’ Rights; Arab Charter of Human Rights; Inter-American Convention to Prevent and Punish Torture; European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

international treaties, States assume obligations to respect, to protect and to fulfil human rights.¹³ In addition to their obligations deriving from international treaties, States are also bound by those international human rights standards that have the status of customary international law.

Other international instruments also provide important guidance on the use of force and firearms. The two most important are the United Nations Code of Conduct for Law Enforcement Officials (United Nations Code of Conduct) and the Basic Principles on the Use of Force and Firearms for Law Enforcement Officials (Basic Principles/BPUFF).¹⁴ Those international declarations, guidelines and principles, although not legally binding, can contribute to the understanding, implementation and development of international human rights law.

The United Nations Code of Conduct, adopted by the General Assembly in 1979, states in article 3 that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. The Basic Principles were adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990 and, on 18 December 1990, the United Nations General Assembly adopted resolution 45/166, welcoming the Basic Principles and inviting States to “respect them and to take them into account within the framework of their national legislation and practice”. The Basic Principles set out the core parameters to determine the lawfulness of use of force by law enforcement personnel and establish standards for accountability and review.

These instruments, and in particular their provisions on the use of force as they relate to the right to life and physical integrity in particular—article 3 of the Code of Conduct and principle 9 of the Basic Principles—are relied upon as authoritative by regional and national courts.^{15,16}

In addition to the international instruments developed under the aegis of the United Nations, a range of instruments has been developed at the regional level, including binding and non-binding instruments.

¹³ See, for example, United Nations Human Rights Committee General Comment No. 31 [80], The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13.

¹⁴ Other relevant standards include the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; Declaration on the Protection of All Persons from Enforced Disappearance; Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”); United Nations Rules for the Protection of Juveniles Deprived of their Liberty (“Havana Rules”); United Nations Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice; Istanbul Protocol; Declaration on the Rights of Indigenous Peoples; United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice; Revised United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR Revised or Nelson Mandela Rules); United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. For more information, visit: https://www.unodc.org/documents/justice-and-prison-reform/English_book.pdf

¹⁵ See, for example, Inter-American Court of Human Rights, *Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela*, 5 July 2005, IACtHR Ser. C No. 150, paras. 68-69; *Zambrano Vélez et al. v. Ecuador*, 4 July 2007, IACtHR Ser. C. No. 166, para. 84; African Commission on Human and Peoples’ Rights, *Kazingachire et al. v. Zimbabwe*, Comm. 295/04, 12 October 2013, para. 110.

¹⁶ The United Nations Special Rapporteur on extrajudicial, summary, or arbitrary executions, and other experts, have noted that provisions of the Code of Conduct and the Basic Principles are “rigorous applications of legal rules that States have otherwise assumed under customary or conventional international law. Among these are the instruments’ core provisions on the use of force. Thus, the substance of article 3 of the Code of Conduct and principle 9 of the Basic Principles reflects binding international law”. See for example, Interim report on the worldwide situation in regard to extrajudicial, summary or arbitrary executions, 5 September 2006, (A/61/311), para. 35; Jelena Pejić, “Conflict classification and the law applicable to detention and the use of force”, chapter 4 in E. Wilmshurst (ed.), *International Law and the Classification of Conflicts*, Oxford University Press, 2012, p. 110; OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, page 87.

1.2. From international law to day-to-day instructions

Establishing a system that reinforces compliance with international human rights obligations and promotes standards and norms on crime prevention and criminal justice as well as international good practices requires not only an adequate legal and operational framework but also the political will, the resources and institutions to implement and act accordingly. While many of the details regarding the use of force in law enforcement will be found in the operational framework, certain issues need to be regulated by laws. These issues include:

- The general principles governing any use of force (the principles of legality, necessity, proportionality and non-discrimination)
- The thresholds for the use of lethal force (both potentially lethal and intentional lethal force)
- Rules on accountability (criminal and other forms) and the rights of victims of unlawful, excessive or arbitrary use of force
- Control and oversight mechanisms

In most jurisdictions, the basics are laid down in the form of a law regulating the corresponding law enforcement agency accompanied by various pieces of legislation, which provide guidance for policing situations of narrower scope. Some States may have delegated authority for certain law enforcement to subnational governments, like state or local governments, who may have their own laws governing use of force. In all cases, such laws may be subject to interpretation and elaboration by courts. In addition to such laws, States may develop policies that further develop the general framework for the use of force laid out in laws, for general as well as for particular policing situations.

Based on the above, the following are important points to bear in mind when drafting domestic laws:

- Clearly define when law enforcement officials may use force and for what purpose, and ensure that such laws are sufficiently accessible to the public.
- Clearly spell out that the use of force can only be allowed for achieving a lawful law enforcement objective.
- Force can only be used when absolutely necessary to achieve the lawful objective; the type and level of force used must be able to achieve the objective. Law enforcement officials shall as far as possible apply non-violent means before resorting to the use of force and firearms.
- The principle of proportionality should be duly reflected in the law and it should be ensured that law enforcement officials do not incur negative consequences when aborting operations if deemed disproportionate.
- Appropriate control and oversight on the compliance of law enforcement officials' actions with international and domestic laws and norms and standards should be arranged for and mechanisms should be created to hold those who commit violations accountable.
- States must also ensure that victims of violations have access to an effective remedy, including access to justice and reparations.
- The required steps before using force and in its aftermath should be clearly spelled out and known to law enforcement officers.

- Guidance must be given on the use of firearms. They should only be used in self-defence or in defence of others against an imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, or to arrest a person presenting such a danger and resisting authority, or to prevent his or her escape. Even in these cases, the use of firearms is only warranted if less extreme measures are not available.
- Arbitrary or abusive use of force and firearms should be punished as a criminal offence.

A good practice is for law enforcement agencies to further develop a national policy on the use of force in law enforcement, applicable to all security forces carrying out law enforcement functions. Such a use-of-force policy serves as a basis for developing further guidance (such as standard operating procedures) on the use of force in specific law enforcement situations, such as policing assemblies and protests, but also to provide a coherent approach in areas such as reporting, oversight and training.

POLICY ON POLICING PROTESTS

An example of such policy can be found in South Africa, on its policing of public protests, gatherings and major events.⁹ The policy starts with a policy statement, followed by a summary of the relevant legislative and policy framework, including the Constitution, applicable laws, standing orders and regulations. The policy also references South Africa's international obligations. A framework is then provided for what needs to be done in order to comply with obligations under international and domestic law, such as setting up a specialized unit, training its members, command and control, operational planning, etc.

⁹ See South Africa, Ministry of Police: Policy and Guidelines: Policing of Public Protests, Gatherings and Major Events, 2011 at: http://www.policesecretariat.gov.za/downloads/policies/policing_public_protests_2013.pdf

It is good practice for States to conduct public consultations, including with civil society organizations, when developing or reviewing such laws and policies, in order to gain public acceptance and support in the implementation of these instruments. The United Nations can also provide legislative assistance to the process, upon request.

The legislation and policy may then be “translated” into operational guidance through regulations, including standard/standing operating procedures (SOPs), orders, or other internal operational regulatory tools, providing practical guidance or directions detailing specific steps, procedures and precautions that should be taken in a range of scenarios. For instance, SOPs can regulate how to use a piece of equipment or respond to an incident. In addition, in certain countries the code of conduct delineates acceptable from unacceptable behaviour, based on organizational values and ethics.

Operational guidance related to the use of force may include:

- Reference to relevant international obligations and commitments and domestic law as relevant
- A section defining the main concepts
- A section laying down the general principles governing the use of force
- Instructions for the use of particular instruments of force
- Instructions related to care to be provided in the event of an injury
- Recording and reporting obligations

- A section specifying the chain of command, operational decision-making at the scene of the operation, as well as control and oversight procedures
- A section on training requirements
- Storage of/access to instruments limited to the use of police and related responsibilities
- A feedback mechanism and lessons learned to improve SOPs

It is good practice to share regulations and SOPs with the public, for example by publishing them on any relevant institutional website. This increases public awareness of agency policies and permits law enforcement officials to demonstrate compliance with their own operational framework.¹⁷

Non-compliance with regulations, SOPs and the code of conduct may amount to “neglect of duty” and have disciplinary repercussions. These instruments should therefore be written in plain language that is easily understood and unambiguous. Law enforcement officials need to know and understand the standards they are supposed to comply with, which is usually imparted through training.¹⁸ It is good practice that such training is conducted on a regular basis for new recruits as well as all active law enforcement officials to ensure that their knowledge and practice is current. It is recommended that all officials have personal access to the regulations, SOPs and codes of conduct, and be provided with a copy.

All the above provides guidance to law enforcement officials as they carry out their work. On a day-to-day basis they get instructions and briefings from their supervisors, based on the operation plans prepared, on how to approach a particular event, prepare for a specific operation, or for their daily patrols. During specific operations, there is also likely to be real-time command and control.

It is important that different laws, policies and regulations are consistent with each other,¹⁹ and that the daily instructions given to a law enforcement official, on the basis of which he or she operates, accord with the regulations, which in turn accord with the domestic legal framework, and that this law itself is in compliance with international human rights law.

Responsibility for drafting and reviewing regulations, developing training, and establishing planning processes and instructions is usually placed with either the Ministry of Interior or its equivalent, and sometimes directly with the law enforcement agency. In some federal States, for example Argentina, Mexico and the United States, the competence to draft regulations for many law enforcement functions and powers, such as the power to use force, are placed at the state level. Whichever may be the case, the obligations of the State under international human rights obligations should be observed. All of these steps should also be kept under review by relevant independent domestic oversight bodies, which may include the Parliament and national human rights institutions.

¹⁷ Or other publication channels as available in the country. It is important to note that not all SOPs may be appropriate for publication due to the sensitive information they may include.

¹⁸ See Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials. See also OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017.

¹⁹ Samuel Walker and Carol Ann Archbold, *The New World of Police Accountability*, Sage Publications, United States, 2014.

1.3. Key human rights standards related to use of force

The rights discussed in this section are all particularly relevant to the use of force by law enforcement officials. The meaning and scope of these rights, as well as how they shall be protected, should be well understood by law enforcement officials.

Right to life

The use of force and firearms has the potential to infringe on the right to life, which is often described as a right without which all other rights would have no meaning. The right to life is protected by article 3 of the Universal Declaration of Human Rights and article 6(1) of the ICCPR, which provides that: “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”.²⁰ The right not to be arbitrarily deprived of life implies that the right to life is not absolute, as indeed some deprivations of life may be non-arbitrary. However, even those exceptional measures leading to deprivations of life which are not arbitrary per se must be applied in a manner which is not arbitrary in fact. Such exceptional measures should be established by law and accompanied by effective institutional safeguards designed to prevent arbitrary deprivations of life. In international law, the right to life includes protection against arbitrary deprivation of life by State security forces.²¹

The prohibition on arbitrary deprivation of life is absolute and non-derogable, and is a rule of customary international law. The prohibition must be respected at all times: no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of arbitrary deprivation of the right to life.²²

The right to life is also reflected in the BPUFF, stating that “law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person”. Principle 9 further provides that the use of lethal force may not be applied in any situation where it is not strictly necessary to save lives. The use of force that results in the death of a subject could therefore, depending on the circumstances, amount to a gross human rights violation.

Right to freedom from torture and other forms of ill-treatment

The right to be free from torture and any other forms of cruel, inhuman or degrading treatment or punishment (hereafter “torture and other forms of ill-treatment”) is also absolute, meaning that it cannot be restricted under any circumstances, either through limitations or through derogations.²³ An order from a superior officer or a public authority may not be invoked as a justification of such acts.²⁴ Moreover, the State must “keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture”.²⁵

²⁰ See ICCPR, article 6(1) ICCPR; UDHR, article 3. However, in a conduct of hostilities context, arbitrary deprivation of life is assessed also by reference to international humanitarian law.

²¹ Human Rights Committee, General Comment No. 6, article 6 (Right to life), 1982, para. 3.

²² See ICCPR, article 4(3); CAT, article 2(2).

²³ This right is reflected in the UDHR, article 5; ICCPR, article 7; CAT, article 2; the European Convention on Human Rights, article 3; African Charter on Human and Peoples’ Rights, article 5; American Convention on Human Rights, article 5.2, as well as in many other international and regional instruments. See also the United Nations Code of Conduct for Law Enforcement Officials, article 5.

²⁴ See CAT, article 2(3).

²⁵ See CAT, article 11.

The Human Rights Committee has stated that the aim of this absolute prohibition is to protect both the inherent dignity of the human person and his or her physical and mental integrity.²⁶ The prohibition of torture and other forms of ill-treatment is widely accepted as forming part of customary international law, binding on all States.²⁷

As stated by the Human Rights Committee, States must take all necessary and reasonable steps to protect those under their jurisdiction against acts of torture and ill-treatment, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.²⁸ They must also actively inform their populations, and in particular law enforcement personnel about the prohibition of torture and ill-treatment.²⁹

The use of force and firearms in law enforcement could, depending on the circumstances, amount to torture or other forms of ill-treatment. Article 1 of the Convention against Torture clarifies that pain and suffering that arise only from or that are inherent in or incidental to lawful sanctions do not constitute torture. The use of force that results in severe pain and suffering which, in the particular circumstances of the case, is considered excessive, unjustifiable or disproportionate, would amount to a form of ill-treatment.³⁰ Thus, the use of force by law enforcement officers, both when the subject is under their direct control (arrest, detention) and in cases of incident control (during riot control) may amount to torture (if the use of force is unlawful, and falls under the definition of torture) or cruel, inhuman, and degrading treatment (if the lawful use of force is excessive, disproportionate and unjustifiable).³¹

Right to liberty and security of person

Another core human right is the right to liberty and security of person.³² While liberty of persons concerns freedom from confinement of the body (not general freedom of action), security of person concerns freedom from injury to the body and the mind, or bodily and mental integrity.³³ The Human Rights Committee has explained that “the right to security of person protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained”, which includes an obligation to prevent and redress unjustifiable use of force in law enforcement.³⁴ As such, this right is to be read in conjunction with article 7 (prohibition of torture and other forms of ill-treatment) and article 10(1) of the ICCPR, which state that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”.

²⁶ See Human Rights Committee, General Comment No. 20, article 7, para. 2.

²⁷ See Questions Relating to the Obligation to Prosecute or Extradite (*Belgium v. Senegal*), Judgment of 20 July 2012, ICJ Reports 2012, para. 99.

²⁸ See Human Rights Committee, General Comment No. 20, article 7, para. 2.

²⁹ See CAT, article 16; Human Rights Committee, General Comment No. 20, article 7, para. 10. The Human Rights Committee particularly stressed the importance of disseminating such information to “enforcement personnel, medical personnel, police officers and any other persons involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment” and that such persons must receive appropriate instruction and training to ensure that they do not violate the prohibition of torture and other cruel, inhuman or degrading treatment while exercising their functions.

³⁰ Reports of the Committee Against Torture, see: A/52/44(1997), A/54/44 (1999), A/56/44 (2001), all available from: <http://www.ohchr.org/en/hrbodies/cat/pages/catindex.aspx>. The European Court of Human Rights also has stated in several cases, including *Rehbock v. Slovenia* and *Ivan Vasilev v. Bulgaria* that “unjustified” and “excessive” use of force by law enforcement officers during apprehension, arrest or detention of a suspect is considered a violation of article 3 of the European Convention of Human Rights. See also M. Novak, “What Practices Constitute Torture? US and UN Standards”, *Human Rights Quarterly* 28 (2006), pp. 809-841.

³¹ For further details see OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, chapter 5.

³² See UDHR, articles 3, 9-11; ICCPR, article 9.

³³ See Human Rights Committee, General Comment No 35, article 9, para. 3.

³⁴ See Human Rights Committee, General Comment No 35, article 9, para. 9.

The right to liberty and security of person are important in the context of this resource book, as force may be applied (and misused) in arrest and detention operations, and may as such lead to a violation of this right when the use of force was unlawful, excessive or disproportionate.

Right to a fair trial

The right to a fair trial includes the principle of equality before the law, the principle of presumption of innocence and the right of everyone to a fair hearing before a competent, independent and impartial tribunal established by law, in determination of a criminal charge.³⁵ While it is a right that can be derogated from, such derogations must not endanger the fundamental principles of fair trial.³⁶

The inappropriate use of force by law enforcement officials may be an element of consideration in the course of a trial. For example, the use in criminal proceedings of statements obtained as a result of a violation of the prohibition of torture or other forms of ill-treatment (e.g. confessions as a consequence of torture) may render the whole trial automatically unfair.³⁷

Rights to freedom of peaceful assembly, association and freedom of expression

The rights to freedom of peaceful assembly, association and expression are considered fundamental rights for fair societies and good governance.³⁸ However, these rights are not absolute and their enjoyment can be limited under certain conditions. Limitations to these rights must, however, be provided for by law, necessary in order to achieve a legitimate aim and proportionate to that aim.

Both the right to freedom of peaceful assembly and the right to freedom of association may be restricted, if such restrictions are in conformity with the law and necessary in a democratic society, in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.³⁹

The right to freedom of expression may similarly be subject to certain restrictions as long as these are “provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals”.⁴⁰ Moreover, expression that amounts to propaganda for war, advocacy of national, racial or religious hatred that constitutes incitement to hatred, hostility or violence shall be prohibited.⁴¹

It is particularly important that law enforcement officials fully understand these rights and the (strict) conditions under which they can be limited, in particular as law enforcement officials are

³⁵ See ICCPR, article 14.

³⁶ Human Rights Committee, General Comment No. 29: “States of emergency (article 4)”, United Nations Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 16; Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 11.

³⁷ See the Convention against Torture, article 15 (prohibition to use evidence obtained through torture), as well as—for example—the Human Rights Committee, General Comment No. 32, article 14, para. 6 and the jurisprudence of the European Court for Human Rights: http://www.echr.coe.int/Documents/Guide_Art_6_criminal_ENG.pdf

³⁸ See UDHR, articles 20 and 19; ICCPR, articles 21, 22 and 19. For an overview of the right to assemble peacefully and to associate in many international and regional treaties, visit: <http://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/InternationalStandards.aspx>.

³⁹ See ICCPR, articles 21 and 22(2).

⁴⁰ See ICCPR, article 19(3).

⁴¹ See ICCPR, article 20(2).

often called upon to facilitate assemblies and protests. An assessment of the appropriateness of using force in such contexts should take into consideration the rights of those participating in such events.

Right to an effective remedy

As part of their human rights obligations, States must also provide for an effective remedy in case human rights have been violated.⁴² The right to remedy requires States to set up relevant mechanisms where people whose rights have been violated can seek and secure redress. The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law⁴³ provide further guidance in this regard.

EXCEPTIONAL CIRCUMSTANCES

Under international human rights law, it is possible for States to exceptionally derogate from certain human rights obligations as well as to impose limitations on the exercise of certain rights. Such restrictions on rights, whether in the form of limitations or derogations, can never be arbitrary or discriminatory.

Limitations

The ICCPR and other human rights instruments allow States to limit certain rights and freedoms, but only in conformity with the law and when necessary in a democratic society. Limitations are only permitted in pursuance of a legitimate aim, such as in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.^a Any measures taken to limit the enjoyment of rights must be necessary under the circumstances and proportionate to the legitimate aim pursued and the threat encountered. Moreover, safeguards against the arbitrary or abusive application of the law and of concrete measures must be available. The rights and freedoms that can be limited include:

- Liberty of movement
- The right to manifest one's religion or belief
- Freedom of expression
- Freedom of peaceful assembly
- Freedom of association

Derogations

The ICCPR also provides for the possibility for States to temporarily adjust certain obligations under the treaty at times of "public emergency which threatens the life of the nation", provided a number of conditions are met.^b Measures derogating from human rights obligations are bound by the principle of proportionality as they are only permitted "to the extent strictly required by the exigencies of the situation", they must be limited in time, and may not be discriminatory. Certain human rights, such as the rights to life and freedom from torture and other forms of ill-treatment are non-derogable in all situations, including states of emergency or armed conflict. With regard to the use of force, the BPUFF provide that exceptional circumstances, such as internal political instability or any other public emergency may not be invoked to justify any departure from the BPUFF.^c

^a ICCPR, articles 6, 12, 18, 19, 21 and 22.

^b ICCPR, article 4. See also article 15 of the European Convention on Human Rights, and article 27 of the American Convention on Human Rights. The African Charter on Human and Peoples' Rights does not contain a derogation clause. However, domestic law should still accord with international obligations.

^c BPUFF, principle 8.

⁴² See ICCPR, article 2(3).

⁴³ Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005, see for full text at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

1.4. Rights and obligations: respect, protect, fulfil

Human rights obligations are binding on all States and thus on all State organs and agents—including law enforcement agencies. These obligations have implications for law enforcement agencies at strategic, operational and tactical levels, and before, during and after the use of force. Scarcity of resources is not an acceptable justification for failure to comply with these duties.

States, and hence State organs and agents, have the following obligations:⁴⁴

- They have a duty to respect human rights, i.e. they must refrain from unduly interfering with or curtailing the enjoyment of human rights.
- They are obliged to take reasonable and effective measures to protect persons within their jurisdiction against actions by third parties, including non-State actors that threaten their human rights, including their life, limb or property.
- They must fulfil human rights, that is, they must take positive action to facilitate the enjoyment of basic human rights, through adopting appropriate legislative, administrative, budgetary, judicial, promotional and other measures. They must make sure that people know about their rights and can indeed enjoy them and seek redress when their right(s) have been violated.

RESPECT FOR THE RIGHTS OF LAW ENFORCEMENT OFFICIALS

While law enforcement officials are duty bearers with an obligation to protect the human rights of others, they are rights holders as well and States have a responsibility to respect and protect their rights too. This means for example that States have a responsibility to ensure that their law enforcement officials work under adequate conditions (including in terms of salaries, rest and vacation, family protection); are well trained and equipped, including with self-protective equipment; that operations are well-planned; and receive appropriate instructions, in order to avoid placing officials in unnecessary danger. Moreover, there is a need to have an effective chain of command that allows for clearly defined and delineated responsibilities and adequate control and oversight mechanisms. Creating an environment in which law enforcement officials are aware of their rights and see their rights and concerns respected is an important factor in ensuring they carry out their work with confidence and with the commitment to protect the rights of others.^a

^a For a more detailed overview of the rights of law enforcement officials, see OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, chapter 20 (Rights of Law Enforcement Officials).

⁴⁴ See for example Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, United Nations Doc. CCPR/C/21/Rev.1/Add.13 (2004).

1.5. The obligations in practice: guiding principles for use of force in law enforcement

Based on the above international standards, any use of force by law enforcement should be in accordance with the following principles: legality, necessity, proportionality, non-discrimination, precaution, and accountability.⁴⁵

Legality

Principle 1 of the Basic Principles requires governments and law enforcement agencies to “adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials”.⁴⁶ To prevent abuse, domestic law needs to define when law enforcement officials may use force and for what purpose. In order to safeguard against arbitrary interpretation and abuse, the provisions must be clear and unambiguous, so that they are foreseeable both to those applying them and to those that will be affected by their application, i.e. both to law enforcement officials and the public.

Captured within the principle of legality is the objective of using force. Only when it is used with the aim of achieving a lawful law enforcement objective, can the use of force be justified. Therefore, any use of force that occurs for another purpose, such as for personal gain or as a punishment, would not be compliant with the principle of legality. To safeguard against abuse, domestic law must define lawful law enforcement objectives in a sufficiently clear manner.

The Special Rapporteur on extrajudicial, summary or arbitrary executions issued a report in April 2014 on domestic legislation and the use of force. Legislation of 146 countries was considered and examples of good practice for regulating the use of force were discussed in this report, which is available at: www.use-of-force.info.⁴⁷

Necessity

The second principle is that of necessity as captured in article 3 of the United Nations Code of Conduct: “Law enforcement officials may use force only when strictly necessary [and to the extent required] for the performance of their duty.” This is reiterated in principle 4 of the Basic Principles: “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 are deemed ineffective or without any promise of achieving the intended result”.

In other words, law enforcement officials should only use force when it is absolutely necessary to achieve a lawful and legitimate policing objective. Moreover, the type and level of force used should also be able to achieve the law enforcement objective pursued. Thus, before resorting to force, law enforcement officials should always ask themselves: is it possible to achieve the same goal without using force? For example, is it possible to ask someone to cooperate, rather than coerce? Is it possible to negotiate or mediate? If possible, such non-violent alternatives should be attempted and exhausted before resorting to force. Moreover, law enforcement officials should only resort to a certain forcible measure if that measure can alleviate the threat posed.

⁴⁵ See Report of the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/26/36), 1 April 2014.

⁴⁶ See Basic Principles, principle 1 Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, article I.A.1.; Human Rights Committee, General Comment No. 6, article 6, para. 3.

⁴⁷ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/26/36, 1 April 2014.

When resorting to force, law enforcement officials should use the minimum necessary force required to meet the law enforcement objective. Using force that goes beyond the minimum required would be considered unnecessary use of force and thus in violation of a State's obligations under international law. Furthermore, the principle of necessity also includes a temporal component, meaning that force can only be lawfully used until the law enforcement objective is accomplished or can be accomplished. Once the objective has been met or it becomes clear that it cannot be met anymore, the use of force becomes unnecessary and should cease.

Law enforcement officials should never use force to intimidate or to extract information nor should they use force against an alleged offender who is already under control, or in police custody—unless in self-defence or defence of others against an imminent threat. When the person subjected to the force has been restrained or is incapable of resisting, additional use of force would be unnecessary, and therefore unlawful. Such use of force may amount to assault and battery, or even torture or ill-treatment.

EXAMPLES OF LEGALITY, NECESSITY AND PROPORTIONALITY IN DOMESTIC LAW

In his report reviewing domestic legislation on the use of force by law enforcement officials,⁹ the Special Rapporteur on extrajudicial, summary or arbitrary executions noted that the emphasis in the laws was often on law enforcement objectives but not on the question of whether the person concerned poses a threat, which obviously should constitute the key element for deciding on the appropriate, hence proportional, type of force. He further provides examples of domestic law referring to the principles of necessity and proportionality.

An example of a clear reference to the principle of necessity would be: “[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”.

Note that references in the law that force “not greater than that required” or as “little force as necessary shall be used” need to be accompanied by provisions on proportionality, as otherwise it would allow the fleeing thief, posing no immediate danger, to be shot with apparent impunity, which would contradict international standards.

An example of a clear reference to the principle of proportionality is “[t]he force used shall be proportional to the objective to be achieved, the seriousness of the offence, and the resistance of the person against whom it is necessary, and only to the extent necessary while adhering to the provisions of the law and Standing Orders”. Provisions such as “use all reasonable means necessary”, and “use such means as are necessary to effect the arrest”, if not narrowed by accompanying requirements of proportionality and necessity, allow uncontrolled (and unlawful) discretion by the law enforcement official.

⁹ See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/26/36), 1 April 2014.

Proportionality

The principle of proportionality serves to assess the balance between the harm caused through the use of force and the benefits thereby achieved. Principle 5 of the Basic Principles provides:

“Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved”.

Any law enforcement official considering the use of force should consider the balance between the type and level of force used and the harm that it can cause for the subject with the threat posed by the subject. The law enforcement objective pursued is linked to the level of threat posed by the subject of the law enforcement action. Thus an important consideration when establishing the proportional response is the level of threat to life and property that is being experienced.⁴⁸ Once the harm caused by the use of force outweighs the advantages of its use (the achievement of the law enforcement objective), use of force becomes disproportionate. This may require that the law enforcement official aborts the operation. For example, if catching a petty thief would require the use of firearms (i.e. potentially lethal force), law enforcement officials should refrain from using such force even if that means that the thief may escape. Domestic law should ensure that the principle of proportionality is duly considered in law enforcement and that officers do not incur negative consequences when aborting operations in such cases.

In order to give meaning to the principles of necessity and proportionality, law enforcement officials should be able to choose from a range of instruments and techniques to use force in order to opt for the least intrusive and most proportional one in the circumstances to achieve the legitimate policing objective.

Non-discrimination

Non-discrimination is a fundamental aspect of all States' obligation to respect, protect and fulfil their respective human rights obligations, and is essential for ethical, legal and democratic policing.⁴⁹ As provided in article 2 of the Code of Conduct for Law Enforcement Officials and its commentary, in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons. This means they have the duty to respect and protect the human rights of every person, without discrimination on the basis of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁵⁰

This requires that the legal and operational framework developed protects against both direct and indirect discrimination.⁵¹ Direct discrimination occurs when the law treats a person less favourably because of a protected characteristic such as religion or sexual orientation, including when that characteristic is perceived, regardless of its actuality. Indirect discrimination occurs when an apparently neutral provision, criterion or practice puts a person with a particular characteristic at a higher disadvantage than others cannot be objectively justified.

The principle of non-discrimination must also be built in the assessment of necessity and proportionality of the use of force to avoid that excessive or arbitrary force is used against a person out of prejudice or with discriminatory intent.

⁴⁸ See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/26/36), 1 April 2014, para. 65.

⁴⁹ The principle of non-discrimination is considered to be customary law and is also enshrined in the Charter of the United Nations, the Universal Declaration of Human Rights and all core human rights instruments. Various human rights treaties bind States parties to respect and ensure to all, without discrimination, that rights enshrined in the treaties as legally binding. This legal standard is found in article 2 (1) of the International Covenant on Civil and Political Rights and article 2(2) of the International Covenant on Economic, Social and Cultural Rights. See also International Covenant on Civil and Political Rights, article 26.

⁵⁰ See ICCPR, article 26.

⁵¹ Committee on Economic, Social and Cultural Rights, General Comment No. 20, para. 10(a); Committee on the Elimination of Racial Discrimination, General Recommendation No. 32, para. 8.

Precaution

It is important to underline that law enforcement actors at all levels should take precautions to avoid or minimize the use of force, that is, make a conscious effort—prior to the escalation of events—to minimize to the greatest extent possible the likelihood of using force. This requires above all effective planning prior to law enforcement operations. As the Special Rapporteur on extrajudicial, summary or arbitrary executions remarked:

“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.”⁵²

Accountability

Under the principle of accountability, States, law enforcement agencies and their officials should take responsibility for inappropriate use of force and answer to their victims. States should set up “a system of internal and external checks and balances aimed at ensuring that [law enforcement agencies] carry out their duties properly and are held responsible if they fail to do so”.⁵³ Law enforcement agencies should be subjected to appropriate control and oversight of their compliance with the legal and operational framework governing their functioning and be held accountable for the fulfilment of their duties, including with regards to their use of force.

Part V of this resource book will go more in-depth into the legal and practical meaning of accountability.⁵⁴

For accountability purposes, the lawful objective of using force and the steps to take in the aftermath of using force must be captured in applicable regulations. Principles 5, 6, 10, 11 of the BPUFF lay out the measures that should be adopted to minimize the adverse consequences that may result from it:

- Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved.
- Minimize damage and injury, and respect and preserve human life.

⁵² See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/26/36), 1 April 2014, para. 63: “A failure to take proper precautions in such a context constitutes a violation of the right to life. In *McCann and Others v. the United Kingdom*, for example, the European Court of Human Rights (application No. 18984/91, 27 September 1995) held that the use of lethal force by soldiers who erroneously but in good faith believed that a group of terrorists were about to trigger an explosion did not violate the right to life, but that the lack of control and organization of the operation as a whole did violate the right.”

⁵³ See UNODC *Resource book on Police Accountability, Oversight and Integrity*, 2011 at: http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/PoliceAccountability_Oversight_and_Integrity_10-57991_Ebook.pdf

⁵⁴ When courts are called to assess *post hoc* whether the use of force by law enforcement in a specific situation was consistent with the guiding principles for the use of force, allowance may need to be made for the emergency nature of the decisions law enforcement officers are called to take in dangerous situations, without benefitting from the opportunity to reflect calmly and the hindsight knowledge that the Court will have when assessing whether the decision taken was right or wrong. (See United States Supreme Court decision in *Graham v. Connor*, 490 U.S. 386 (1989): “The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.”)

- Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment.
- Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.
- Report promptly to superiors any injury or death caused by the use of force or firearms by law enforcement officials.
- Establish effective reporting and review procedures for all incidents of serious injury, or use of firearms.
- In cases of death and serious injury or other grave consequences, a detailed report should be sent promptly to the competent authorities responsible for administrative review and judicial control.
- Before using firearms, law enforcement officials should 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.

1.6. Use of firearms

The use of firearms is always potentially lethal, and law enforcement officials should abide by the highest standards of care in resorting to their use. Moreover, the use of firearms may harm third persons present at the scene of the operation. Indeed, in order to protect the right to life, law enforcement officials should make every reasonable effort to exclude the use of firearms. The Code of Conduct emphasizes that this is especially the case against children and this is also reconfirmed by the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (United Nations Model Strategies).⁵⁵

As with any use of force, the principles of legality, necessity, proportionality, precaution, non-discrimination and accountability apply. The Human Rights Committee has noted that States should provide for legal guidance on the use of firearms and prevent arbitrary killings and extra-judicial or summary executions by their security forces.⁵⁶ In case of any incident involving death or (serious) injury caused by use of firearms by law enforcement, authorities should conduct effective, prompt, independent and impartial investigations. These investigations should seek to evaluate responsibility for unlawful behaviour but also study patterns, identify their causes and take action as to eradicate them.⁵⁷ Principle 7 of the BPUFF states that 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.

To avoid such unlawful or arbitrary use of firearms, laws should provide proper guidance for the use of firearms, including by setting strict conditions for their use. Relevant authorities also should

⁵⁵ See United Nations Code of Conduct, Commentary to article 3. See also the United Nations Model Strategies (A/RES/69/194, 18 December 2014), which urge Member States to “[t]o 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”.

⁵⁶ See Human Rights Committee, 1982 General Comment No. 6 on the Right to Life, para. 3.

⁵⁷ See Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, 24 May 1989.

ensure that staff are properly trained, equipped and prepared to conduct their work professionally and in accordance with international human rights norms and standards.

The country and thematic reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions highlight specific situations where concerns as well as positive developments regarding the use of firearms have been observed and recommendations made.⁵⁸

Principle 9 of the BPUFF states that a law enforcement official shall not use firearms against persons except:

- In self-defence or in defence of others against the imminent threat of death or serious injury⁵⁹
- 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

The official commentary to article 3 of the United Nations Code of Conduct states that “firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the offender.” Hence, firearms should not be used to effect an arrest or prevent an escape, or to disperse or control a crowd, unless the individuals targeted by such use of force pose an imminent or continuous threat of death or serious injury. It follows that as soon as there is no longer such a threat to life or limb, firearms cannot be lawfully used.

As firearms should only be used to protect human life or against serious injury, it follows that a threat merely against property cannot justify using firearms against a person. Firearms should not be used to prevent a theft or to safeguard other interests such as property (including public property, such as government buildings), unless any of these incidents are accompanied by an

⁵⁸ In one country, the Special Rapporteur raised the concern that the threshold for the use of force was excessively low in domestic legislation (“when reasonably justifiable for the defence of property”, “to prevent criminal offences”) and pointed out that the Policing Manual on the use of force did not include directives defining the circumstances, conditions, degree and manner in which force may be used. The immunity that was afforded to law enforcement officers for the deprivation of life when using force in cases of riots, insurrections or mutinies, were raised as an issue (A/HRC/29/37/Add.2). In another country, concerns were raised regarding the high number of deaths resulting from excessive use of force in the context of demonstrations and arrests. The Special Rapporteur found that the legal framework was insufficiently precise, allowing for overly broad interpretations of the conditions in which lethal force was permissible. One of the recommendations was to ensure that the concepts of “necessity” and “proportionality” in domestic law were amended to align them with international standards (A/HRC/23/47/Add.2). Elsewhere, the Special Rapporteur attributed the high numbers of deaths from the excessive use of force (for example during demonstrations and arrests) on legislation that was too permissive of lethal use of force and that hampered accountability. He also specifically addressed the issue of so-called “fake encounters”, where law enforcement officials allegedly staged shoot-out scenes to hide the fact that they had unlawfully killed suspects. The Special Rapporteur was particularly concerned about the lack of meaningful investigations in such allegations. He commended the country for adopting guidelines requiring, inter alia, that police officers record information about an encounter, that such cases should be investigated by an independent agency, that a magisterial inquiry must be undertaken in instances where deaths have occurred, and that disciplinary action should be taken against delinquent police officers (A/HRC/23/47/Add.1). In yet another country, the Special Rapporteur noted positive developments in achieving structural and operational reforms to enhance the police force capacity to respect effectively to calls. He particularly highlighted the drawing up of mandatory guidelines on the use of force, firearms and detention procedures for the police, and recommended that these should be implemented through official training, equipment and a monitoring system (A/HRC/23/47/Add.3). Finally, in a country where police killings as a consequence of excessive use of force was prevalent, the Special Rapporteur identified the following six contributing factors: (1) official sanctioning of targeted killings of suspects, (2) dysfunctional criminal justice system, (3) non-existence of internal and external accountability mechanisms, (4) use-of-force laws contradictory and overly permissive, (5) witness intimidation, and (6) lack of training, discipline and professionalism within the police (A/HRC/23/47/Add.4).

⁵⁹ The Special Rapporteur on extrajudicial, summary or arbitrary executions has suggested that “Any such force may also only be used in response to an imminent or immediate threat – a matter of seconds, not hours.” A/HRC/26/36, 1 April 2014, para. 59.

imminent threat of death or serious injury.⁶⁰ A fleeing thief who poses no immediate danger should never be shot at, even if it means that the thief will escape.⁶¹ Similarly, someone driving through a roadblock, but otherwise posing no apparent immediate danger, should not be killed or fired at.

Intentional lethal use of firearms

Principle 9 of the BPUFF restricts the use of firearms to situations where there is a threat to life or serious injury. The force applied must be aimed at stopping the threat. But on rare occasions the only way to achieve this objective is by killing the person posing the threat. In these situations, the BPUFF states that law enforcement officials may resort to “intentional lethal use of firearms”. Principle 9 of the BPUFF provides for this situation, stating that “intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life”. This threshold is higher than the one for using potentially lethal force, which is also allowed to protect against serious injury.

It is important to distinguish between shoot-to-kill orders during concrete operations, and shoot-to-kill policies. Intentional lethal use of firearms can only be lawful when it is strictly unavoidable to protect life in a particular situation; any other reason for an intentional killing would amount to arbitrary use of force, and possibly to an extrajudicial, summary or arbitrary execution, which is a gross violation of human rights. Any policy, or any order that allows for the intentional lethal use of a firearm with any other purpose than to protect life, is always in violation of BPUFF principle 9.

Yet, during a particular operation, with an identified target posing an immediate threat to life and only when there are no other means available to reduce the threat, a “shoot-to-kill” order can be given, as for example with a suicide bomber who is ready to detonate his or her explosive device or an “active shooter” scenario where the suspect(s) have already used lethal or potentially lethal force, have demonstrated an intent to continue to use such force and thereby pose a threat to further persons. Due to the inherent dangers involved in such an operation, authorization should come from senior level, and the shooting would have to be carried out by highly trained specialists.⁶²

A situation where it is believed that a single identified person is about to cause massive loss of life imminently is an extremely rare situation—often there will be an alternative, most likely to arrest the suspect and place him or her in custody or to consider a different type of force, or use force at a more convenient moment.

When the only option left in order to save life is to shoot the suspect (and continue shooting) until he or she is dead, such a decision “should be taken as near in time as is possible to the actual shot being fired, in order to allow for the suspect concerned to change his or her mind and withdraw from the conduct that poses a threat to the life of another or others.”⁶³

This indicates such a decision has to be based on a case-by-case analysis of the threat posed in that particular situation. Moreover, for the purposes of accountability such decisions need to be recorded and reported along with clear rationales, for future scrutiny and review. It is good practice to report any instance of use of firearms.

⁶⁰ Threat against a nuclear facility, dam, or airplane may constitute examples where lethal force is necessary.

⁶¹ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/26/36, 1 April 2014, para. 72.

⁶² Regarding situations requiring split second decisions on the level of force required to mitigate a threat, see chapter 3.4.

⁶³ *Ibid.*, § 73.

Management responsibility

The decision to use potentially lethal force is one of the most serious that law enforcement officials can take. By extension, the decision to equip law enforcement officials with instruments of force that are likely to be lethal or that may cause (serious) injury, or to deploy a firearms unit for a particular operation, is equally serious.

The decision to equip and deploy law enforcement officials with firearms requires proper policies and a management that is responsible and is held to account for any institutional deficits where these do occur. Indeed, it would be unfair to just hold the person who used the firearm accountable when the arbitrary use of force may also be the result of institutional failure.⁶⁴ More on this topic can be found in chapter 3.

CHAPTER KEY MESSAGES

- International human rights law sets strict conditions for the use of force by law enforcement officials. If these conditions are not respected, the use of force may be unlawful, arbitrary or excessive, and amount to a human rights violation.
- A wide range of international and regional human rights instruments contain provisions relevant to the use of force by law enforcement officials. Law enforcement officials should be familiar with the content and scope of these rights.
- The general guiding principles for the use of force by law enforcement officers are: legality, necessity, proportionality, non-discrimination, precaution and accountability.
- International law needs to be incorporated into an adequate legal and operational framework, i.e. into domestic legislation, policy and practice. The general principles governing the use of force, the thresholds for the use of lethal force, rules regarding accountability and regarding control and oversight mechanisms should be set out in law.
- The use of firearms is always potentially lethal, requiring that law enforcement officials abide by the highest standards of care in resorting to their use. Every effort should be taken to avoid the use of firearms.
- Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.
- The decision to equip and deploy law enforcement officials with firearms and other instruments of force requires proper policies and management that is responsible and held to account for any institutional deficits.

⁶⁴ This was captured in the ruling by the European Court on Human Rights in the McCann case. It is also discussed in Samuel Walker and Carol Ann Archbold, *The New World of Police Accountability*, Sage Publications, 2014.

Chapter 2. Human rights-based approach to law enforcement: legitimacy, non-discrimination and accountability

A human rights-based approach to law enforcement is a comprehensive, systematic and institutional approach to law enforcement that is consistent with international human rights standards and practices.⁶⁵ It promotes an analysis of policies and actions through the obligations to respect, protect and fulfil human rights, and encourages law enforcement officials to consider their work as duty bearers towards rights holders (the community).

The principles of a human rights-based approach to law enforcement include: participation, accountability, non-discrimination and attention to vulnerability, linkages to human rights standards, access to public officials, and equality and gender sensitivity. This chapter further explores three cross-cutting elements related to legitimacy, non-discrimination, and transparency including openness to public scrutiny. For additional details, see OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials* (2017).

2.1. Legitimacy: law enforcement by consent rather than force

Need for an overarching doctrine

For law enforcement to act in a manner consistent with international standards and principles, as discussed in the previous chapter, law enforcement officials must understand their role in protecting, respecting and fulfilling human rights. Most law enforcement agencies have formulated a doctrine defining the mission for law enforcement, and the underlying values and purpose. Such a doctrine serves an important purpose in terms of transparency and accountability towards the community, while also providing a framework for conduct and oversight.

⁶⁵ For more detail on a human rights approach to law enforcement, see also OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, chapter 1 (Introduction to Human Rights and Law Enforcement). In literature the concept of “democratic policing” is also used. In a study reviewing 500 documents on police reform and “democratizing the police” four norms for democratic policing were defined: 1. Police must give top operational priority to servicing the needs of individual citizens and private groups; 2. Police must be accountable to the law, rather than to the government; 3. Police must protect human rights, especially those that are required for the sort of unfettered political activity that is the hallmark of democracy; and 4. Police should be transparent in their activities; David Bayley (2001): *Democratizing the police abroad: What to do and how to do it*, p. 13-14.

NATIONAL LEGISLATION IN GUATEMALA

Article 9 of the National Civilian Police Act in Guatemala states that the National Civilian Police is in charge of (1) protecting the life, the physical integrity, the security of persons and property, and the free exercise of their rights and freedoms, and (2) preventing, investigating and combating crime to preserve order and public security.

Serving the public interest

Such a doctrine must be based on the principle that law enforcement should be conducted impartially and in the public interest, rather than serve partisan, political or personal interests. Political leadership should refrain from attempting to unduly influence law enforcement operations, actions and decisions—including when, where and against whom to use force. Rather, they must respect and ensure the operational independence of law enforcement agencies.

Such operational independence also means that the agency is responsible for its conduct, as well as that of its members, and must be held accountable for unlawful or arbitrary actions.⁶⁶ Indeed, operational independence, when paired with accountability, will help build public confidence.⁶⁷

Based on consent

A human rights-based approach to law enforcement functions on the basis of consent rather than force. Where members of the public largely agree with the laws that are to be upheld and trust those that are appointed to do so, they will be less likely to oppose interventions by those officials and generally be more cooperative which will invariably lead to more effective law enforcement.⁶⁸ Indeed, where law enforcement agencies have to resort to force frequently, they are likely to have a legitimacy deficit, which will only deepen further every time they resort to force.

Being responsive

There are several mutually reinforcing actions that can be taken to acquire and strengthen legitimacy: carrying out law enforcement functions in a fair, effective and non-discriminatory manner and in line with human rights law; establishing good contacts with the communities; being responsive to people's and communities' needs and involving them in setting policies and priorities; adopting a problem-oriented approach; and acting with integrity and being accountable. Adopting a community-policing model of law enforcement is one of the approaches police agencies have found to be useful in this regard.⁶⁹

⁶⁶ Osse, Anneke, *Understanding Policing: a Resource for Human Rights Activists*. Amnesty International, the Netherlands, 2006.

⁶⁷ *Ibid.*

⁶⁸ See UNODC *Handbook on Police Accountability, Oversight and Integrity*, 2011, p. 6.

⁶⁹ For more details on community-based policing see UNODC *Handbook on Policing Urban Space* and OHCHR, *Human Rights Standards and Practice for the Police, Professional Training Series No. 5/Add.3* (2004), pp. 58-59. While recognizing the potential of community-oriented policing, it is also important to be mindful of the risks of such an approach, including for example an over-reliance on the concept, the risk of reinforcing inequalities across communities, and the risk of reinforcing existing community power structures that are not representative. For more details, see OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, chapter 4 (Law Enforcement in Democracies).

Community-oriented policing is based on the assumption that police cannot prevent and control crime and disorder alone but require the support of the community to ensure safety and security. It can be defined as “a collaborative effort between the police and the community that identifies problems of crime and disorder and involves all elements of the community in the search for solution to these problems”.⁷⁰

CHANGE OF POLICING MODEL IN ECUADOR

In response to extreme levels of violent and organized crime, some States employed so-called *mano dura* approaches, applying severe penalties and excessive use of force. An example of a State that has broken with the “tough hand approach” of the past is Ecuador. In 2011, Ecuador was one of the most violent countries in the world, but has now managed to have the number of homicides drop by almost two thirds.^a This was achieved through the implementation of an integrated “citizen security” strategy and, above all, a new philosophy on improving police-citizen relations. A number of initiatives were implemented in order to professionalize the police, and transform them from a military police to a civilian and community police force:

- First, the Government more than doubled the budget for security (to 2.3 per cent of its fiscal budget), of which a large proportion was invested in Community Police Units (UPC); emergency buttons in public spaces and businesses, which are connected to the closest UPC station; and police vehicles, many of which are now equipped with GPS, video cameras and modern communication systems. In addition, the authorities also reclaimed public spaces and worked with thousands of community leaders to improve citizen security.
- Second, Ecuador embarked on a massive reform of its police forces, involving enhanced training, more foot and bicycle patrols, and policing in and with the communities. Also, police salaries were raised, attracting more candidates to apply for jobs with the police while nearly 400 officers resigned from the force in 2014 due to the stiffer standards of police professionalism.

^a Bachelet, Pablo and Mauricio García Mejía, “How Ecuador is Lowering its Murder Rate,” *InsightCrime*, 15 February 2015 at: <http://www.insightcrime.org/news-analysis/how-ecuador-is-lowering-its-murder-rate>

PROFESSIONALISM AND PROPER HANDLING OF CONFLICT

Legitimacy is also gained by the way conflict situations are handled. Law enforcement officials who remain calm and maintain a professional attitude, using effective communication and negotiation skills, are more likely to win the respect of members of the public than those that establish their authority by using (or threatening to use) force. In some countries law enforcement is very much based on a display of authority. This often goes hand-in-hand with a focus on State security or the security of the political establishment, rather than citizen security.

Citizen security

The Inter-American Commission on Human Rights introduced the concept of “citizen security”, which is “a situation in which persons are able to live free of the threats caused by violence and crime, and the State has the necessary means to guarantee and protect the human rights directly threatened by violence and crime. Taking a human rights approach, citizen security is, in practical terms, a condition in which individuals live free from the violence practiced by State and non-state actors”.^a

^a See Inter-American Commission on Human Rights, Report on Citizen Security and Human Rights, December, 2009, para. 221.

⁷⁰ See Police Executive Research Forum (PERF), 2004, p. 3.

The concept of citizen security underlines that the central objective of policies established must be that of ensuring the security of the human person and not that of the State or of a given political system alone. Moreover, providing such security is the responsibility of the State as a whole, not just of law enforcement actors. Providing proper security includes social, community and situational crime prevention efforts, all of which also play a role in avoiding the use of force.

FAILURE TO OBEY AN ORDER BY A LAW ENFORCEMENT OFFICIAL?

Abuse of force often happens when law enforcement officials escalate an encounter, claiming a member of the public has obstructed them or failed to obey an order (conduct which in some jurisdictions amounts to a criminal offence), and therefore needs to be taken into custody. If people consider that law enforcement officials are likely to exercise their powers in an arbitrary manner, they may avoid contact with them, which will negatively impact the relations between the police and the communities they serve and hamper a community-oriented policing approach. It also reduces the flow of information between the community and the police.

It is important that the powers of law enforcement officials to charge someone with obstruction, or disobedience, are exercised in a restrained, transparent and non-discriminatory manner, and only in accordance with the law. This means it should only be used when:

- (a) The act the law enforcement official was performing was lawful, necessary and proportionate in the line of duty;
- (b) The law enforcement official had the power to issue the order and the order was legitimate;
- (c) The person arguably obstructed the lawful act, i.e. there must be reasonable cause to believe he or she has indeed obstructed an official in the course of his/her duty and criminal proceedings may be started against him or her;
- (d) The arrest is necessary, and there is no other option available in the circumstances. Indeed, it's not enough for an officer to have the power of arrest but he or she will have to justify why it is necessary to use that power in a particular situation;
- (e) The person will need to be brought promptly before a judicial authority that can decide on the appropriateness of the arrest. Also, the person affected must be able to file a complaint with the appropriate judicial, legislative, administrative or other policing oversight bodies.
- (f) Where a law enforcement official was found to have abused his or her powers, he or she must be held duly accountable

Law enforcement officials who make unlawful, unnecessary or disproportionate use of their power to use force and also to stop or arrest someone for obstruction or failure to obey an order, may reveal an attitude that prioritizes showing authority over serving the public interest. Some law enforcement agencies have set up early warning systems that track the number of such charges by individual officer and prompt reviews that examine whether multiple or unusual charges by an officer are due to inadequate conflict resolution skills or abusive behaviour.⁷¹

⁷¹ Samuel Walker, Geoffrey P. Alpert and Dennis J. Kenney, "Early Warning Systems: Responding to the Problem Police Officers", *United States National Institute of Justice*, July 2001, available at: <https://www.ncjrs.gov/app/publications/abstract.aspx?ID=188565>

2.2. Non-discrimination: providing fair law enforcement for all

An important indicator for a human rights-based approach to law enforcement is whether law enforcement officials provide an effective and equitable response to diverse populations. As addressed in chapter 1, the principle of non-discrimination is at the heart of human rights. The State has a positive obligation to ensure that all people can enjoy their human rights to the fullest. In line with the resolution adopting the United Nations Code of Conduct, the police should be “representative of and responsive to and accountable to” the community it serves.⁷²

Key elements of a strategy to ensure that the human rights and freedoms of those most vulnerable are respected and protected include:

- *Outreach.* Law enforcement agencies should actively reach out to representatives of those groups that are most vulnerable to abuse, in order to engage them in matters concerning security, identify problematic areas and formulate solutions in consultation with these groups, rather than unilaterally.
- *Training and awareness-raising.* It is crucial that during training sufficient attention is given to the principle of non-discrimination and more specifically to the obligations law enforcement officials have towards certain groups in society. Training should also address the risk of stereotyping and ethnic profiling.
- *Monitoring.* Law enforcement agencies should ensure that they keep reliable statistics so that they can monitor the use of force and whether it disproportionately affects certain groups and possible patterns detected in order to take appropriate action where needed.⁷³

COLOMBIA: MEASURES TO PROTECT VULNERABLE GROUPS AND ENSURE DIVERSITY IN POLICING

The Colombian police are implementing a strategy on respecting and protecting groups at risk.^a They identified six priority groups as facing disproportionate vulnerability due to factors including poverty and violence. The groups include human rights defenders and trade unionists, indigenous peoples, Afro-Colombians, victims of displacement, women and the LGBT population. These groups were then geographically mapped in order to identify the location of the highest violence. Subsequently, the police defined seven modes of institutional interventions, which include specialized training, dialogue, specialized police services, investigations of crimes against members of these populations, capacity-building, inter-institutional coordination and police integrity.

In order to meet its obligations in a multi-ethnic, multicultural and multilingual society, the Colombian National Police have in recent years founded police training schools for different ethnic groups in Colombia and trained other members of the institution there in understanding and policing these communities. The Office of the High Commissioner for Human Rights in Colombia has documented how alumni from these schools have managed conflict to avoid using of force when relating with these communities, and enhanced communication and cooperation between them.^b

^aNational Police of Colombia, Book 5: 16 Operational Strategies of the National Police, Plan Green Heart, 2012, paras. 152-160; National Police of Colombia, Permanent Operational Directive 003, 11 July 2013.

^bOHCHR, Colombia and National Police of Colombia, Final Report: Joint Monitoring Report on the Implementation of Five Selected Human Rights Prevention and Response Mechanisms in the National Police of Colombia.

⁷² See for instance the OSCE Recommendations on Policing in Multi-Ethnic Societies: <http://www.osce.org/hcnm/32227> and the recommendations of the OHCHR Expert Meeting on Integration with diversity in policing, Vienna, 2008.

⁷³ In Pittsburgh, United States, the police have developed an auditing cycle to review potential racial bias, including use of racial epithets, by officers, placing responsibility on supervisors to act on data with the goal of eliminating actions that reflect racial bias by officers; Pittsburgh Consent Decree, chapter 13, available at: <http://www.justice.gov/crt/about/spl/documents/pittssa.php>.

Groups particularly at risk of unlawful, excessive or arbitrary use of force

Some groups in society are more at risk of human rights violations or abuse than others, including the use of illegal or unnecessary force by law enforcement officials. Law enforcement agencies tend to mirror the society in which they operate. Coming from that very same society, law enforcement officials are likely to hold the same values, share the same attitudes and stereotypes.⁷⁴ If it is commonly acceptable to hold hostile attitudes towards certain segments of society, this is likely to be reflected in the way law enforcement officials operate when confronted with members of these groups. This can manifest itself in different ways, for example in a readiness to use force against members of these groups (failing to respect their rights) or in a more laissez-faire attitude when their rights have been abused or violated, such as when failing to follow up on a complaint (failing to protect their rights).

Groups that may be more vulnerable to the abuse of force and ill-treatment than others include members of ethnic, religious, linguistic or other groups or minorities; lesbian, gay, bisexual, and transgender persons (LGBT); migrants, including irregular migrants; stateless persons; refugees; drug users; children and young people; sex workers; the poor; homeless persons; older persons; persons with disabilities; members of the political opposition; victims of past human rights violations or sexual and gender-based violence; and human rights defenders, among others.⁷⁵ The same person can be vulnerable on multiple grounds, for example a female sex worker addicted to drugs.

Problems may also arise when law enforcement officials encounter someone who cannot communicate, due to either the language barrier or cognitive, mental or other disability.⁷⁶ Such situations may lead to heightened stress levels, increasing the likelihood of the use of force and associated risks.

Governments and law enforcement agencies need to identify and address key factors that create and perpetuate the vulnerability of such groups and their exposure to the unlawful and arbitrary exercise of police powers, including the existence of structural discrimination against such groups.

LIMITING THE USE OF FORCE AGAINST VULNERABLE GROUPS

In Portugal, the Regulation on Limits to the Use of Coercive Means by the National Police (2004) provides that: "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." (chapter 1, Section 5.3, d)

⁷⁴ Osse, Anneke, *Understanding Policing: A Resource for Human Rights Activists*, Amnesty International, the Netherlands, 2006: https://www.amnesty.nl/sites/default/files/book_1_0.pdf.

⁷⁵ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, (A/HRC/13/39/Add.5), 5 February 2010, para. 193.

⁷⁶ For more information on human rights and disability, see OHCHR, *The Convention on the Rights of Persons with Disabilities – Training Guide*, 2014.

Women and girls

The United Nations Declaration on the Elimination of Violence against Women requires that States pursue a policy to eliminate violence against women, including “physical, sexual and psychological violence perpetrated or condoned by the State.” (articles 2 and 4). Women,⁷⁷ when coming in contact with the criminal justice system, including as victims, suspects and detainees, often find themselves vulnerable to sexual and other abuse. Many of these women have previously suffered sexual or gender-based violence and are at particular risk of secondary victimization by law enforcement and criminal justice officials. Moreover, women in police custody and in detention centres are vulnerable to sexual abuse and other forms of violence, which may be used to force them to confess to offences they may or may not have committed.⁷⁸ Women and girls who face multiple forms of discrimination and are often particularly vulnerable to violence include indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women with disabilities, elderly women, and women in situations of armed conflict. Violence against women, in all its forms, violates or impairs the enjoyment of human rights by women and girls. Law enforcement should take steps to prevent such acts of violence and conduct prompt, independent, impartial and efficient investigations into allegations of violence against women and girls, whether perpetrated by public officials or private persons, in the home, in the community, or in official institutions.

In situations where the police lawfully use force against women, special attention should be given to a number of factors. For example, use of force should be avoided as far as possible against pregnant women, and medical assistance should be made available as soon as possible afterwards.⁷⁹ In addition to factors relating to the person against whom force is used, police also need to consider the possible physical and psychological consequences, which may be different for women than for men.

It is recommended to have all law enforcement personnel regardless of their gender duly trained on women’s rights and gender equality and on how to respect and protect these rights while exercising their duties. In many countries, female law enforcement officers are assigned to deal with female victims and suspects or these victims and suspects are given the option to be dealt with by female police officers, sometimes operating from a Women’s Desk or even an entire female police station or unit. Generally, it is good practice to assign female officers to carry out all searches and supervision of women, including female detainees.⁸⁰

⁷⁷ For more on fundamental principles relevant to law enforcement and human rights of women, see OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, p. 311-320.

⁷⁸ See UNODC, *Resource book on Women and Imprisonment*, 2014, p. 8.

⁷⁹ See for example the final report of “The President’s Task Force on 21st Century Policing” in the United States, which was published in May 2015, which included the following action item: “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.” (p. 15-16).

⁸⁰ See p. 53 of the UNODC *Resource book on Effective Police Responses to Violence against Women*.

WOMEN IN LAW ENFORCEMENT AGENCIES

Law enforcement agencies should recruit sufficient numbers of women to ensure fair community representation and facilitate the protection of the rights of female suspects, arrestees and detainees. They should not discriminate against women in recruitment, hiring, training, assignment, promotion, salary, or other career and administrative matters and may establish temporary special measures that allow equal participation and consider women's needs and conditions. There should be a regular review of recruitment, hiring, training and promotion policies to tackle any existing gender bias.

Female law enforcement officers should also be protected against gender-based and sexual violence, which is not a rare occurrence.^a The internal disciplinary, oversight and accountability mechanisms should be prepared to deal with such cases.

^a See CHRI, *Rough Roads to Equality: Women Police in South Asia*, 2015, at: http://humanrightsinitiative.org/tenders/CHRI_Women%20Police%20in%20South%20Asia_2015.pdf. Also see Report of the Special Rapporteur on violence against women, its causes and consequences (A/HRC/26/38/Add.1), 1 April 2014.

Lesbian, gay, bisexual and transgender persons (LGBT)

The United Nations and other human rights mechanisms have documented how LGBT people are, in many contexts, particularly at risk of arbitrary detention, violence, torture and ill-treatment, including from law enforcement officials.⁸¹ In many countries, members of LGBT communities also find themselves harassed by law enforcement officials, sometimes in order to extort money or sex from them or otherwise blackmail them. When detained, LGBT persons are particularly at risk of becoming victims of sexual violence, other torture and other forms of ill-treatment, by fellow detainees and by or with the complicity of law enforcement officials. The right to non-discrimination of LGBT law enforcement officials should also be ensured within law enforcement agencies.

United Nations mechanisms have condemned the persistence of impunity for such violations and abuses and highlighted shortcomings including ineffective police action, failure to register cases, lack of investigation, loss of documents, inappropriate classification of acts and investigations guided by stereotypes and prejudices, and police abuse of LGBT victims of crimes when they attempt to report acts of violence. In order for law enforcement officials to effectively respect and protect the human rights of members of LGBT communities, their agencies need to adopt anti-discrimination and anti-harassment policies, ensure that allegations of violations against LGBT people are promptly and thoroughly investigated and perpetrators held accountable, and provide mandatory training to officials to raise their awareness and combat biases and prejudices.⁸²

⁸¹ See for example OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity* (A/HRC/29/23), sections IV-V.

⁸² See OHCHR, *Living Free and Equal – Ending violence and discrimination against lesbian, gay, bisexual, transgender, and intersex persons: practices, gaps and challenges*, 2016 (in particular chapter 6.4 regarding the training of law enforcement officials and chapter 10); as well as OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, chapter 13 (Law Enforcement, Human Rights and Gender).

ENSURING PROTECTION OF THE RIGHTS OF LGBTI PERSONS

Brazil, Honduras and Mexico have established specific teams to investigate and prosecute homophobic and transphobic hate crimes to the full extent of the law, and law enforcement officials have been trained accordingly. In Ireland, trained liaison officers have been assigned to handle crimes or complaints related to homophobia and transphobia. In South Africa, the Government has established a multistakeholder task team that includes both law enforcement authorities and civil society organizations to monitor the investigation and prosecution of hate crimes based on sexual orientation and gender identity. In Serbia, the police took measures to protect LGBT participants in a peaceful assembly from attacks.^a

The Jamaica Constabulary Force developed an internal policy on diversity stating: “it is the policy of the Jamaica Constabulary Force that all reports from any individual or group be handled in a manner which reflects the highest level of professionalism and respect for human rights and dignity”.^b This was in particular the result of a dialogue with civil society actors who defend the human rights of LGBT persons.

^a See OHCHR, *Living Free and Equal – Ending violence and discrimination against lesbian, gay, bisexual, transgender, and intersex persons: practices, gaps and challenges*, 2016 (in particular chapter 6.4 regarding the training of law enforcement officials and chapter 10).

^b JCF Diversity Policy, Force Orders No. 3351 Part I Sub. No. 1 dated 2011-08-25 (p. 6) <http://library.jcsc.edu.jm/xmlui/bitstream/handle/1/340/Force%20Orders%203379A%20dated%202012-03-08.pdf?sequence=1>

Children

Children are defined in the Convention on the Rights of the Child (CRC) as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” According to the CRC, “in all actions concerning children, [...] the best interests of the child shall be a primary consideration”.⁸³ This consideration is therefore central to the role of law enforcement officials when they enter into contact with children. Children have the right to be protected from physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse,⁸⁴ and, whether they enter in contact with the justice system as victims or as alleged offenders, any treatment should be aimed at promoting the child’s reintegration into society.⁸⁵

Due to their evolving physical and mental development, children are particularly vulnerable to violence, abuse, extortion, and being forced to act as informants. Such vulnerabilities should be taken into account whether children are directly in contact with law enforcement or when their family members are targeted.

When dealing with children, law enforcement officials should take into account that perceptions, reasoning and reactions will not be the same as when dealing with adults. Children are more easily intimidated, frightened and have a harder time evaluating the long-term consequences of their actions. Considering children as less important or reliable than adults can easily lead to miscommunication, improper approaches to children and, ultimately, disproportionate resort to the use of force, with potentially devastating consequences for the life of the child.

⁸³ Article 3, Convention on the Rights of the Child.

⁸⁴ Article 19, Convention on the Rights of the Child.

⁸⁵ Articles 39 and 40, Convention on the Rights of the Child.

The recently adopted United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (United Nations Model Strategies)⁸⁶ recognizes that situations such as arrest and investigation can present particular risks for children, and therefore detail a series of practical measures to reduce the possibility of improper action. In particular, it is recommended that apprehension, arrest and detention of children are used only as measures of last resort; that “the use of firearms, electric shock weapons and violent methods to apprehend and arrest children” are prohibited, 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”.⁸⁷

Recognizing also the particular vulnerabilities of children deprived of their liberty, the United Nations Model Strategies invite States “to adopt and implement strict policies guiding the use of force and physical restraints on children during their detention; to adopt policies prohibiting the carrying and use of weapons by personnel in any facility where children are detained; to prohibit and effectively prevent the use of corporal punishment as a disciplinary measure, to adopt clear and transparent disciplinary policies and procedures that encourage the use of positive and educational forms of discipline”.⁸⁸

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) had already specified strict conditions for the exceptional recourse to instruments of restraint and force in the case of children deprived of their liberty. In order to promote a comprehensive child-sensitive approach within the justice system, and in particular amongst law enforcement officials, police are encouraged to acquire specialized training to deal with children, and, where it is appropriate, that specialized units are established to deal with the complexities and sensitivities relating to the treatment of children.⁸⁹

Minorities and marginalized groups

In many countries members of minorities,⁹⁰ whether ethnic, religious, racial, cultural, linguistic or national minorities, are disproportionately subjected to the arbitrary use of force by law enforcement officials.⁹¹ This also happens frequently to members of marginalized groups that are economically deprived, often living in informal settlements, sometimes without steady employment. Young males, especially those coming from minorities and marginalized groups, are overrepresented among victims of the excessive use of force around the world.

Authorities need to identify and tackle the conditions that lead law enforcement to be disproportionately suspicious of persons belonging to certain minority groups and take proactive steps to prevent law enforcement officers from engaging in profiling methods, including questioning, arrests and searches, based solely on the physical appearance of a person, or the person’s features or membership in a particular minority group. Furthermore, law enforcement agencies should take necessary steps to ensure that all minorities are duly represented in the force, at all levels and that law enforcement officers are trained to handle diversity, both in their relationships with colleagues belonging to different groups and when in contact with different communities.

⁸⁶ A/RES/69/194, 18 December 2014.

⁸⁷ See United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, Strategy XII, 34 (c).

⁸⁸ See United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, Strategy XV, 39 (c), (d), (e).

⁸⁹ See Beijing Rule 12.

⁹⁰ For more on law enforcement and human rights of minorities, see OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, p. 329-342.

⁹¹ See Report of the Special Rapporteur on minority issues, Rita Izsák, 30 July 2015, A/70/212.

TARGETING OF MINORITIES IN STOP AND SEARCH^a

Police targeting individuals for identity checks or stop-and-search operations purely on the basis of minority group characteristics rather than on any reasonable suspicion that the individual in question is involved in any illegal activity or other legitimate law enforcement justification is a common concern. These methods have been heavily criticized where these are based solely on racial or ethnic profiling, that is: based on discriminatory criteria of race or ethnicity, rather than any objective and transparent legal grounds.^b

Law enforcement personnel should therefore be able to account for the reasons why they carried out the procedure. Given the need for police to have stop-and-search powers, while being able to apply them in accordance with international human rights norms and standards, and given the risk of abuse or discrimination, it is good practice to keep records of all stop and searches that are carried out, complaints received, and subject stop and search procedures to (independent) periodic review.^c Regular monitoring of stop-and-search activities to evaluate whether they impact minority groups fairly and proportionately, with due respect for confidentiality and data protection, also constitutes good practice.

^a Counter-Terrorism Implementation Task Force (CTITF), “Basic Human Rights Reference Guide: Stopping and Searching of Persons,” Working Group on Protecting Human Rights while Countering Terrorism, March 2014, para.4 at: http://www.ohchr.org/EN/newyork/Documents/StoppingAndSearching_en.pdf

^b See Open Society Justice Initiative, *Addressing Ethnic Profiling by Police*, May 2009, at: <http://www.opensocietyfoundations.org/reports/addressing-ethnic-profiling-police>.

^c See Northern Ireland Policing Board, *Rights Thematic Review on the use of police powers to stop and search and stop and question under the Terrorism Act and the Justice and Security (NI) Act, 2013*: http://www.nipolicingboard.org.uk/stop_and_search_thematic_review__final_draft__15_october_2013.pdf

People with psychological disabilities

People with psychological disabilities are at an increased risk of encountering use of force by law enforcement officials.⁹² Many law enforcement officials do not have appropriate training on how to deal with persons with psychological disabilities and on the human rights standards applicable to this population.⁹³ Some persons with psychosocial disabilities are perceived as having behavioural issues that diverge from the normalcy standards socially developed under prejudicial and misconstrued representations. Criminal and administrative systems usually under mental health laws, often wrongly give a mandate to law enforcement officials to engage with persons with psychosocial disabilities in moments of personal crises, instead of providing for less repressive measures. This increases the risk that such persons may be restrained, possibly leading to further violence and injuries, and arbitrary deprivation of their liberty. Also, certain weapons, such as tasers, can have a disproportionate impact on the health of those in a heightened emotional state.

In order to ensure an effective law enforcement response to persons with psychosocial disabilities, adequate training is a prerequisite. Moreover, law enforcement agencies should develop a referral

⁹² Martin A. Schwartz, “Police Use of Force to Restrain the Mentally Ill”, *New York Law Journal*, Vol. 253, Issues 123, 29 June 2015: <http://www.newyorklawjournal.com/id=1202730675786/Police-Use-of-Force-to-Restrain-the-Mentally-Ill?slreturn=20150731112005>; Wesley Lowery, Kimberly Kindy and Keith L. Alexander, “Distraught People, Deadly Results,” *The Washington Post*, 30 June 2015: http://www.washingtonpost.com/sf/investigative/2015/06/30/distraught-people-deadly-results/?uuiid=0ca51840-11cc-11e4-98ee-daea85133bc9&wt=promo_story&wpisrc=al_alert-COMBO-exclusive%252Bnational

⁹³ Office of the High Commissioner for Human Rights, “Report on mental health and human rights”, A/HRC/34/32, 31 January 2017.

mechanism to community-based resources, preferably of the choice of the person concerned, who can provide support and advice both to law enforcement and to the person concerned. Persons with psychosocial disabilities should have access to justice to challenge abusive and arbitrary use of force by law enforcement officials. The latter should bear the burden of proof that the use of force was of last resort, and that they exhausted all other support efforts, such as calling the person's preferred peer support, which could include friends, family or health professionals. In such cases, the law enforcement officials should also prove that there was an actual, rather than a perceived threat to others or a life-risking situation for the person concerned.⁹⁴

SPECIAL ATTENTION TO THE NEEDS OF PERSONS WITH MENTAL HEALTH DISORDERS

In the United Kingdom, firearms teams are specifically trained to deal with emotionally or mentally challenged people. The training focuses on giving them space, avoiding direct challenge and prioritizing establishing verbal contact whilst protecting others. In Jamaica, the Independent Commission of Investigations, INDECOM, recommended that the police establish medical response teams consisting of police officers with specialized training in dealing with the mentally ill and with psychiatric aides, who should be on-call on a 24-hour basis.^a

^a See INDECOM Jamaica, *Safeguarding the Right to Life: Issues from Investigations of Jamaica's Security Forces in 2012*, 2013, p. 32.

Measures to prevent the abuse of force against groups at risk

A human rights-based approach to law enforcement means that law enforcement agencies prepare and implement a strategy on how to ensure that the human rights and freedoms of those most at risk of abuse are respected and protected.

COLOMBIA: "VULNERABLE POPULATION'S PROTECTION STRATEGY"

The Colombian police are implementing a strategy on respecting and protecting groups at risk.^a They identified six priority groups as facing disproportionate vulnerability due to factors including poverty and violence. The groups include human rights defenders and trade unionists, indigenous peoples, Afro-Colombians, victims of displacement, women and the LGBT population. These groups were then geographically mapped in order to identify the location of highest violence. Subsequently, the police defined seven modes of institutional interventions, which include specialized training, dialogue, specialized police services, investigations of crimes against members of these populations, capacity-building, inter-institutional coordination and police integrity.

^a National Police of Colombia, *Book 5: 16 Operational Strategies of the National Police, Plan Green Heart*, 2012, pp 152-160; National Police of Colombia, *Permanent Operational Directive 003*, 11 July 2013.

⁹⁴ See also Police Executive Research Forum (PERF), *An Integrated Approach to De-Escalation and Minimizing Use of Force*, 2012: http://www.policeforum.org/assets/docs/Critical_Issues_Series/an%20integrated%20approach%20to%20de-escalation%20and%20minimizing%20use%20of%20force%202012.pdf

In addition to these measures, and in line with the resolution adopting the United Nations Code of Conduct, policymakers and law enforcement agencies should make sure that the police is “representative of and responsive to and accountable to” the communities they serve, ensuring staff composition is indeed truly reflective of the community, in ethnicity, religion, race, gender and other relevant factors, if needed through measures of “positive action”. In order to achieve representativeness, law enforcement agencies should actively recruit members from underrepresented groups, in order to move towards becoming an organization that more closely reflects the composition of society (see further chapter 5). Law enforcement agencies must also ensure gender mainstreaming through their policies, procedures and practices to protect against negatively effects on women within the organization or in the communities they serve.

POLICE TRAINING SCHOOLS FOR DIFFERENT ETHNIC GROUPS IN COLOMBIA

In order to meet its obligations in a multi-ethnic, multicultural and multilingual society, the Colombian National Police have in recent years founded police training schools for different ethnic groups in Colombia and trained other members of the institution there in understanding and policing these communities. The Office of the High Commissioner for Human Rights in Colombia has documented how alumni from these schools have managed conflict to avoid using of force when relating with these communities, and enhanced communication and cooperation between them.^a

^a OHCHR, Colombia and National Police of Colombia, Final Report: Joint Monitoring Report on the Implementation of Five Selected Human Rights Prevention and Response Mechanisms in the National Police of Colombia.

2.3. Scrutiny

Law enforcement agencies should be open to public scrutiny and responsive to the public, even where members of the public may be critical of the actions or decisions of law enforcement officials. Outcomes of public assessments can contribute to reform agendas. These issues are addressed in detail in chapter 11 on Complaints and investigations.

Human rights defenders

The right to form and participate in NGOs and other (advocacy) groups is protected under international human rights law.⁹⁵ The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (hereafter “Declaration on Human Rights Defenders”), was adopted in 1998 to strengthen the protection of human rights defenders while carrying out their work within the human rights framework. Human rights defenders and civil society play an important role in a democratic society, acting as monitors and watchdogs and bringing up human rights concerns. States (and therefore law enforcement officials) do not only have a duty to refrain from threats, harassment, persecution or reprisals against human rights defenders, they also have a positive obligation to protect them.

According to the Special Rapporteur on the situation of human rights defenders, human rights defenders are sometimes depicted as “terrorists”, “enemies of the State” or “political

⁹⁵ See ICCPR, article 22. See also the OSCE Guidelines on the Protection of Human Rights Defenders, 2014: <http://www.osce.org/odihr/119633>

opponents” by politicians, State authorities and State-owned media.⁹⁶ Women defenders and human rights defenders working on LGBTI-related issues often find themselves particularly at risk, due to their work on issues that challenge established customs and norms, which are culturally and politically sensitive.⁹⁷ Even when human rights defenders voice criticism of State laws, policies and practices, the enjoyment of their human rights must be guaranteed. Law enforcement officials should strive for a good relationship with human rights defenders, as this may provide them with useful information and channels of communication with the communities they serve. It will also provide them with suggestions on how to improve their efforts towards human rights compliant law enforcement, particularly regarding the use of force.⁹⁸

Journalists and other media workers

The right to freedom of expression and the right to seek, receive and impart information are contained in both the Universal Declaration of Human Rights and the ICCPR.⁹⁹ Journalists and other media workers, including citizen journalists, bloggers and community media workers play an important role in holding law enforcement agencies to account, and the Special Rapporteur on the situation of human rights defenders has argued that many journalists and other media workers are in fact human rights defenders.¹⁰⁰

In his report on “the safety of journalists and the issue of impunity”,¹⁰¹ the Secretary-General of the United Nations emphasized the important role of journalists and media workers as follows:

“Independent and critical journalism is vital in any democratic society. It drives the right to hold and express opinions and the right to seek, impart and receive information and ideas, as defined in article 19 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights. It contributes to ensuring transparency and accountability in the conduct of public affairs and other matters of public interest, and it enables individuals to participate fully, actively and meaningfully in all aspects of society.”

Journalism has been defined as “a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the Internet or elsewhere.”¹⁰² A broad understanding of who constitutes a journalist or media worker is important to ensure adequate protection of those who are investigating and reporting on human rights issues and therefore should include those formally recognized as journalists, as well as, for example, community media workers, bloggers, citizen journalists, and those monitoring assemblies and protests.¹⁰³ In this regard, the United Nations High Commissioner for Human Rights pointed out that all individuals are entitled to the full

⁹⁶ See Report of the Special Rapporteur on the situation of human rights defenders. A/HRC/13/22, 30 December 2009, para. 27.

⁹⁷ *Ibid.*, paras. 47-49.

⁹⁸ For a list of good practices for engagement and protection of human rights defenders, see OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, p. 210.

⁹⁹ See UDHR, article 19 ; ICCPR, article 19.

¹⁰⁰ See Report of the Special Rapporteur on the situation of human rights defenders. A/HRC/19/55, 21 December 2011.

¹⁰¹ See A/69/268, para. 3.

¹⁰² Human Rights Committee, General Comment No 34, United Nations doc. CCPR/C/GC/34, para. 44. See also A/HRC/20/17, paras. 4-5, and A/HRC/20/22, para. 26.

¹⁰³ See Report of the Special Rapporteur on the situation of human rights defenders. A/HRC/19/55, 21 December 2011, paras. 33-34; Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/20/22, 10 April 2012, paras. 36 and 122; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/20/17, para. 54.

protection of their human rights, whether the State recognizes them as “journalists” or not; whether they are professional reporters or “citizen journalists”; whether or not they have a degree in journalism; whether they report online or offline.¹⁰⁴

Some journalists and media workers report on crime, including on issues that are still under investigation and on sensitive security-related issues, as well as on law enforcement operations and the general performance of law enforcement agencies, in particular their use of force—for example in the context of demonstrations. Hence, they play an important role in shaping perceptions of law enforcement agencies, their accountability and in prompting changes towards human rights-compliant law enforcement operations.¹⁰⁵

WIN-WIN: IMPROVING CONTACTS WITH THE MEDIA

As UNESCO stated: “Journalists provide a link between security forces and citizens, who read, watch or listen to the media.”^a When law enforcement agencies improve their relationships with the media and journalists, and are open to scrutiny, this can help them to improve their relations with citizens. Indeed, it is good practice for law enforcement agencies to have provisions in their code of conduct to guide dealing with the media.^b

^a UNESCO (2015). Freedom of Expression and Public Order. Training manual, p. 119, at: <http://unesdoc.unesco.org/images/0023/002313/231305e.pdf>

^b See UNESCO, examples including Belgium, South Africa, Finland (2015).

As highlighted by the United Nations General Assembly, States should promote a safe and enabling environment for journalists to perform their work independently and without undue interference, including through awareness-raising among law enforcement officers and military personnel regarding international human rights obligations.¹⁰⁶ It is good practice to provide law enforcement officials with training in order to ensure their awareness of international human rights standards and the role and work of journalists and other media workers, the legitimacy of their presence during protests and assemblies, as well as measures that can be taken to enhance the protection of their rights.¹⁰⁷

¹⁰⁴ See A/HRC/27/35, para. 9: the Human Rights Committee, in its General Comment No. 34, also defined journalism as “a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the Internet or elsewhere” (see CCPR/C/GC/34, para. 44; see also A/HRC/20/17, paras. 4 and 5; A/HRC/20/22, para. 26; and A/HRC/24/23, para. 9).

¹⁰⁵ See for example the Secretary-General report on the Safety of Journalists and the Issue of Impunity, A/70/290.

¹⁰⁶ A/RES/68/163.

¹⁰⁷ See UNESCO (2015), paras 113-118. See also OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, chapter 9 (Human Rights and Policing of Public Assemblies and Protests), in particular for a list of good practices for law enforcement agencies in the protection of journalists when policing protests.

One good practice example is highlighted in OHCHR's *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, which suggests that: "In order to ensure the smooth running of the protest, it is important for law enforcement officers to develop a comprehensive media liaison strategy. Such a strategy should include efforts to develop long-term communication channels with editors and journalists in order that law enforcement can publicize public safety messages, messages aimed at community reassurance, and appeals for all those who plan to engage in demonstrations or public protest, to do so peacefully. Where it is anticipated that crowd violence will occur, command officials should communicate to the public via the media, in order to explain how their property and personal safety will be protected."¹⁰⁸

UNESCO TRAINING MATERIAL^a

The training manual *Freedom of Expression and Public Order* aims to provide security forces with both theoretical and practical tools regarding their duties and obligations in relation to maintaining order while respecting human rights, freedom of expression and the security of journalists. The manual consists of seven modules, some of which specifically target members of security forces, while others envisage joint training sessions for members of security forces and journalists. These joint sessions aim to promote greater mutual understanding of the reality and the needs of, respectively, members of security forces and journalists in a democracy.

^a UNESCO (2015).

¹⁰⁸ OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, chapter 9.

CHAPTER KEY MESSAGES

- Key elements of an effective human rights-based approach to law enforcement include legitimacy, non-discrimination and public scrutiny.
- A human rights-based approach to law enforcement functions on the basis of consent.
- The best way to preserve life and protect and respect the physical and mental integrity that is an inherent right of any human being is through preventing the use of force.
- Whenever possible, conflict situations should be managed using alternative conflict resolution skills, such as mediation and negotiation. In this way, law enforcement can acquire legitimacy and build public trust—both key conditions for law enforcement effectiveness.
- Legitimacy is strengthened by carrying out law enforcement functions in a fair, effective and non-discriminatory manner in line with the law, including human rights law, and taking into account relevant and applicable standards and norms on crime prevention and criminal justice; establishing contacts with the community; being responsive to individual and community needs; involving the community in setting policies and priorities; and acting with integrity and being accountable.
- Important indicators of a human rights-based approach to law enforcement are how law enforcement officials deal with groups that are particularly at risk of human rights violations and abuses.
- Law enforcement agencies tend to mirror the society in which they operate. Law enforcement officers should be trained to effectively and equitably interact with a diverse population.
- Groups that are typically more vulnerable to abuse of force from law enforcement officials, include members of ethnic, religious, linguistic or other groups or minorities; women; children; LGBT persons; people with mental disabilities. Governments and law enforcement agencies need to identify and address key factors that create and perpetuate the vulnerability of such groups and their exposure to abuse of force.
- Key elements of an effective strategy to prevent abuse of force against groups at risk include outreach, training and awareness-raising, as well as effective monitoring and oversight.
- Law enforcement officers should refrain from profiling based on race, religion and other discriminatory grounds at all times, and be able to justify a decision to stop and search, if and when required. Detailed guidance should be developed for stop-and-search practices with clear and precise standards and guidance in order to combat bias-based profiling.
- Law enforcement agencies should be open to public scrutiny and responsive to the public.
- Human rights defenders as well as journalists and other media workers play vital roles in holding law enforcement agencies to account. Fostering a good relationship with human rights defenders and journalists helps reaching law enforcement goals in an effective manner.

PART II

.....
**THE RESPONSIBILITY OF
LAW ENFORCEMENT
AUTHORITIES**
.....

Chapter 3. Command and control

In this part the resource book focuses on the role of law enforcement authorities, and the responsibility they bear to design and lead the organization in such a manner that all officers know what to do, when to do and how to do it, in particular pertaining to the possible use of force. Chapter 3 discusses the importance of having an effective command and control structure, and examines the effective planning of operations to minimize the likelihood that force, in particular lethal force, will need to be used.

3.1. The role of governments and law enforcement agencies in creating the conditions necessary for professional law enforcement

The government and law enforcement agencies bear responsibility for creating the conditions under which law enforcement officials can operate professionally. This includes setting up effective command and control mechanisms, and developing adequate SOPs and instructions. They should be held accountable where such conditions are lacking.¹⁰⁹ Where there are regular incidents of unnecessary, disproportionate or irresponsible use of force, this is often an indication of a failure of the organization to have the requisite effective control mechanisms in place, which could lead to an institutional culture of human rights violations and impunity.

Government authorities responsible for law enforcement are in charge of developing policies and regulations, deciding on budget allocation and, in many countries, appointing the Chief of Police. In most countries, such law enforcement authorities, including the Minister and the Chief of Police, jointly bear responsibility for installing an effective line of command, setting up structures that are capable of providing adequate training, installing fair procedures for procuring equipment, and taking corrective actions when needed (however, in some countries these functions are delegated to the Chief of Police).

¹⁰⁹ Maurice Punch, *Shoot to Kill: Police Accountability, Firearms and Fatal Force*. United Kingdom, Bristol: The Policy Press. 2011, p. 14.

Law enforcement agencies also bear responsibility for wrongdoings committed by their staff.¹¹⁰ The BPUFF makes a distinction between “law enforcement officials” and “law enforcement agencies”. Typically, the Minister of Interior together with the leadership of law enforcement agencies, the Chief of Police and his or her senior management team, are the responsible authorities at the national level.¹¹¹ Usually the Minister of Interior also bears political responsibility for the functioning of law enforcement agencies in front of the legislature and other oversight bodies. In addition, in many countries, for example in South and Central America, continental Europe, some African countries, parts of the Middle East and Asia, local authorities, such as mayors (or their equivalent)¹¹² play a key role in directing and sometimes overseeing law enforcement in their municipalities. Whatever the institutional setting is, it is important that roles and responsibilities are clearly defined.

CORPORATE MANSLAUGHTER

Certain (mostly common law) jurisdictions have introduced legislation on “corporate manslaughter”, meaning that an organization (as a corporate entity) can be found responsible under criminal law when its staff violates laws and procedures. It is an institutional responsibility to set up structures, implement and enforce rules and procedures that reduce the possibility of violations happening and ensure proper accountability in case they do occur. For example, in the United Kingdom, an organization is “guilty of an offence if the way in which its activities are managed or organized causes a person’s death and amounts to a gross breach of a relevant duty of care owed by the organization to the deceased. An organization is guilty of an offence only if the way in which its activities are managed or organized by its senior management is a substantial element in [manslaughter]”.^a

^a See United Kingdom, Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA), section 1.

3.2. An effective line of command

Effective accountability requires the installation of a clear chain of command, as everyday discipline relies on it.¹¹³ An effective line of command facilitates both upward and downward communication and eases the coordination of operations that require the involvement of multiple units (or multiple law enforcement bodies). It must be clear to every member of staff who he or she reports to; and who reports to him or her.

¹¹⁰ See *McCann et al v. the United Kingdom*, European Court on Human Rights; PERF, “Re-Engineering Training On Police Use of Force,” *Critical Issues in Policing Series*, 2015, p.9: <http://www.policeforum.org/assets/reengineering-training.pdf>; the IPCC investigation into the killing of De Menezes; and also the investigation into the handling of the terrorist attacks in Mpeketoni, Kenya, by the Independent Policing Oversight Authority (2014).

¹¹¹ In addition, in some countries there is a Security Council or Police Council setting the policy parameters for the police, and a Police Commission, responsible for personnel management issues. In decentralized systems, and also in federal States, there sometimes is a decentralized equivalent.

¹¹² In some States the mayor (often referred to as “(Village) Chief” in African and Asian countries) is a locally elected official serving his or her electorate, in others he or she is appointed by and serving the (national) Government. Sometimes the mayor is part of the law enforcement architecture, sometimes he or she plays an oversight role or is independent.

¹¹³ See Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, principle 2; Body of Principles, principle 24; BPUFF, principle 24; Guidelines for the Effective Implementation of the Code of Conduct for Law enforcement officials, IB (3).

Anyone in a supervisory role bears responsibility for the conduct of his or her staff, and he or she should hold those who report to them accountable for their actions and decisions. This is captured in principle 24 of the BPUFF:

“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.”

Supervisors can only exceptionally claim that they had no knowledge of the unlawful conduct of their staff as the assumption is that a line manager, as part of their supervisory functions, should be aware of the conduct of those under their command. The superior thus bears responsibility for such unlawful conduct as long as they had a reasonable opportunity to prevent the act.¹¹⁴ Furthermore, the superior is also responsible for reporting wrongdoings by those under their command and for taking all necessary and adequate steps to punish those in violation of rules and procedures.

MANAGEMENT ACCOUNTABILITY IN JAMAICA

The Independent Commission of Investigations (INDECOM) of Jamaica emphasized:

“Central to the state’s observance of the right to life must be the conduct of the supervisors of state agents who are often called upon to decide whether to take a life. It falls to those in command to lead in a manner that fosters observance of, and respect for human rights. This must include training and equipping, as well as reviewing conduct and facilitating independent investigation. A good measure of the efficacy of command officers is their conduct of planned operations”.^a

The Commission recommends that, in appropriate cases, commanders and supervisors are held accountable and, in some cases, “be suspended from duty pending the completion of investigations which would necessitate that divisional commanders desist participation in the conduct of reviews of their own action”.^b

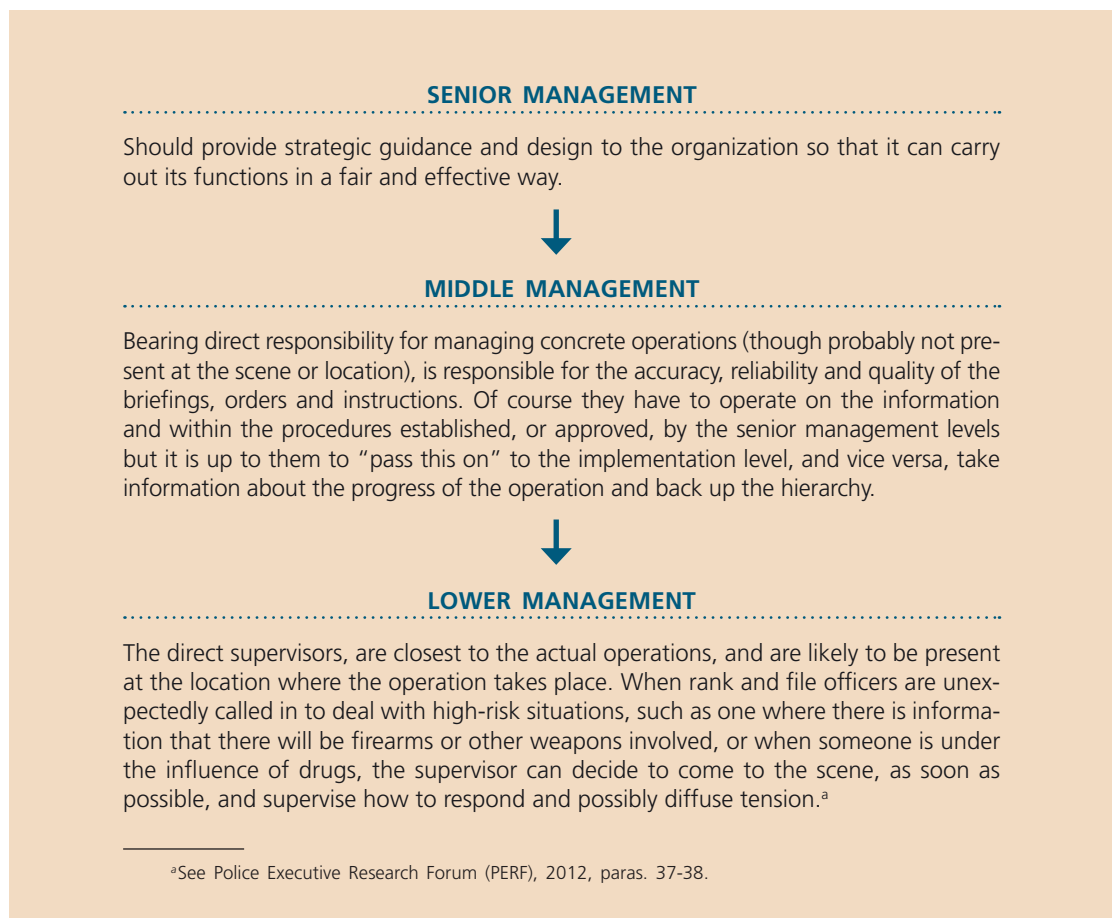
^a See INDECOM Jamaica, “Command Responsibility for the Use of Force,” *INDECOM’s Special Investigations 2014 and Annual Financial Reports, 2014*, p. 13: <http://indec.com.gov.jm/reports.htm>

^b *Ibid.*, p. 7.

It is good practice to distinguish between strategic, tactical and operational command positions, as each of these comes with its own particular responsibilities and authorities—(also referred to as senior, middle, and lower command, or management).¹¹⁵

¹¹⁴ See Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, principle 19.

¹¹⁵ In the United Kingdom, for any operation, a system is used consisting of Gold (strategic), Silver (operational command) and Bronze (implementation) commanders. The role of the Gold commanders, of which there is only one per operation, is not just setting the strategic parameters, but also monitoring decisions taken by Silver and “keeping an operational audit of key decisions regarding communications with stakeholders and mobilising resources.” (Punch, 2011). See College of Policing (2013): *Command structures*: <https://www.app.college.police.uk/app-content/operations/command-and-control/command-structures/>



Line management is also in charge of maintaining discipline. The senior management has the duty to set up fair and transparent disciplinary procedures and oversee that these are applied responsibly and consistently. The obligation to install an effective line of command does not depend on whether law enforcement is organized in a centralized or a decentralized manner, as any structure requires effective command and control.

An important aspect of management responsibility is to allocate resources, including human resources, to operations and care should be taken to make sure to assign duties to staff that are adequately trained, equipped and prepared for that particular activity. Through the line of command, law enforcement officials are briefed prior to going for a particular operation, when they receive the instructions based on the tactical plan.

3.3. Orders and obedience

When a supervisor gives an order, the subordinate is personally responsible for how they execute the order. However, responsibility for the substance and lawfulness of an order lies with the person giving the orders.¹¹⁶ Principle 26 of the BPUFF states that “Obedience to superior orders

¹¹⁶ See BPUFF, principle 26; ICPAPED.

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 domestic legal system should allow law enforcement officials to resist unlawful orders and laws and regulations should not provide for an absolute duty of obedience. The law should clarify that law enforcement officials are entitled and, under certain circumstances, even obliged to refuse to comply with manifestly unlawful orders, and refusal to follow such orders shall not result in either disciplinary or criminal repercussions.¹¹⁷ These measures should be complemented by constitutional or legal assurances to allow law enforcement officials to resist an unlawful order. Appropriate complaints and oversight mechanisms (and a functioning justice system) are also needed, to ensure accountability for superiors and others (e.g. politicians) who give unlawful orders.¹¹⁸

According to the Convention against Torture "an order from a superior officer or a public authority may not be invoked as a justification of torture". The principle that obeying an unlawful order does not exempt a law enforcement official from criminal and other forms of liability is also reflected in other international instruments.¹¹⁹

EXAMPLES OF NATIONAL LEGISLATION

In the Regulation of the Chief of the Indonesian National Police, article 57 prohibits every police official "to exploit their subordinates or order them to conduct acts for personal interest and outside of their authority". Also, the police official is "responsible for every consequence of their orders", which may include "criminal and administration responsibilities".^a

In Guatemala, the Constitution provides in its article 156 that orders which are clearly illegal or imply the commission of a crime are not obligatory to follow for any functionary or public servant, be it a military or civilian.

^a See Regulation of the Chief of the Indonesian National Police (INP), article 57(6) and (7).

It is good practice to establish clear guidance for law enforcement officials in case they are confronted with orders that they suspect to be unlawful,¹²⁰ and to train recruits in dealing with such situations during of their basic training.¹²¹ Recruits should discuss examples of unlawful orders in common day-to-day situations, including orders to torture, to beat someone who has submitted to authority, or to collect bribes, that can prepare them for actual operational situations.

¹¹⁷ See BPUFF, principles 25-26; Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, principles 3 and 19.

¹¹⁸ See part V on Accountability for the use of force and firearms in law enforcement.

¹¹⁹ See CAT (2)(3); Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, principle 19.

¹²⁰ See, for example, the Albanian Law on the State Police (No. 108/2014), article 86.

¹²¹ See Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, principle 3.

3.4. Planning for operations

Effective planning minimizes the likelihood that force, in particular lethal force, will need to be used and maximizes the potential to protect the lives and rights of all those involved; if force has to be used it is more likely to be strictly necessary under the circumstances and proportionate to the threat posed.¹²²

The requirement for planning should be at the heart of any law enforcement action or operation. The main question to be answered in this context is the following: “what is the objective of the operation and what are the available options for achieving that objective?” It is good practice to have a set of questions to guide any planning.¹²³ Such set of questions should include:

- What is the law enforcement issue at hand?
- What is the situation on the ground?
- What is the legitimate law enforcement objective?
- What are the risks involved in this situation?
- Do I have the authority to act, and what does this authority imply?
- Do I have all needed skills/equipment/possibility to act?
- How do I approach the situation/what is my plan?
- What alternative approaches are available?

A human rights-based approach to law enforcement must incorporate human rights considerations at the planning stage of any operation, including mitigation measures where any risks to human rights are identified. Orders and briefings should include human rights issues, and clear directives should be issued on how human rights should be protected in the specific situation.¹²⁴

HUMAN RIGHTS ADVISERS

Some States employ human rights advisers to assist commanders, as well as rank-and-file officers, to comply with human rights law. For example, in Northern Ireland, law enforcement is assisted by advisers who are lawyers with expertise in human rights, and who work on all aspects of policing, ranging from information processing, legacy investigations to counter-terrorism and maintenance of public order. The human rights adviser is available to assist all officers, attends planning meetings and can be present at the command centre for major operations. The lawyer's role is advisory only, and the responsibility for the decisions remains with the relevant police official. Similarly, in Chile, the Carabineros entered into an agreement with the National Human Rights Institution (NHRI), to allow delegates from the NHRI to oversee and be present in police stations and buses when the police arrested students demonstrating in Santiago. In Poland the police have employed human rights advisers since 2008; there is one in each region (17 in total) and one adviser at the central level.^a

^a See OSCE, Office of the Secretary General Strategic Police Matters Unit. Regional workshop on Democratic Policing: Workshop Report, Minsk, Belarus, 16-17 September 2009: <http://polis-cp.osce.org/library/f/3662/2854/OSCE-AUS-RPT-3662-EN-2854.pdf>

¹²² See INDECOM Jamaica (2014), p. 13: “in view of preventing loss of life or causing serious injury whenever it is possible operations should be carefully planned, and it must be recorded who are participating and with what equipment, what powers to be deployed, which need to be properly authorized and commanders need to ensure that use of force policies are complied with.”

¹²³ Adang, O.M.J, *Learning to Deal with Potentially Dangerous Situations: a Situation-Oriented Approach*, 2012; M.R. Haberkfeld, C.A. Clarke and D.L. Sheehan (eds.), *Police Organization and Training: Innovations in Research and Practice*, Springer, New York, 2012.

¹²⁴ See OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, chapter 19 (Law Enforcement and Human Rights in Command, Management and Organization), p. 443.

Note that these questions and considerations should always be taken into account before getting into action. There can be months of pre-planning in the case of an international conference where protests are anticipated; just hours when an incident presents itself unexpectedly; or even mere minutes as when answering calls for assistance during patrols. Even when there is very little time, law enforcement officials should be trained to automatically analyse information about the incident and consider various response scenarios. The underlying idea is that there are always moments of choice, where the law enforcement official(s) involved can choose if and how to respond, and they must make sure to make effective use of these moments, in order to respond appropriately and minimize risk for themselves, the subject of the law enforcement operation and others, including any third persons present at the scene.

PROPER PLANNING TO AVOID "SPLIT-SECOND SYNDROME"

Police-citizen encounters are transactional events, with each participant making decisions and responding to the decisions of the other. As a result, use of force by a police officer is the culmination of a series of earlier actions and reactions. However, reviews of incidents involving the use of force frequently ignore earlier stages of an encounter and focus entirely on the final-frame decision, called the "split-second syndrome". It has been argued that such narrow focus excuses unnecessary violence resulting from poor decisions made by officers at earlier stages of the encounter.^a

In this sense, see also the Police Executive Research Forum (PERF), "Re-Engineering Training on Police Use of Force" (2015).^b

^a J.J. Fyfe, "Split-second Syndrome and Other Determinants of Police Violence, *Critical Issues in Policing: Contemporary Readings*, pp. 465-479, 1989; Roger G. Dunham and Geoffrey P. Alpert, eds.: <https://www.ncjrs.gov/App/publications/abstract.aspx?ID=114687>

^b See Police Executive Research Forum (PERF), 2015, p. 9.

In situations of planned operations, and where considerable numbers of staff are to be deployed under a command structure, the tactical command level is responsible for preparing a tactical plan for how to approach that particular situation. It is good practice for the agency to establish a policy that specifies the required elements for a tactical plan; this information should also be readily accessible to operational commanders who may be required to pull together a plan for response to an unanticipated incident.

An effective planning system enables the management to coordinate resources and issue directions and commands to them.

- It allows for the preparation of orders and instructions based on which the operational plan can be developed and executed.
- It entails orders that are used to disseminate information and delineate responsibilities during the planning and different phases of the actual operation.
- The plan needs to be based on the legal framework governing the agency's functioning, its policies, code of ethics, lessons learnt (review of previous incidents in which force was used) and other guidance in order to ensure it is not developed in isolation.

When developing the tactical plan, questions about how to prevent the likelihood of recourse to use of force, and, if necessary to use, minimize force, should be addressed. Due caution needs to

be taken to ensure that the operation is conducted in a manner that does not imply an undue risk to the life or safety of third persons. Calculating incidental loss of life or injury caused to uninvolved persons when planning an operation is never acceptable in a law enforcement context.¹²⁵

It is good practice to invite a human rights adviser to attend planning meetings and advise on what tactical options should or should not be deployed in order to operate in full compliance with human rights obligations.

This planning process in such cases is very similar to the one described above, and should answer the questions listed before. In this regard, planning should:

- Start with collecting and analysing relevant information about the incident as well as the expected developments, in order to make a risk assessment.
- Identify relevant stakeholders and develop communication and coordination mechanisms with them, and develop scenarios (both worst case and realistic) about what could happen (also called “contingency planning”).
- Formulate the law enforcement objective(s) and how to achieve them in a realistic manner while being prepared for different possible scenarios and the steps that need to be taken in each case.
- Answer questions such as: what are the threats and which are the tactical options, the number of staff to be deployed, with what equipment and in what dress?
- Focus on how to de-escalate in order to prevent the use of force and if force has to be used make sure it is the minimum necessary and always proportionate to the threat.
- Be flexible, so that it can be adapted when needed during the course of events, which requires continuous data collection and monitoring, prior to and during the operation.

Use of force during planned operations will be subject to a stricter level of scrutiny than would be the case with unplanned events. All plans should be recorded, including the considerations of the options rejected or progressed together with the reasons why such conclusions were drawn, and by whom.¹²⁶

Prior to the operation, and in line with the tactical plan, those involved will need to be briefed about the objectives, possible scenarios, and what they should and should not do. The briefing must be realistic and use neutral language, since when law enforcement officials are told to expect violence there is a risk they are more likely to approach the situation prepared to use force (rather than prevent it), which can lead to undesired outcomes.

There must be a clear operational command structure in place defining who is authorized to take decisions on specific operational aspects, and thereby also identifying those responsible. In every operation there needs to be a lead, responsible for accurate record keeping, information gathering, investigation, interviewing, seizures, arrests/arrest processing, court processing, case review and debriefs.

¹²⁵ The notion of lawful incidental damage is one that is particular to the conduct of hostilities paradigm and inapplicable to law enforcement operations.

¹²⁶ See for example PSNI *Manual of Policy, Procedure and Guidance on Conflict Management*, chapter 9: Police use of firearms, para. 9. 107.

INDIA: SCHEME OF POLICE ARRANGEMENTS

For big events requiring police to play a facilitating or controlling role, such as elections, festivals, demonstrations, sports events, and pre-announced protest marches which attract very large numbers, people, the number of law enforcement officials deployed may extend from a few hundred to thousands. In India, for such events a written "scheme of police arrangements" is prepared in advance, after discussion among senior police officers. The scheme will indicate how police strength is drawn and deployed, duties are detailed to individuals, assigning responsibilities, explaining how command and control mechanisms will operate, etc. It will also specify communication systems, traffic arrangements, positioning of rifle, teargas and medical aid parties, administrative arrangements for food and water, collection of information, liaison with organizers, contingency planning etc. These documents are distributed or circulated (for example by e-mail) to all law enforcement officials involved, including the rank and file. It is also customary to issue press releases communicating relevant information to the public.

3.5. Creating a culture of professionalism and respect for human rights

The role of the line of command in establishing an environment that facilitates compliance with human rights cannot be stressed enough. Maybe the most important aspect of this is also the least tangible: that of professional culture. It is the leadership that bears responsibility for establishing a professional culture that values the inherent human dignity of all people, including of the law enforcement officials and sends the message that the law enforcement agency does not tolerate abuse.

Everyone within the agency plays a role in shaping the professional culture, the norms and values, but the exemplary behaviour of those in the line of command should never be underestimated. In order to establish an ethos that is respectful of human rights, they should make sure that they give the right example themselves, for example:

- They should respond promptly, transparently and effectively to incidents of abuse whenever they occur in order to avoid them developing into customs and patterns that will be hard to change.
- They should use appropriate language when talking about use of force, about lost lives, but also about gender and minority groups.
- They should treat victims of crime and of police violence with respect.

Establishing a working ethos that is respectful of human rights and is based on respect for human dignity is also visible in the working conditions under which staff should operate:

- Clean premises
- Proper sanitary conditions
- Adequate living areas
- Uniforms
- Salaries and benefits

All of these are indicative of how law enforcement officials are treated by their own organization. When working conditions are bad, this is likely to have a negative impact on the work ethos and consequently, on how members of the public, in particular less privileged groups, are treated.

This is acknowledged in the preamble of the Basic Principles, which states that “there is (...) a need to maintain and, whenever necessary, to improve the working conditions and status of these officials”. The Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, Guideline IB (2) state: “All law enforcement officials shall be adequately remunerated and shall be provided with appropriate working conditions.” This was also recognized by the African Commission on Human and People’s Rights, confirming the importance of having an enabling environment, when it adopted the “resolution on Police and Human Rights in Africa”:

“Concerned that effective policing in Africa is impeded by several factors including limited financial resources, inadequate training, poor working conditions and corruption; Further concerned that this situation has led to non-compliance by the police with basic human rights standards in the execution of their duties, including the use of excessive and disproportionate force, extrajudicial killings and summary executions, arbitrary and illegal arrest, torture and mistreatment (...)”.¹²⁷

¹²⁷ Resolution ACHPR/RES.259 (LIV) 2013 on Police and Human Rights, adopted during the 54th Ordinary Session held from 22nd October to 5th November 2013 in Banjul.

CHAPTER KEY MESSAGES

- Governments and law enforcement agencies bear responsibility for creating the conditions under which law enforcement officials can operate professionally, including setting up effective command and control mechanisms, and developing adequate SOPs and instructions.
- Effective management within law enforcement agencies will feature a chain of command that facilitates upward and downward communication, and coordination of operations among multiple units.
 - Senior management should provide strategic guidance.
 - Middle management bears responsibility for managing concrete operations and accounting for accuracy, reliability and quality of briefings, orders and instructions.
 - Lower management directly supervises officers, deciding how to respond and diffuse tension.
- Anyone in a supervisory role bears responsibility for the conduct of his or her staff, and he or she should hold those who report to them accountable for their actions and decisions.
- Orders and instructions passed through the line of command have to be lawful and mechanisms and procedures should be in place to object to manifestly unlawful orders and instructions. Following manifestly unlawful orders does not exempt a law enforcement officer from criminal and other forms of liability for unlawful actions.
- When a supervisor gives an order, the subordinate is personally responsible for how they execute the order. However, responsibility for the substance and lawfulness of an order lies with the person giving the orders.
- Laws and regulations should not provide for an absolute duty of obedience. The law should also specify that law enforcement officials are entitled and, under certain circumstances, even obliged to refuse to comply with manifestly unlawful orders, and that refusal to follow such order shall not result in disciplinary or criminal repercussions.
- Employment or involvement of human rights advisers within an agency can help assist commanders and rank-and-file officers to comply with human rights norms and standards.
- Appropriate planning should be at the heart of any law enforcement action or operation. A human rights-based approach to law enforcement should incorporate human rights considerations at the planning stage. All possible human rights issues should be identified and mitigation of any associated risks must be considered. Orders and briefings should include these human rights issues, and clear directives should be issued on how human rights should be protected in the specific situation.
- Management should instil a culture of respect for human rights and the dignity of every person, sending a clear message that abuse will not be tolerated, including proper working conditions for law enforcement officers.

Chapter 4. Human resources management

In addition to good management, compliance with the principles laid out in this resource book requires law enforcement officials to have the right attitude, skills and expertise, which in turn requires proper human resources management, including recruitment and selection procedures, adequate training and performance management. Chapter 4 goes into such human resource issues: how to recruit and select people with the right skills, competencies and attitude, and train them so that they know how to use means alternative to force to solve conflicts, and if they do have to use force, how they can analyse a situation, with the help of scenario-based training, to identify the most appropriate response.

4.1. Recruitment, selection and promotion

The first step in building a professional workforce is making sure to get the right people to do the job and train them properly.¹²⁸ In this respect, principle 18 of the BPUFF states:

“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”.¹²⁹

Recruitment processes should focus on skills and competencies, the right attitude and moral values, together with physical fitness aspects, required education, and references. Those that do not match pre-set criteria should not be allowed to enter the agency.

Recruitment processes should be publicly and widely announced, well-prepared, and implemented in such a way that they result in a work force that is representative of the communities served. The recruitment policies and processes should ensure that applicants with the requisite social attitudes and interpersonal skills are selected. In addition, where the workforce is skewed and has an over-representation of one community, for example on ethnic or religious grounds, this is likely to lead to legitimacy deficiencies which may manifest whenever law enforcement officials are to operate

¹²⁸ In some countries police are responsible for recruitment and training, in others this is the responsibility of the Ministry of Interior.

¹²⁹ See Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, Guideline IB (1).

within an area inhabited by members of the underrepresented community or where their interests are at stake. Also, as discussed in chapter 2, arbitrary or excessive use of force is often found to target communities that are underrepresented within the law enforcement agencies.

Efforts should be made to determine the cause of the lack of equitable representation, where applicable, so that corrective action can be taken. Measures of affirmative action may be helpful, while maintaining high standards of professionalism of the force. In line with the key principle of non-discrimination, whenever certain recruitment channels or selection criteria turn out to have a direct or indirect discriminatory effect,¹³⁰ they should be carefully reviewed and revamped to address shortcomings. This could lead to measures such as widening the channels through which recruitment processes are announced, for example, through including media outlets that target the underrepresented group or actively reaching out to those communities that are underrepresented. It is considered good practice for law enforcement agencies to examine options to provide applicants with good potential, but not meeting a particular standard, with additional training to enhance their chances.

4.2. Training

General principles for training

Whenever recruits enter the world of law enforcement, they must first undergo training. The duration of training varies and is usually in the range of 6 to 18 months. In most countries training in police education facilities is followed by a period of “on-the-job” training, usually under the guidance of an experienced officer, the so-called mentor. To be effective, training must be built on appropriate organizational policies, procedures and SOPs, which should be reinforced in practice to ensure they are effectively applied.¹³¹

For training to bear relevance for law enforcement practice, it should be grounded on “real world” experiences, making use of real life scenarios. This is particularly important for human rights training, which should be integrated and streamlined throughout all training modules and material, rather than treated as a separate module. Such integration and streamlining help to ensure that human rights are embedded in the reality of law enforcement practice.

Sometimes, human rights are treated as a stand-alone subject, that everyone has to go through but nobody really knows why. This approach falls short of adequately demonstrating how human rights relate to the everyday work of law enforcement officials. For example, a trainer can discuss the protection of the right to life under different international instruments, but it is far more effective to link this issue to training on the use of force and how such use of force can be minimized in order to prevent loss of life.

New recruits need to be trained in policing functions, the role and responsibilities of law enforcement in society, and how to carry out their respective tasks, in accordance with relevant laws and policies. They must learn when and how to use their police powers, including the power to use force, how to exercise powers that provide for some degree of discretion, and the responsibilities

¹³⁰ *Direct* discrimination occurs when someone has been treated less favourably because of a protected characteristic like religion or sexual orientation, including when that characteristic is perceived, regardless of its actuality. *Indirect* discrimination occurs when an apparently neutral provision, criterion or practice puts a person with a particular characteristic at a higher disadvantage than others cannot be objectively justified.

¹³¹ See Osse, A. (2006); Police Executive Research Forum (PERF), 2012, p. 35: “Participants also stressed the importance of ensuring that policy and training are in sync with each other.”

that come with it. In addition, law enforcement officials who have responsibilities related to arrest, detention and treatment of detainees should receive appropriate training for those particular tasks.¹³²

Those responsible for mentoring new recruits during their “on-the-job” training should be the recipients of similar training that enables them to know what their recruits have learned. More importantly, mentors must understand that their role is to help instil a work attitude that is based on professionalism, respect for human rights and dignity, a willingness to learn, and handling oversight and scrutiny in a positive and constructive manner, and should set an example for such characteristics. Especially in the case of reforms that affect law enforcement rules and practices, care must be taken that trainers and mentors do not reinforce the “old” operational code, hence frustrating the reforms.¹³³ This means they should be carefully selected, and mentored themselves to ensure they comply with the reform agenda. In principle, those that have been implicated in human rights violations or abuses in the past should not be allowed to mentor new recruits.

Those in command positions should be properly trained and prepared for the specific responsibilities they bear, in providing effective supervision (i.e. direct command during operations), preparing for operations, including developing tactical plans, and evaluating operations and actions in order to learn from them and take adequate measures to prevent recurrent mistakes. This also implies that when a law enforcement official is promoted, additional training should be provided commensurate with the new responsibilities, including on the use of force. In most countries there are specialized management training institutes for leadership positions, regardless of their entry degree.

It is crucial that the training is in clear connection with the operational side of law enforcement, so lessons learnt from law enforcement practice can be distilled into training, as per principle 20 of the BPUFF which states that “law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents”. A regular exchange of trainers who go back into operational practice and vice versa is recommended. This is also important in view of new instruments, technologies and tactics that may have been developed, either in practice or theory. Information on the person responsible for the training contents and record of updates should be accurate and transparent.

Use-of-force training: practical, realistic and scenario-based

Use-of-force training should be scenario-based, with emphasis on those scenarios that the new recruit is most likely to encounter in practice. Through working on these real-life scenarios the recruit learns to assess a situation in order to identify options how to solve it.

Principle 20 of the BPUFF tasks governments and law enforcement agencies to “give special attention to issues of police ethics and human rights, (...) and 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”.

Indeed, recruits should learn how they can handle conflict situations in ways other than through use of force. They should learn how to de-escalate tension, make use of communication skills such as mediation and negotiation, and understand different tactics they might deploy.

¹³² See CAT, article 11; Committee Against Torture, General Comment 20, para. 10.

¹³³ See Police Executive Research Forum (PERF), 2012, *Resistance from a training unit can thwart policy reforms*, pp. 37-38.

Topics that should be addressed in use of force-related training, in the classroom and then reinforced during “on the job” training include:¹³⁴

- Relevant legal and ethical framework for policing in general and use of force in particular
- Absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment¹³⁵
- Peaceful settlement of conflicts or conflict-resolution skills
- Communication skills, including methods of persuasion, negotiation and mediation;
- Cultural awareness and sensitivity to diversity
- Gender awareness, including in the context of sexual and gender-based violence
- Child-related issues, including in the context of violence against children
- Awareness of the rights and needs of victims of crime
- Facilitating assemblies
- Understanding crowd behaviour
- Professional criminal investigations
- Use of different types of equipment and weapons
- Personal safety and stress management
- First aid training

Moreover, law enforcement officials should learn that not every situation requires action. This is the recommended course of action in case an officer can walk away from a situation and no negative outcome results, or if the situation can be better handled by other agencies with more effective responses.¹³⁶ If the situation needs action, officials should learn to consider non-violent means first, and only consider using force when non-violent means remain ineffective or have no likelihood of succeeding. Even in such cases, any use of force should strictly comply with the principles of necessity and proportionality.

Personal safety considerations should be included in the training, as this may help reduce the sense of threat in a given situation and hence the likelihood that an officer would resort to using force. An example can be found in Somaliland, where the Comprehensive Education Programme which was developed with assistance from UNODC and will be offered to all ranks of police officers, includes a module on self-defence, which involves conflict management, communication, non-lethal control and restraint, and prisoner transportation.

¹³⁴ See BPUFF, principles 5(c), 19, 20, 22; CAT, article 10; Declaration on Violence Against Women, article 4(i); Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, chapter X. Strengthening capacity and training of criminal justice professionals, article 28(g) and (h); Convention Against Racism; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; United Nations Code of Conduct for Law Enforcement Officials; Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials.

¹³⁵ See CAT, article 10; General Comment No. 20, article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment) adopted in 1992 by the HRC, para. 10.

¹³⁶ See Police Executive Research Forum (PERF), 2012, pp. 37-38.

PERF: RE-ENGINEERING TRAINING ON POLICE USE OF FORCE (2015)

In its latest publication on use-of-force training, the Police Executive Research Forum (PERF) wrote:

“It became clear that this issue of de-escalation was one of many ways in which the training of police officers can be improved. Our goal is to give police officers better tools for avoiding unnecessary uses of force, particularly deadly force”.^a

The research found that law enforcement training generally had heavy emphasis on the “shoot-don’t shoot” approach, which “[did not] provide the full range of issues that officers need to consider”.

^a See Police Executive Research Forum (PERF), 2015.

During actual use-of-force training (training on the shooting range, learning to use the baton, applying handcuffs), the recruit should learn to reflect on the principles that should be applied whenever resorting to the use of force, and his or her general responsibilities to respect, protect and fulfil human rights, so that he or she at a later stage can then also apply these to more complex scenarios and in real practice, when acting under pressure.

Training law enforcement officials in the correct use of firearms is essential, but in many countries such training is limited to cleaning the weapon, disassembling it and putting it back together, and firing at the “bull’s eye”. This is clearly insufficient, indeed firearms training should include a necessary minimum of shooting practice and also be scenario-based, where students have to make assessments of a situation and decide if and how to respond.

More specifically, during actual use-of-force training recruits should learn:

- General obligations under international human rights law and their implications
- Principles of proportionality and necessity and how to apply them in practical examples
- National laws and regulations
- How to use unarmed force effectively
- How to use the various instruments of force and techniques professionally
- How to use firearms professionally
- When and how to stop use of force which started lawfully but is no longer needed, for example: how to avoid becoming emotionally charged, angry or vengeful during operations (regardless of any provocation)
- What steps to take after having used force or firearms
- Issues around chain of command, reporting obligations and why such structures and obligations are important

Any training provided as well as the choice of instruments to be used should be independent of any company or commercial interests involved in the manufacture and marketing of instruments of force.¹³⁷

¹³⁷ See Omega Research Foundation, Briefing for the Special Rapporteur on extrajudicial, summary or arbitrary executions on the use of lethal force during arrest, 2011: <http://www.omegaresearchfoundation.org/assets/downloads/publications/Briefing%20for%20SR%202.pdf>

Testing and certification

Principle 19 of the BPUFF states that governments and law enforcement agencies “shall ensure that all law enforcement officials are (...) tested in accordance with appropriate proficiency standards in the use of force”. Recruits must show they can apply what they were taught in practice, preferably in the context of realistic scenarios.

An important element of the test should be to assess whether law enforcement officials know how to employ communication and other tactical skills in order to avoid using force, and also whether they know how to determine the minimum necessary level of force to be used and how they assess the proportionality of the force used to the threat encountered.

Principle 19 also states that “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”.

To be authorized to use a firearm, the recruit should be certified for that particular instrument, meaning they should regularly be re-tested and lose their licence or certification or have it suspended when they fail a test. In such cases, law enforcement officials should be required to hand in the respective instrument. This may also benefit from being extended to other instruments of force.

Follow-up and refresher training

Training does not stop after the newly recruited law enforcement officials have finished their basic training. The norms and standards governing law enforcement work should be reinforced in all subsequent training and refresher courses. This need is also emphasized in principle 18 of the BPUFF which highlights the obligation of law enforcement agencies to provide “continuous and thorough professional training”.

In many countries it is common for law enforcement officials to receive regular refresher training on the use of firearms, but this is not enough. Rather, refresher training should reinforce constant awareness of the need to avoid the use of force whenever possible and of the tools that facilitate law enforcement that do not rely on force. As by that point the participants have practical experience, it is important to allow for reflection on how they dealt with certain situations, how they could have done things differently and avoided the use of force and how they can use their experience to improve their law enforcement skills and competencies.

Police academies or colleges should have a training record of every officer who got initial training and call officers back for follow-up and refresher courses based on the institutional schedule.

4.3. Performance management

Principle 18 of the BPUFF states that the “continued fitness [of law enforcement officials] to perform [their] functions should be subject to periodic review”.

Ensuring a human rights-based approach to law enforcement requires an effective performance management process, which involves regular assessments of each member of staff on the basis of previously established indicators, and (jointly) developing a plan on how to improve performance, where required.

In addition, good management is where superiors also keep an eye on the personal situation of law enforcement officials under their command. Without intruding, a commander should notice and observe when certain circumstances or operations seem to affect someone's judgment. In these cases, the commander should take appropriate action and assign other duties for the time being. This is, for example, recognized in the regulations of the Indonesia National Police, where article 57 requires superiors to "be aware of the health conditions of their subordinates" and to "consider the capability of their subordinates with task been given to them".¹³⁸

POLICE SUICIDE AND FAMILY VIOLENCE

There are many reports about law enforcement officials who use their arms against themselves or their family members. Indeed, levels of suicide amongst law enforcement officials tend to be high and one of the facilitators of this regrettable trend is that they have access to instruments of force, in particular firearms. Moreover, law enforcement officials have used their official instruments of force (in particular firearms) against their spouses, children and others in cases of domestic violence. Where instruments of force provided in an official capacity have been used in private incidents, including instances of domestic violence, this should have disciplinary, and whenever warranted, criminal consequences. In many countries, law enforcement officials are required to leave their firearms at work in designated storage spaces. Also it is important to have suicide prevention programmes and psychological support for law enforcement officers. In Algeria for instance, the national law enforcement agency has a number of staff psychologists available to support members of the agency.

An important aspect of the performance management cycle is assessing and evaluating the conduct of the members of staff in their performance of duty, including arrests made, incidents of force,¹³⁹ use of firearms, as well as any casualties resulting from their actions, in light of their geographic placement, and their command structure.

PRAISE OR PUNISH?

In Rio de Janeiro, Brazil, instead of punishing officers for their wrongdoings, the state financially awarded 11,749 police officers and other public servants in April 2013 for meeting reduction targets for crimes and acts of violence, including police homicides.^a This has helped to reduce police killings, since units that had a high number of deaths had less chance of obtaining the bonus. It should be noted, however, that such a policy carries great risk when it does not include a transparent reference to how police officers' performance relates to decreased crime rates. Thus, police officers should only be rewarded when they bring down crime in compliance with the law. Indeed, the definition of accurate indicators is a major challenge in measuring efforts.

^a See Human Rights Watch, World Report, Brazil, 2014: <https://www.hrw.org/world-report/2014/country-chapters/brazil>

¹³⁸ See Regulation of the Chief of the Indonesian National Police (INP), No. 8, 2009: www.use-of-force.info.

¹³⁹ Osse, Anneke, *Understanding Policing: A Resource for Human Rights Activists*, Amnesty International, the Netherlands, 2006.

4.4. Early intervention systems

In some countries law enforcement agencies make use of a so-called “early intervention system” (also known as the “early warning system”) to identify officers at risk of misconduct, including the use of excessive force, and to provide those officers with appropriate counselling or training in order to correct performance before a situation develops that warrants formal disciplinary action.¹⁴⁰

For such a system to be effective, reports of incidents that involved the use of force, and complaints by members of the public, need to be completed and included in the system, in order to allow for an analysis of whether there is a negative pattern in an officer’s conduct, and whether he or she has a higher than average number of incidents involving the use of force or complaints. When such a pattern can be established, supervisors should conduct a review of the person’s performance in order to detect underlying causes, and decide whether intervention is necessary, and, if so what kind of intervention could effectively tackle the problem.

Although there are no standard criteria for early intervention systems, a study conducted in 2001 found there was general agreement on factors that help identifying “problem officers”, including citizen complaints, firearm-discharge reports, civil litigation, resisting-arrest incidents, and pursuits and vehicular accidents.¹⁴¹ Being included in an early intervention system appeared to reduce problem behaviours significantly and change the behaviour of both supervisors and identified officers. The true impact of these systems however was difficult to assess as it was typically found to correlate with the agency’s general culture of accountability. The study concluded that “early warning systems can be effective management tools but are only one of many tools needed to raise standards and improve the quality of police services”.¹⁴²

BRAZIL: INDEX OF APTITUDE FOR THE USE OF FORCE

In Rio de Janeiro, Brazil, the police, with the help of the University of Rio de Janeiro, has developed an Index of Aptitude for the Use of Force for each individual police officer, based on information from medical sources, including from mental health professionals and the officer’s past record on use of force. Under this programme, officers who exceed a certain threshold of consumption of ammunition over the preceding six months and also those who become involved in armed incidents with fatal and non-fatal consequences are to be submitted to a monthly evaluation and training programme, where use of force is re-trained and contention is emphasized. In order to resume their functions, officers will have to be declared apt in medical, psychological and technical evaluations. Officers who, after participating in the course, exceed the threshold of ammunition may be assigned administrative tasks that do not involve the possibility of use of force.

¹⁴⁰ Samuel Walker and Carol Ann Archbold, *The New World of Police Accountability*, Sage Publications, 2014.

¹⁴¹ Samuel Walker, Geoffrey P. Alpert and Dennis J. Kenny, Walker, *Early Warning Systems: Responding to the Problem Police Officer*, United States National Institute of Justice, July 2001.

¹⁴² *Ibid.*

CHAPTER KEY MESSAGES

- Compliance with the principles laid out in this resource book requires law enforcement officials to have the right attitude, skills and expertise, which in turn requires proper human resources management, including recruitment and selection procedures, adequate training and performance management.
- Recruitment processes should be fair and effective, in order to select persons with the right work ethos, and establish a work force whose composition is a reflection of the society in which it operates.
- New recruits need to be provided with adequate training to facilitate familiarity with rules and procedures relevant to their work as well as proper application.
- Extensive training should be provided on the use of force. For training to bear relevance for law enforcement practice, it should be based on “real world” experiences, making use of real life scenarios and including lessons learnt from previous practice. Those in command positions should be trained and prepared for their specific responsibilities.
- It is important for law enforcement officers to learn that not every situation requires action. If the situation requires action, officials should learn to consider non-violent means first, and only consider using force when non-violent means remain ineffective or have no likelihood in succeeding.
- Firearms training should include a necessary minimum of shooting practice and also be scenario-based, where officials have to make assessments of a situation and decided if and how to respond.
- Regular follow-up and refresher training are good practice.
- An effective performance management process involves regular assessments of each staff member on the basis of previously established indicators and a jointly developed plan on how to improve performance. Good performance management requires the supervisor to also keep an eye on the personal situation of the law enforcement officials under their command.
- Officers at risk of using excessive or arbitrary force should be identified as early as possible and necessary and appropriate measures should be taken to address this problem. A so-called “early intervention system”, to identify officers at risk of misconduct and offer those officers counselling or training in order to correct performance before a situation escalates, is one way of achieving this.

PART III

.....
INSTRUMENTS OF FORCE
.....

Chapter 5. **A “range of means” to allow for a differentiated response**

In situations where it is absolutely necessary to use force, law enforcement officials should use the minimum amount necessary to achieve the law enforcement objective and in a manner that is proportionate to the threat encountered. This requires them to be able to choose between different instruments, including so-called less-lethal instruments.

5.1. Introduction: apply non-violent means first

Principle 4 of the BPUFF stresses that law enforcement officials should consider the use of non-violent means first and only use force when the non-violent means “remain ineffective or without any promise of achieving the intended result”.

This means that before resorting to force, law enforcement officials should always exhaust non-violent measures, such as the use of barriers to separate crowds and the removal or protection of a potential target. Moreover, officials should always consider whether they can solve the conflict through dialogue: are there facilities to communicate with the subject(s)? Is it possible to engage someone who has a good relationship with the person and can talk to them, (a parent, lawyer, social worker or community leader)? Will waiting to act improve chances of avoiding the use of force?

All of the abovementioned options prevent or reduce the likelihood of the use of force whilst helping law enforcement officials to achieve their objectives.

5.2. A range of means

When law enforcement officials do need to resort to force, in order to act in a manner consistent with the principles of necessity and proportionality, principle 2 of the BPUFF calls on governments and law enforcement agencies to “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-defence 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”.

Law enforcement officials should be trained in solving conflicts without having to resort to using force, and when they do have to resort to force, they should be able to choose among a range of types of force in order to opt for the minimum force necessary to achieve the required objective and ensure that such use of force is proportionate to the threat faced, and scale up when needed or down whenever the situation allows; this is sometimes referred to as the “scale of force”, which is a useful guide to train officers.

USE-OF-FORCE “CONTINUUM”

The scale of force, or continuum of force, should not be understood to imply that law enforcement officials should be going up and down step-by-step depending on the resistance encountered. Indeed, in reality law enforcement officials will not (and should not) try every means at their disposal one by one but will, based on their assessment, in line with the legal framework and the policies in use, choose what they believe to be the most appropriate response to a given situation.^a

Rather, the “scale” concept entails that law enforcement officials should be able to choose between different instruments and types of force allowing them to escalate and de-escalate depending on the situation. This requires for them to be equipped with and trained in the use of various different instruments and techniques of force, so that they are aware of the potential impact of the different instruments and can make an informed decision as to when to choose what instrument.

^a See Police Executive Research Forum (PERF), 2015, p. 9: “We also need to review use-of-force policies, many of which rely on outdated concepts of a use-of-force ‘continuum,’ in which levels of resistance from a suspect are matched with specific police tactics and weapons.”

It is unfortunately common to have firearms as the only instruments of force law enforcement officials are provided with. This may lead to an overreliance on these weapons, resulting in unnecessary injuries and loss of life.

An overview of the more commonly used types and instruments of force in law enforcement includes:

Not using instruments:

- Open-hand techniques, such as a raised open hand or pushing someone back with the palm of the hand
- Pressure point techniques
- Body impact (pushing)
- Hard empty hand techniques, such as holding someone’s arm behind the back
- Closed hand techniques (fists)

Using instruments:

- Sticks, batons, truncheons
- Use of shields to push people back
- Handcuffs and other restraints
- Chemical irritants, such as “pepper” or OC spray and tear gas
- Water cannon
- Dogs and other animals
- Electroshock weapons, including stun guns, batons and “tasers”
- Kinetic impact weapons, such as baton rounds or rubber bullets, bean bags
- Firearms

This list is not comprehensive, as there are many other instruments of force, and new ones are being developed on a regular basis. In practice, most applications of force in law enforcement do not involve using instruments but instead the use of an officer’s hands, arms and body to push or pull against the subject to gain control.¹⁴³

Only those instruments that have been appropriately tested, authorized in law for use, have robust rules and regulations governing their use and are used in accordance with these rules should be employed.¹⁴⁴ Where instruments of force are new there may be provisional regulations governing their use during the pilot-phase. Never should instruments be used other than according to the guidelines or for other purposes than what they were designed for. A situation should be avoided where law enforcement officials carry their own instruments of force for which the agency refuses to take responsibility.

5.3. Instruments of “less-lethal” force

Principles 2, 4 and 5 provide that, where force is necessary, graduated force should as far as possible be used. The availability of less-lethal equipment enables law enforcement officers to refrain from using firearms, or to allow a more effective graduated use of force. As noted in the previous section, in order to decrease “the application of means capable of causing death or injury to persons”, the BPUFF task governments and law enforcement agencies to develop less-lethal instruments.¹⁴⁵

¹⁴³ See Police Executive Research Forum, 2015; Michael R. Smith, J.D., Robert J. Kaminski, Geoffrey P. Alpert, Ph.D. e.a. *A Multi-Method Evaluation of Police Use of Force Outcomes: Final Report to the National Institute of Justice*, NCJRS, July 2010: <https://www.ncjrs.gov/pdffiles1/nij/grants/231176.pdf>

¹⁴⁴ In an emergency situation, law enforcement officials can use anything to defend themselves or others as long as it is justified. However, they should be given effective instruments, so that they don’t have to rely on improvised tools.

¹⁴⁵ BPUFF refers to “non-lethal incapacitating weapons”. However, it has become good practice to use the term “less-lethal” over “non-lethal,” to underline that these instruments can be lethal. This noted, in the ordinary course of their intended use, less-lethal weapons have a smaller risk of causing death or serious injuries than firearms do. However, there is no internationally agreed upon definition of less-lethal weapons.

Since the adoption of the Basic Principles in 1990, there has been a significant evolution in the development of less-lethal weapons. Although some of these weapons are part of the more traditional instruments law enforcement officials are provided with, including the baton, there is a growing range of newly developed instruments, including chemical, blunt trauma, electric-shock, acoustic¹⁴⁶ weapons and directed energy weapons,¹⁴⁷ which should be issued only to small specialized units within the police.

AN ADDITIONAL INSTRUMENT OF FORCE, RATHER THAN A SUBSTITUTE

Issuance of less-lethal weapons may indeed lead to less reliance on using instruments that may cause death or serious injury (in this sense see principle 2 of the BPUFF), but this depends on the specific characteristics of the respective instrument, its effectiveness, the amount of pain it inflicts, and its place on the scale of force. Research has shown that in practice police use their less-lethal instruments of force not as a substitute for firearms, but in addition to the weapons arsenal they already have. As a result, less-lethal weapons do not lead to less use of firearms.^a Also, less-lethal instruments are sometimes used as a punishment tool which may amount to ill-treatment and cannot be qualified as lawful use of force.

^a Other examples include millimetre-wave weapons that use focused beams of electro-magnetic radiation to heat the target; malodorants to affect a person or group of people; and optical weapons, such as lasers, disorienting LED or bright light, which use beams of light to affect the vision of the target; Dymond and Corney, "The use of 'less-lethal' weapons in law enforcement," chapter 2, in Casey-Maslen (ed.), *Weapons Under International Human Rights Law*.

Principle 3 of the BPUFF tasks States to "carefully evaluate" the development and deployment of less-lethal weapons and the use of such weapons should be "carefully controlled".

Often the scale of force is understood to go from non-lethal to less-lethal to lethal, but in practice the different instruments of force cannot be categorized so easily. Over the years, numerous studies have shown that some of the less-lethal instruments actually bear the risk of being lethal or causing serious injuries, depending on the type of instrument, but also on the context in which it is used and the characteristics as well as the health condition of the victim.¹⁴⁸

It is important that there are clear and accessible national laws and internal law enforcement regulations that are in accordance with international human rights standards, stipulating for which types, how and when, different equipment or weapons can be used. States should also work together to implement international protocols for the training on and use of less-lethal weapons.¹⁴⁹ Training should enable users to approach the use of these less-lethal instruments in a similar way to firearms, i.e. treating them as potentially lethal.¹⁵⁰

¹⁴⁶ Acoustic weapons, though they are neither lethal nor capable of inflicting visible injury, can cause significant pain and may even cause deafness. Moreover, they are unable to target a specific person and thus will invariably negatively impact on bystanders.

¹⁴⁷ Other examples include millimetre-wave weapons that use focused beams of electro-magnetic radiation to heat the target; malodorants to affect a person or group of people; and optical weapons, such as lasers, disorienting LED or bright light, which use beams of light to affect the vision of the target; Dymond and Corney, "The use of 'less-lethal' weapons in law enforcement," chapter 2, in Casey-Maslen (ed.), *Weapons Under International Human Rights Law. op. cit.*

¹⁴⁸ See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 1 April 2014, paras. 101-107.

¹⁴⁹ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and or association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, 2016, para. 55.

¹⁵⁰ See Omega Research Foundation, Briefing for the Special Rapporteur on extrajudicial, summary or arbitrary executions, on the Use of Lethal Force during Arrest, 2011.

The development of less-lethal means of force has expanded rapidly worldwide, mostly at the initiative of the corporate sector that saw great commercial potential in their development and retail. The downside of the proliferation is that it is difficult to keep track of all weapons available and conduct in-depth research. Also, the development and use of new tools is ever more dictated by industry interests, rather than by the needs of law enforcement, which is an undesirable trend that has led to the militarization of police units in several countries.¹⁵¹ The State should be in control of the types of equipment its agents use and for what purpose. The United Nations Human Rights Council has recommended that States conduct thorough, independent and scientific testing of less-lethal weapons for crowd control, for example, and that the results of such testing should inform national and internal regulations.¹⁵² Ultimately, State needs should guide, rather than follow, what the industry should develop.

USE OF UNMANNED SYSTEMS IN LAW ENFORCEMENT

The United Nations Special Rapporteur on extrajudicial, summary or arbitrary killings^a has examined the use of increasingly autonomous weapons in law enforcement, and the possibilities that increasing depersonalization of the use of force—through unmanned force delivery technologies—may infringe upon human rights standards. His report highlights possible areas in which unmanned weapons may potentially be used in law enforcement context, including crowd control; action against specific classes of perpetrators, such as prison escapees or big game poachers; and provision of perimeter protection around specific buildings.

The Special Rapporteur notes that law enforcement officials have a much stronger duty to consider the specific circumstances of each individual case before using force, including the subjective intention of those against whom force is used, than is the case during armed conflict. In addition, unmanned systems generally do not allow for capture.

The Special Rapporteur thus has suggested that serious consideration needs to be given to whether unmanned systems, in particular autonomous weapons systems used in the context of law enforcement, whether with lethal or less lethal force, can be considered lawful weapons per se.

^a Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/69/265, 6 August 2014, paras. 65-87.

5.4. How to decide when to use what type of force?

With the various instruments of force at the disposal of law enforcement, how can she or he decide which instrument constitutes appropriate force in a given situation? It is impossible to regulate in detail what type of force should be deployed precisely under what circumstances, and when and how to scale up to the next level of force, as obviously this is dependent on the circumstances, including the type of resistance put up by the alleged suspect. The discretion afforded to

¹⁵¹ Small Arms Survey (2011): *States of Security*. chapter 3, p. 94. Download: <http://www.smallarmssurvey.org/publications/by-type/yearbook/small-arms-survey-2011.html> Also the Special Rapporteur on extrajudicial, summary or arbitrary executions emphasizes there is an urgent need for clear guidelines on both the development and deployment of the new instruments of force. Moreover: “it may be necessary to place restraints on the international trade and proliferation of these weapons.” Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/26/36, 1 April 2014, para. 106.

¹⁵² Human Rights Council, “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, Report of the Secretary General”, A/HRC/ 25/38, para. 15, available from: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/109/03/pdf/G1410903.pdf?OpenElement>

law enforcement officials in the decision on what instrument to choose is a key characteristic of professional policing.¹⁵³

Discretion in practice means that, within the constraints of law and policy, the law enforcement official(s), or their commander when he or she is present, is authorized to decide on the necessity of using force in a given situation, and also on what level of force can be considered proportionate. Sometimes such decisions need to be taken in a split second, which places great responsibility on the officer involved, meaning he or she needs to be well-trained in order to assess situations as they present themselves and decide on an adequate response. Discretion should be counterbalanced by accountability: law enforcement officials must record decisions and actions taken, and report afterwards the reasons for them and the circumstances under which they were taken, so that their conduct can be subjected to adequate control and oversight.

The type and level of force used should be consistent with the principles of legality, necessity and proportionality. Such consistency is dependent on the following factors:

- The policing objective to be achieved
- The threat to the law enforcement official(s) or third persons
- The type of (expected) resistance
- The conduct of the subject being confronted
- The time available to make a decision
- The level of self-protection
- The availability of other resources including the possibility to call for back-up
- The area and the presence of uninvolved bystanders
- The instructions or information received by the law enforcement official
- The skills of the law enforcement official
- The seriousness of the offence that was or is likely to be committed

TACTICAL CONSIDERATIONS

Law enforcement officials should take into account tactical considerations when deciding how to handle a conflict situation. Such tactical considerations include:

- Is the area geographically or functionally suitable for employing the intended force?
- What will be the impact on the cooperativeness of the alleged suspect if confronted with force now?
- What will be the impact on the cooperativeness of the community if confronted with force now?
- Will the presence of more—or fewer—or different types of officers (such as staff with good negotiating skills, from a specific ethnic group, that speak the language, that know the community, of a higher rank, etc.) help in minimizing or avoiding the use of force?
- What instruments should or should not be displayed in order to seek to calm the situation?

The police should not always make use of all their means of force, even when they would lawfully be in their right to do so. Sometimes a situation may de-escalate itself, as in fact sometimes law enforcement intervention ends up adding fuel to escalating tension.

¹⁵³ Osse, Anneke, *Understanding Policing: a Resource for Human Rights Activists*, Amnesty International, the Netherlands, 2006.

Law enforcement officials should always remember there is the option to disengage (i.e. tactical withdrawal),¹⁵⁴ even temporarily, when a situation escalates dangerously, or when continued intervention might lead to danger.

Tactical withdrawal may allow for other options to be considered as well, such as seeking alternative cover, waiting for back-up, specialized units that may enable the situation to be contained.¹⁵⁵ Such action, however, should be taken with an eye towards the obligation to exercise due diligence in protecting persons under the State's jurisdiction. Hence, withdrawal is not an adequate option for example when it would have the effect of facilitating an attack on a minority or unprivileged group by the majority or dominant group, as that would invariably be a failure to protect their rights.

PREVENT OVERREACTING: THE NEED TO SLOW DOWN^a

Often, tense encounters develop over nothing more than a person's refusal to comply with a police officer's order. Police officials report that shootings often result from what are called "perception" issues, in which a suspect, often during a foot pursuit, makes a sudden movement that is perceived as reaching for a firearm. It is only in hindsight that it becomes known that the person was reaching for a cell-phone or other object. It can be extremely difficult for officers to assess such situations and ensure their own safety, especially when they have only seconds to make a judgment. For this reason, police chiefs during a conference organized by the Police Executive Research Forum (PERF) on this issue, referred to the advantages of "slowing down" difficult encounters, and thinking through tactics so as not to box themselves into a highly charged incident.

^a See Police Executive Research Forum (PERF), 2012, p. 36.

SEATTLE POLICE DEPARTMENT, UNITED STATES^a

An officer may not use physical force:

- To punish or retaliate
- Against individuals who only verbally confront them unless the vocalization impedes a legitimate law enforcement function or contains specific threats to harm the officers or others
- On handcuffed or otherwise restrained subjects, except in exceptional circumstances when the subject's actions must be immediately stopped to prevent injury, escape, or destruction of property. Use-of-force on restrained subjects shall be closely and critically reviewed. Officers must articulate both:
 - The exceptional circumstances, and
 - Why no reasonably effective alternative to the use-of-force appeared to exist.
- To stop a subject from swallowing a substance, such as a plastic bag containing a controlled substance or other evidence.
- To extract a substance or item from inside the body of a suspect without a warrant.

^a See Seattle Police Department Manual, Section "8.100 – Using force", 2014, article 2.

¹⁵⁴ See Police Executive Research Forum (PERF), 2012-2015.

¹⁵⁵ See Royal Canadian Mounted Police, *Incident Management/Intervention Model: Tactical Repositioning*: <http://www.rcmp-grc.gc.ca/ccaps-spcca/cew-ai/imim-migi-eng.htm#lethal>

When not to use force

It is good practice to specify in the regulations on the use of force the circumstances or cases when the use of force is not lawful and therefore is prohibited.

In addition, law enforcement officials must never use force to obtain any information or admission of fact or confession of guilt (see chapter 8).

In some countries, the SOPs explicitly list what kind of force is prohibited by the police, providing detailed examples such as the prohibition to hit someone's head against a wall. This can be a good practice in particular as a tool to address patterns of unlawful, arbitrary or excessive use of force within a law enforcement agency.

5.5. Use-of-force models and matrices

Some States have developed policies aimed at giving more guidance as to the type of force that is most appropriate to deal with varying types of resistance.

DIFFERENT MODELS TO PROVIDE GUIDANCE

Use-of-force matrix, Nigeria

The "situation or type of threat posed by the offender/suspect" which ranges from cooperative, resistant (passive, semi-active or active), to assaultive (possible bodily harm, bodily harm, serious bodily harm or death) is put in the first column. The second column identifies the type of response the police officer can give (physical presence, soft hand, hard hand, baton, lethal). The model also indicates the language and defensive postures that should go along with the response.

Use-of-force model,^a used by many agencies

The model is a graphic representation of the guidelines for the appropriate use of force in relation to the actions of a subject.

Incident management/intervention model, Canada^b

This model is more dynamic, looking at incidents as "constantly evolving events", which require continual risk assessment and evaluation by the officer(s) involved. The process of continuous risk assessment also helps to explain how behaviour (and intervention options) can change from cooperative to assaultive (from communication to lethal force) in a split second without passing through any other behaviour or intervention options. The decision on what force to use depends on situational factors, the environment, number of subjects, perceived subjects' abilities, knowledge of the subject, time and distance, threat cues and subject behaviour, perception and tactical considerations.

^a John C. Desmedt, The Use of Force Model, 1982: <http://www.pss.cc/uofm.htm>

^b See Royal Canadian Mounted Police, Incident Management/Intervention Model: <http://www.rcmp-grc.gc.ca/ccaps-spcca/cew-ai/mim-migi-eng.htm#lethal>

SCALING UP, SCALING DOWN

Law enforcement officials should bear in mind that situations change, and the use of force may be justified at a certain point, but this may change while the incident is happening. As one police chief mentioned during a conference organized by the Police Executive Research Forum (PERF) on this issue:

“One of the things that I’ve discovered during my time as a police officer is that it’s easy for us to go up the use-of-force continuum, but the hard part is bringing it back down, and de-escalating situations effectively. These are dynamic events that are taking place. An officer may be justified in using a certain level of force at one moment in time, but that doesn’t necessarily mean that the same window is open three, four, five seconds later in an unfolding event”.^a

^a See Police Executive Research Forum (PERF), 2012, p. 1; Terrill, W. E. A. Paoline III and J. Ingram, Final Technical Report Draft: Assessing Police Use of Force Policy and Outcomes. NCJRS, Feb. 2012: <https://www.ncjrs.gov/pdffiles1/nij/grants/237794.pdf>

Although models like these can be useful, they are also criticized for a number of reasons. They are said to hamper decision-making, raising fear of liability issues, and may fail to take into account the particular qualities and skills that individuals or groups of police personnel may bring to the situation.

A problem with many use-of-force models is that they are based on a principle of “use of violence encountered + 1”, which entails that the law enforcement official should always be one step ahead of the violence encountered. Consequently, their use may actually lead to an escalation of violence, rather than allow for the opportunity to de-escalate, possibly leading to use of force that fails to meet the requirements of necessity and proportionality.

THE NATIONAL DECISION MODEL, UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND^a

The United Kingdom has moved away from use-of-force models that follow a scale of force, but instead adopted the National Decision Model. The model is generic and can be applied both to spontaneous incidents and planned operations; whether carried out by an individual or team of people; and to both operational and non-operational situations. It has six key elements. At the heart is the code of ethics, containing the principles and standards of professional behaviour that should guide all police action and decisions. The model starts with gathering information and intelligence; assessing threats and risks and developing a working strategy; considering powers and policy; identifying options and contingencies; then taking action; and reviewing what happened. The model is cyclic, in that this action then provides new information, which in turn needs to be assessed. Decisions taken need to be recorded and be subject to review.

^a See College of Policing, National Decision Model, 2014.

The type of policy that is most suitable for a particular context should be contingent on the context in which it will be used: in countries where discretion is seen to lead to many incidents of abuse of force, a policy may help to bring that down. However, adopting a policy will not

suffice, if it is not accompanied by measures to implement it and ensure compliance, most notably training, planning, proper instructions and accountability.

5.6. Protective gear, communication equipment and self-defence

Governments and law enforcement agencies do not only have obligations towards members of the public, but also towards their own staff. An underlying notion of the Principles as a whole is that law enforcement officials are entitled to be properly trained in how to analyse a situation and prevent escalation, use effective communication techniques and de-escalate a situation, and if use of force is required, they should be trained how to do so appropriately and in line with international norms and standards. In addition, knowing how to protect oneself and one's colleagues, not only may help save the lives of others, it also serves to save the lives of the officials affected. The same applies to having good equipment. As the ICRC stated: "equipment, in particular protective gear and communication devices, is key to maintaining control over a situation and averting violence".¹⁵⁶

Protective equipment

Recognizing that law enforcement officials sometimes have to operate in potentially dangerous, and at times life-threatening, situations, they should be adequately protected and provided with self-defensive equipment. Principle 2 of the BPUFF requests States to provide equipment such as "shields, helmets, bullet-proof vests and bullet proof means of transportation". This is to protect law enforcement officials, while at the same time decreasing the need for using (lethal) force, hence protecting the life of all involved. The Special Rapporteur on extrajudicial, summary or arbitrary executions refers to the experience in Northern Ireland where, after police officers had been issued body-length shields and fireproof overalls, there was a drastic reduction in the use of force.¹⁵⁷

Communication equipment

In some countries law enforcement officials are sent into dangerous zones, where there is a high incidence of violent confrontations, without the possibility of communicating with one another. In such a situation, when an official is confronted with potential danger, he or she could be more likely to use his or her gun, or other types of force, simply to protect him or herself, because of the impossibility of calling for a backup.

Indeed, in addition to protective equipment it is important to provide law enforcement officials with relevant and properly functioning communication devices, so that they can call for backup when needed, inform their superiors about developments on the ground, and share information with colleagues. Effective communication in dynamic situations is also essential to ensure that all officers involved in the operation are aware of up-to-date information and that confusion, which could lead to overreactions or misuse of force, is minimized or eliminated.

In addition to guaranteeing effective communication between law enforcement officials of the same unit or agency, it must be ensured that different agencies involved in an operation, as well as medical emergency services, can communicate smoothly with each other.

¹⁵⁶ See ICRC, 2011, p. 18.

¹⁵⁷ See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/17/28, 23 May 2011, para. 104.

It is good practice to equip law enforcement officials and their vehicles, while on patrol or during operations, with radios operating at a frequency that is reserved for such police communications. Radio communications of law enforcement are usually shielded from the public, and should be recorded to allow for review and scrutiny after the event.

5.7. Procuring instruments of force

Issuance of weapons in a particular situation should be based on an assessment of local or domestic threats, needs and policing objectives.

Prior to starting the procurement process, the requirements for the equipment needed must be detailed and specified: what should it do, in what circumstance (short or long distance, against a single individual or a crowd), and for which law enforcement objective? Where this is not well formulated in advance, there is the risk that manufacturers' recommendations will be a major consideration in the process, at the expense of the actual needs of the particular law enforcement agency or unit.¹⁵⁸ Indeed, selection of instruments should be done independently from corporate interest.

Any new instrument of force should be thoroughly tested before being issued to the field; data and information about capabilities and functions, as provided by manufacturers should not be accepted without independent testing prior to the introduction of the instrument to the law enforcement agency. States should establish a formal process for evaluating and assessing new weapons, which should include:¹⁵⁹

- A needs analysis
- Determination of operational requirements
- Technical evaluation (what it can and cannot do, ease of handling, risks when handling, reliability, accuracy, effectiveness)
- Medical assessment of the particular health risks associated with each type of "less-lethal weapon"
- Human rights impact¹⁶⁰
- Operational performance trials¹⁶¹

It is good practice, during the trial phase, to consult medical experts, scientists, human rights defenders and other relevant stakeholders.

The assessment should directly inform policy constraints on the situations in which the weapon can be used, and associated training for the users. It is important to note that each type of weapon should

¹⁵⁸ See Small Arms Survey, 2011, p. 88: "The proliferation of off-the-shelf less-lethal products sometimes encourages police agencies to procure weapons without considering whether the equipment is intended for individual targeting or crowd control requirements. Whereas CS grenades are tacitly understood by police as a means to break up unruly crowds indiscriminately, there is no official international standard on how other, more recent weapons systems, such as kinetic launchers, should be used. In many cases, manufacturer recommendations substitute for doctrine-led procurement."

¹⁵⁹ See College of Policing, *Use of force, firearms and less lethal weapons*, 2013.

¹⁶⁰ See Omega Research Foundation (2011): "Without this it is difficult to ensure such weapons are compatible with article 3 of the Basic Principles on the use of force and firearms, which states that "non-lethal incapacitating weapons ... should increasingly restrain the application of means capable of causing death or injury to persons"; i.e. that any weapon introduced should be less injurious than existing alternatives."

¹⁶¹ The weapon should be tested in practice, by a sample of the entire law enforcement community, and clear guidelines must be issued for their use. Devices must be suitable for use on the majority of people within the population, including both men and women, disabled, people that may be intoxicated and others that may be particularly vulnerable.

be assessed individually since effects can vary greatly even among different weapons of the same broad category. Consideration must be given to the risk the particular weapon offers for abuse.

Where this is the case, either the device must be adapted to prevent such abuse, or where that is not possible, guidelines must be developed to prevent abuse from happening. Care must be taken to thoroughly scrutinize extra functions the weapons may be equipped with, in order to assess whether these are necessary and what risks they pose. Firearms having an “automatic function” should have the possibility of disabling that function. Equipment to digitally and audio record the use of the instrument of force should be enabled to facilitate any subsequent investigation as well as protect the law enforcement officer from any wrongful accusations.¹⁶²

The decision on what equipment to procure should be taken in consultation with the end user, including the law enforcement officials. In countries where law enforcement officials are permitted to join a union, representatives of the union can play an important advisory role in this respect. Having finished the evaluation and assessment processes, and based on the outcomes of the performance trials, training programmes can be developed in order to assist the instrument being “rolled out”.

Instruments may be procured for a particular highly specialized unit, for example a SWAT team or an Anti-Terrorism Unit, but this should not lead to proliferation of those weapons throughout all law enforcement units, including those with more general duties.

It is recommended to have a central list of approved equipment, at the national level or per single law enforcement agency. The responsibility for procurement of instruments of force, choice of ammunition and developing guidelines, may lie with the law enforcement agency or with the relevant Ministry. Either way, for accountability purposes, it has to be clearly stated, and preferably established under law, who can authorize the choice of weaponry and be responsible for its procurement. For example, in Argentina, the National Directorate of Logistics, which falls under the National Security Ministry, coordinates logistics plans of the police and security forces and provides oversight of its implementation.

INSTRUMENTS THAT HAVE NO PLACE IN HUMAN RIGHTS-BASED LAW ENFORCEMENT INCLUDE:

- Weapons that have been designed to cause unnecessary suffering, such as spiked batons or thumb cuffs
- Incendiary ammunition, that is ammunition that causes fire
- White phosphorus smoke
- Bayonets fixed on the firearm
- Artillery as well as weapons delivered by aircraft
- Any weapon that is illegal under an international convention, such as landmines

The entire procurement process should be placed under effective oversight or democratic control that is independent of commercial, police or political interference, and is made up of a

¹⁶² At the same time, it should be kept in mind that such recordings may have serious human rights implications, in particular with respect to the right to privacy. At the same time this feature may also discourage abuse by law enforcement officials. Each time an agency decides to make use of this function, it should carefully balance all considerations as relevant in the specific context.

cross range of expertise including human rights, law, medical and civilian representation. Where applicable, it is recommended to invite civil society organizations working on security or human rights to participate in the review process. In addition, it is good practice to have the entire procurement process peer reviewed and published, as should the guidelines on use. The tactics for how to use the instrument can be kept secret, but the type of equipment, guidelines for use, testing and selection should be made public.

Ideally, there should also be widespread public awareness regarding the nature of the proposed weapon and its effects, etc. The public should not be kept in the dark about new weapons used in law enforcement.

Military instruments of force for (civilian) law enforcement purposes

In certain countries, there has been a trend towards acquiring equipment for law enforcement that was developed for military purposes, for example for use in the context of fighting terrorism, but also in the fight against violent crime, particularly drug cartels and gangs. Sometimes such transfers are simply caused by having a surplus of military instruments. The tendency for law enforcement agencies in some countries to acquire ever more military equipment is concerning, since organizations with very different organizational objectives and operational cultures have started to use the same type of arsenal.¹⁶³

The use of military weapons may be inappropriate for law enforcement, and given their nature, they may make it more difficult to comply with the obligation to apply the minimum force necessary to achieve the legitimate law enforcement objective. An additional disadvantage is the impact it will have on the image of law enforcement for the public, as it may have adverse effects on community-law enforcement relations.

In general, military instruments of the offensive type should not be used in law enforcement. If they are needed for a particular situation, they must be used only by a special unit trained in their use, under special supervision and after strict authorization at the highest levels.

UNITED STATES: PROPOSED INTERVENTIONS TO BALANCE ACQUISITION OF MILITARY EQUIPMENT

In the United States, a programme to transfer military equipment to local law enforcement agencies,^a has recently come under heavy scrutiny.^b A review ordered by the Office of the President concluded that better oversight is needed, and also that the acquisition of new weaponry needs to be accompanied by adequate training, including human rights training, and there should be mechanisms to hold law enforcement agencies accountable for the misuse or misapplication of equipment because it can erode “the partnership, problem-solving and crime prevention collaboration with citizens that is at the heart of effective policing”.

^a See Executive Office of the President, United States. Review: Federal Support for Local Law Enforcement Equipment Acquisition, December 2014: https://obamawhitehouse.archives.gov/sites/default/files/docs/federal_support_for_local_law_enforcement_equipment_acquisition.pdf

^b See “Obama’s Cautious First Step Toward Demilitarizing the Police”, *The Atlantic*, 1 December 2014: <http://www.theatlantic.com/politics/archive/2014/12/obamas-cautious-first-step-toward-demilitarizing-the-police/383305/>; “Obama Offers New Standards on Police Gear in Wake of Ferguson Protests”, *New York Times*, 1 Dec 2014: http://www.nytimes.com/2014/12/02/us/politics/obama-to-toughen-standards-on-police-use-of-military-gear.html?_r=0

¹⁶³ See *Small Arms Survey*, 2011, p. 93: “Observing military small arms development is the most reliable way to predict what police officers will be issued in the near future.”

CHAPTER KEY MESSAGES

- States should equip their law enforcement officials with a range of means through providing equipment and developing skills, so that they can choose a differentiated response to situations that is in line with international norms and standards, including the BPUFF.
- Developing use-of-force policy in order to give guidance on when to choose what type of force may assist law enforcement officials in their decisions.
- Less lethal instruments of force that bear great risk to life should be subjected to the same provisions as firearms, but with the understanding that, where possible, the use of such weapons should be exhausted before resorting to lethal force.
- Training should enable users to approach the use of these less-lethal instruments in a similar way as to firearms, i.e. treating them as potentially lethal.
- Law enforcement officials should always remember there is the option to disengage (i.e. tactical withdrawal), even temporarily, when a situation escalates dangerously, or when continued intervention might lead to danger.
- The discretion afforded to law enforcement officials in the decision as to what instrument to use is a key characteristic of professional policing. Such discretion needs to be counter-balanced by accountability: officials should record decisions and actions taken, and report about them so that effective control and oversight can be exercised. It is good practice to equip law enforcement officials and their vehicles, while on patrol or during operations, with radios operating at a frequency that is reserved for such police communications and to record such communications to allow for review after the event.
- Any new instrument of force should be thoroughly evaluated and tested before being issued to the field, with particular attention to risks and appropriate response measures for mitigation.
- In general, military instruments of the offensive type should not be used in law enforcement. If they are needed for a particular situation, they should be used only by a special unit trained in their use, under special supervision and after strict authorization at the highest levels.

Chapter 6. **Guidance for the most commonly used instruments of force in law enforcement**

This chapter looks at different instruments of force that are commonly employed around the world, including batons, handcuffs and other restraints, dogs and horses, chemical irritants, water cannons, electroshock weapons, launched kinetic impact projectiles and firearms. It discusses the tactics that should guide their use based on international human rights norms and standards, as well as recognized good practice. This guidance should be included in domestic policy and regulations.

6.1. General principles for all instruments

Consistent with the principle of legality, prior to their deployment, all the instruments of force discussed in this chapter should be appropriately tested, properly authorized, and law enforcement authorities should develop regulations or other authoritative guidance for their use.

The regulations should address the instrument, and where applicable its ammunition, how it is used and in what circumstances.¹⁶⁴ They should expressly prohibit modifying an instrument of force, for example to make it more potent by putting a metal knob at one end of the baton, increasing the weight of the truncheon etc. In countries where it is common practice to issue an instrument of force on a long-term basis to an officer, it should be regularly checked for modifications and verified whether it is still fit for purpose.

Use of any of the instruments discussed in this chapter should only be justified through establishing the legal authority to apply the force and reasonable objective grounds for doing so. It is important to note that each single application of the instrument needs justification instead of just the initial instance of use.

Therefore, law enforcement officials should always:

- Assess the situation.
- Decide whether force is required or whether there is another means to achieving the objective.
- Decide what maximum use of force is permissible.

¹⁶⁴ Note that in situations of self-defence law enforcement officials are allowed to use anything that is at hand, as long as it is proportionate and they will have to account for it afterwards.

- Decide what minimum use of force could achieve the objective.
- Apply the force if no other feasible option is available.
- Re-assess the situation and decide to apply force again or scale up or down.

This is a continuous and cyclic assessment process until the objective has been achieved or otherwise the circumstances have changed and force is no longer required.

Each instrument of force carries advantages and risks, and care should be taken to minimize the risks as much as possible. In addition, none of the instruments discussed can be guaranteed to have a perfect efficiency rate.

As such, use of any of the instruments of force discussed in this chapter must be conditional upon being adequately trained in their use, reinforced with regular refresher training. The training should be scenario-based, practical, as close to reality as possible and should enable the user to articulate the facts that caused the use of force.

Whenever possible, a warning should be given prior to the use of an instrument of force, if appropriate, and the subject should be allowed to comply before using the weapon.

Law enforcement officials applying force, regardless of the instrument, are personally responsible for doing so and hence should be personally identifiable. They should record, in detail, any use of force and report it to their superiors, and should be required to account for their actions and show that they acted responsibly within the applicable legal and operational framework. Following orders is no excuse for arbitrary or excessive force.

Supervisors and commanders bear responsibility for the lawfulness of their orders, the adequacy of their supervision, and the quality of the briefing and instructions before an operation as well as debriefing. It is also their responsibility to intervene when it is known an official has a problematic record in the use of force.

EASILY ACCESSIBLE REGULATIONS AND SOPs PUBLICLY AVAILABLE

The United Kingdom has made most of its materials public, including their use-of-force policies, regulations, guidance manuals on how to use various instruments of force, and also review reports into specific operations and issues of concern. Until recently, the Association of Chief Police Officers (ACPO) was responsible for developing policy and guidance on various policing issues.^a In 2013 however, the United Kingdom set up the College of Policing whose responsibilities include setting standards and developing policy and guidance for policing. The College has incorporated most of the ACPO guidance on various instruments of force, which is now called “Authorised Professional Practice”. Some of these guiding materials have been updated to reflect the latest domestic and European Court of Human Rights jurisprudence.^b

Within the United Kingdom, Northern Ireland has a history of intercommunal violence placing significant demands on the police. The use of force by the Royal Ulster Constabulary (RUC) in both counter-terrorism and public order operations led to criticism of the State; after the 1997 peace agreements (the Belfast Agreement) the RUC was reformed and is now known as the Police Service of Northern Ireland (PSNI). PSNI has a Manual of Policy, Procedure and Guidance on Conflict Management, covering various topics related to the use of force. The entire manual is available on the Internet.^c

^a These manuals were not legally binding, but forces in the United Kingdom were expected to adhere to the guidance set out in order to ensure conformity between police forces. The guidance reflects all relevant legislation subsidiary regulations and current good practice. They were compiled by representatives and experts from the field of specialization required, and included input from other stakeholders. Local agencies could then use this guidance to draft their SOPs, or refer to the respective manual.

^b See <https://www.app.college.police.uk>

^c https://www.psni.police.uk/advice_information/our-publications/corporate-policy/conflict-management-manual/

6.2. Instruments of force

Batons

Description and use

A baton is a stick, which sometimes includes a handle at a right angle to the principal shaft, used to restrain or hold a person, poke or hit a person, usually on the larger muscle groups on the limbs. There are various types of batons. Some batons have a soft core, others have a metal core, which obviously carry greater risk of seriously injuring someone, and some are extendable. The longer ones carry greater risk as they can inflict a higher level of force. A baton should not be too heavy, ideally not more than a pound or half a kilogram, as something heavier makes it more difficult to handle which can lead to worse injuries. In some countries, law enforcement officials use more traditional types. For example the police in the Philippines are equipped with a rattan stick¹⁶⁵ and in India police officers employ a wooden baton called the lathi.

A baton has several principal functions as a use-of-force instrument:

- It is a sign of authority that gives legitimacy to police personnel and indicates the capacity to use force.
- It can be used defensively to protect the police or other persons from physical aggression given its blocking capacity. Holding the baton “in the baton hand” can have a

¹⁶⁵ See Philippines National Police Manual, 2010, at: www.use-of-force.info

deterrent effect for further violence “as it displays a clear demonstration of the intended police response to an actual or potential aggressor”.¹⁶⁶

- It can be used to apply force with the aim of submitting, controlling or disarming a person for the purpose of arrest, for example by using it to lock a person’s arm.
- It can be used to oblige a person to move to where the law enforcement official desires, for example through lock techniques.
- It can also have other non-use of force related functions.

Given the range of functions that a baton can have, training in baton use is an essential part of a law enforcement agency’s effort to develop capacity to differentiate the use of force depending on the law enforcement objective and the threat encountered. A baton is not expected to be lethal in the case of proper use.

Risks and how to mitigate these

The use of batons and similar types of equipment can cause brain injuries or death if the head or other sensitive areas of the body are targeted.¹⁶⁷ The PSNI Manual indicates that “[a]ny use of batons has the clear potential to cause injury to a person and destroy or damage property. In every circumstance where a baton has been used by a police officer, each individual officer will be required to justify the legality, necessity and proportionality of their actions”.¹⁶⁸

In Northern Ireland any use of a baton has to be reported and officers have to make their baton available for inspection. On occasions where a superior officer has given a direction to other police officers to draw their batons, the person giving the direction should also fill out a report, outlining the number of officers involved, estimated size of the crowd, etc. The Police Ombudsman for Northern Ireland conducted an evaluation of baton use in 2003, and made recommendations in particular to improve training as well as refresher training, and enhance consistent recording of the use of physical force by law enforcement personnel.¹⁶⁹

Special precautions

- Law enforcement officers should always use restraint and assess whether raising a baton causes the desired effect, without the need to hit the person.
- Care should be taken not to hit someone on the head or at body parts with vital organs, including the kidney, or the groin area.¹⁷⁰ Other risk areas are the joints, which can easily be damaged or even broken, shins, ankles, the back due to risk of spinal injury, the neck and the sternum.
- Where a law enforcement official has hit someone repeatedly, or whilst on the ground, this may amount to excessive force and should be investigated as such. A situation where law enforcement is seeking to control a highly violent person is a dynamic, ever-changing encounter where the law enforcement official will have to adjust his or her response to the conduct encountered.

¹⁶⁶ See *PSNI Manual of Policy Procedure and Guidance on Conflict Management*, chapter 5: Batons.

¹⁶⁷ Amnesty International and Omega Research Foundation, *The human rights impact of less lethal weapons and other law enforcement equipment*, 2015, p. 16, available from: https://www.amnestyusa.org/sites/default/files/human_rights_impact_less_lethal_weapons_doha_paper.pdf.

¹⁶⁸ *Ibid.*

¹⁶⁹ See Office of the Ombudsman for Northern Ireland, Research report 02/2003, March 2003: <http://cain.ulst.ac.uk/issues/police/ombudsman/po03report2.pdf>.

¹⁷⁰ See, for example, United States Institute of Peace, Draft Model Police Powers Act, 2008.

REGULATION OF BATON USE

The Portuguese Regulation on Limits to the Use of Coercive Means by the National Police (2004), in its chapter 2, section 6.6, states: "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."

The Peruvian Human Rights Manual for Police (2006) similarly instructs officers to avoid baton strikes to the head, neck and thorax.

Handcuffs and other restraints

Description and use

Handcuffs are a universally used means of restraint, applied to control a person who poses a risk or may flee. They have not undergone any significant changes since their introduction. They consist of small metal, for example stainless steel or nickel plated, sometimes plastic, connected rings, and are used to tie someone's hands either in front or behind the back with the palms positioned outwards.

Some types of handcuffs get tighter if not "double-locked", as when someone tries to remove them. Other types are fixed. With their hands properly cuffed most people are under control, as it makes it difficult to run away. However, some suspects may persist in aggressive behaviour and additional measures may be needed, including possibly the application of limb restraints (see below).

Risks and how to mitigate these

It is considered good practice to only use handcuffs that can be double locked so as to avoid over-tightening. For safety reasons, handcuffs should not be used to handcuff someone to another person or object.

Handcuffs or other restraints should never be used with the sole aim of punishing someone, or kept on beyond the time necessary, or once the person is in a situation where they no longer pose a risk or attempt to flee. In some countries, handcuffs are always used upon arrest or when transporting a detainee, regardless of the threat they pose. However, applying handcuffs is not always required and may create unnecessary discomfort for the subject. Handcuffs should only be employed when there is an objective reason to believe the offender might escape or is likely to use violence against the law enforcement official or someone else.¹⁷¹

The age, gender, respective size and apparent strength and fitness (i.e. physical condition) of a person are factors in deciding whether or not handcuffs should be applied or continued. For example, where a person has a condition that may be aggravated when handcuffed, this might make their use unreasonable and amount to excessive force. Some countries explicitly prohibit

¹⁷¹ See PSNI *Manual of Policy, Procedure and Guidance on Conflict Management*, chapter 6: Handcuffs.

the use of handcuffs or restraints on women that are visibly pregnant.¹⁷² When handcuffs are used, the condition of the person should be monitored to ensure that there is no particular risk of injury or death.¹⁷³

Handcuffs should be removed as soon as there is no longer a need for their use. In any case they are usually removed once the person has been taken to a secure holding area.

Where law enforcement officials apply handcuffs, they have to report it afterwards, and also account for the period of time the handcuffs were applied before their eventual removal. The PSNI Manual orders all officers to “record all use of handcuffs in their official notebooks and will include the following information:¹⁷⁴

- The handcuffs have been checked and adjusted for tightness.
- The handcuffs have been double locked.
- Officers have warned the detained person that struggling may cause injury.”

Some restraints are forbidden altogether. The recently revised Standard Minimum Rules for the Treatment of Prisoners (hereafter “SMRs”, also known as the “Nelson Mandela Rules”) states that the use of chains, irons or other instruments which are inherently degrading or painful shall be prohibited.¹⁷⁵ The Special Rapporteur on torture has stated that the use of physical restraints that are “inherently inhuman, degrading or painful”, such as electroshock stun belts, restraint chairs, chains or irons, shall not be used as restraints at any time, nor shall sedatives, neuroleptics or other drugs be used for similar purposes.¹⁷⁶

Limb restraints

Limb restraints are designed and used by law enforcement officials to restrict the range of movement of the arms and/or legs, when they are faced with violence or the threat of violence or when someone is actively fighting while handcuffed. For example, in Canada the Royal Canadian Mounted Police (RCMP) introduced leg restraints, consisting of a length of rope and clips in which to restrain the suspects legs; its application is aimed at preventing a person from kicking and/or punching and allows for safe transportation of the person in a vehicle to a safe holding area.

Limb restraints should only be used for the necessary amount of time, by officers who have received appropriate training, which should include an understanding of the medical implications associated with the use of the device, such as deep vein thrombosis, as well as risks related to

¹⁷² See for example the Law on Police of Armenia (2001), its article 29.4: “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 of armed attack, armed resistance, and group attacks endangering the life and health of people)[...] shall be prohibited [...]”. (As quoted in Amnesty International, *Use of Force, Guidelines for the Implementation of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, 2015, p. 140).

¹⁷³ See ACPO *Guidance on the Use Of Handcuffs*, 2009: <http://www.npcc.police.uk/documents/FoI%20publication/Disclosure%20Logs/Uniformed%20Operations%20FOI/2013/003%2013%20Att%2015%20of%2015%20Guidance%20on%20the%20Use%20of%20Handcuffs.pdf>

¹⁷⁴ *Ibid.*

¹⁷⁵ See United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 47(1). The revised SMR were adopted by the Commission on Crime Prevention and Criminal Justice in its twenty-fourth session, held in Vienna 18-22 May 2015, and approved by the Economic and Social Council, E/CN.15/2015/L.6/Rev.1, unanimously adopted by the General Assembly (UN-Doc A/Res/70/175) on 17 December 2015.

¹⁷⁶ See Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. A/68/295, 9 August 2013, para. 58.

conditions known as positional asphyxia and acute behavioural disturbance.¹⁷⁷ Because of the medical risks to a person who is restrained this way, limb restraints should only be used in exceptional circumstances and they should be easy to remove. In addition, ACPO states that any device adopted should be medically reviewed to minimize the potential of injury to the person.¹⁷⁸

Metal limb restraints, such as leg cuffs or chains that connect the limbs with chains to handcuffs and belts, should be avoided. Soft restraints should always be preferred, in line with the Nelson Mandela Rules. There should be an absolute prohibition on weighted restraints, and also of non-adjustable ones such as fixed rings, leg irons, fetters or shackles.

Hog-tying, that is tying someone's hands and legs together at the back, should not be used given the unnecessary discomfort and suffering it causes, as well as the risk of asphyxiation it poses. Hog-tying may amount to cruel, inhuman and degrading treatment or punishment.

Dogs and horses

Description and use

In law enforcement dogs are used either to search for people or goods (e.g. explosives, drugs), or as an instrument of force. This section will only look at using dogs as an instrument of force.

Dogs are typically used to assist in the search, pursuit, apprehension and detention of a subject who is actively resisting his or her arrest or assaulting the official; to disarm a suspect armed with a firearm or other weapon; to guard and escort suspects after arrest; to defend against attack; and to protect members of the public and property.¹⁷⁹ In some countries dogs can only be used against (alleged) offenders of serious violent crimes.

In addition, dogs can be deployed as a deterrent in situations of general disorder. They can also be used to support cordons, escort marches/groups, assist with the dispersal of a crowd or to help arrest or detain someone.¹⁸⁰

Dogs should not be used in an offensive role in a public order situation. Deployment of dogs in a public order situation is dependent on the tactical plan that has been drafted as a preparation for the event that clearly specifies what they are to be used for and under what conditions.

Risks and how to mitigate these

It is essential that the capabilities and limitations of using dogs are fully understood prior to their deployment. The dog(s) and their handler(s) need to be well-trained and the advice of the handler should be sought prior to deployment. The dog-handler combination should be certified. When deployed, dogs can be either muzzled or unmuzzled, on or off leash, each option obviously having a different impact and varying levels of risk. Dogs should be trained to “find-and-bark” rather than “find-and-bite”.

¹⁷⁷ See PSNI *Manual of Policy, Procedure and Guidance on Conflict Management*, chapter 7: Limb restraints: http://www.psni.police.uk/chapter_7_-_limb_restraints.pdf

¹⁷⁸ See ACPO *Guidance on the Use of Limb Restraints*, 2009: <http://www.acpo.police.uk/documents/uni-formed/2009/200905UNGLR01.pdf>

¹⁷⁹ See Anneke Osse, *Understanding Policing: a Resource for Human Rights Activists*, Amnesty International, the Netherlands, 2006; ACPO *Police Dogs Manual of Guidance*, 2011: http://www.dyfed-powys.police.uk/media/1817/police_dog_manual_of_guidance_2011_foi_version.pdf

¹⁸⁰ See College of Policing, *Tactical options*, 2014.

In general:

- Only trained dogs should be used in combination with their handler.
- Dogs may only be used by a qualified dog handler who bears ultimate responsibility.
- Using an unmuzzled dog should be placed at the higher end of the scale of force and should only be used in specific prescribed situations.¹⁸¹
- The decision to deploy a dog, and its reasons, as well as the outcomes, should always be recorded.

Untrained dogs should never be used, nor should dogs be handled by officers who have not been trained for that task.

*Use of horses during assemblies*¹⁸²

Horses are useful for keeping an overview, monitoring crowd dynamics and making contact with people on the ground. They are also useful for closing off events. As horses are generally quite intimidating, people tend to comply with instructions given.

It is essential that the capabilities and limitations of horses as a force option are fully understood prior to their use. Separate authorization should be sought before horses are deployed and advice should be sought from the mounted public order commander. Their deployment should be in accordance with the tactical plan.

Horses can be used to charge a group of violent people and disperse them, where the horse rider may use a baton, and can support other officers who are on foot, but the horse is not meant to ride over people, as that can obviously be extremely dangerous. Foot officers need to be trained when deployed with mounted police. There must be escape routes for the crowds.

Whether the deployment of horses is useful depends on the situation, the terrain and also the type of violence encountered. The deployment of horses is not always appropriate on safety grounds. As in all cases involving the use of animals, their welfare and protection also must be ensured.

HUMAN RIGHTS PERSPECTIVES ON THE USE OF DOGS AND HORSES

In its *Manual on Human Rights and Law Enforcement*,^a OHCHR has raised several human rights concerns regarding the use of dogs and horses, in particular in a crowd control context.

For example, it pointed to several studies indicating the high number of permanent and serious injuries caused by dog bites, often with major medical complications. It also referred to a study indicating that the employment of dogs in use-of-force situations in some agencies had increased the risk of injury by almost 40 times compared to other less-lethal methods. Another concern raised was the need to use canine units in a culturally sensitive manner. In some cultures or religions, dogs are considered to be unclean, which must be kept in mind when using them to facilitate an assembly of such communities.

¹⁸¹ See United States Institute of Peace, *Draft Model Police Powers Act*, 2008.

¹⁸² See College of Policing, *Tactical options*, 2014.

With respect to the use of horses, the Manual emphasized that, while the use of horses offers unparalleled advantages in monitoring and controlling crowds, a rider does not have full control of the whole body of a horse and is not at all times able to instantly correct the level of force used. It is essential to use horses in the right situations and to make an assessment of how crowds may react. For example, for security reasons, horses should not be used in close proximity to barriers, and when used for the dispersal of crowds, escape routes should be identified and communicated.

^a OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, chapter 9 (Human Rights and Policing of Public Assemblies and Protests), pp. 220-221.

Chemical irritants: pepper spray and tear-gas

Description and use

There is a wide variety of chemical irritants used in law enforcement, usually for riot control purposes, known as riot control agents or RCAs.¹⁸³

Different types of chemicals have different effects and therefore their use bears different legal implications. RCAs affect the peripheral senses. Yet, there are other chemical toxicants (e.g. fentanyl derivatives) that affect the nervous system as a form of anaesthetic, which should never be used in ordinary law enforcement due to the risk of death and permanent disability to those exposed.¹⁸⁴ The most widely known RCAs are colloquially known as pepper spray and tear gas.¹⁸⁵

What are their effects?

All RCAs cause intense irritation and pain in the eyes, respiratory tract and skin, which results in crying, coughing, chest tightness, and difficulty breathing. These effects are often accompanied by anxiety and panic. More severe effects such as vomiting and skin blistering can also occur, as well as permanent damage to the eyes, skin and lungs, depending on the degree of exposure.

The toxicity of different RCAs varies, and the severity of injuries caused will depend on a combination of factors including the specific chemical agent, its concentration, the exposure duration, the delivery method (liquid, smoke, aerosol, powder), the environment (indoor/outdoor and weather conditions), and the vulnerabilities of the victim (age, health). The concentrations of the active chemical can vary greatly among different weapons and there are no international standards regulating the weapons marketed by manufacturers. Solvents mixed with riot control agents can also be toxic.

Exposure to high concentrations of such chemicals, or over a prolonged period, can cause severe injury or even death. Therefore, the use of RCAs must be carefully controlled, and they should not be used in confined or enclosed spaces. Even low concentrations can cause serious injuries to vulnerable groups such as children, the elderly or those with sensitivities or medical conditions, such as asthma.

¹⁸³ See Chemical Weapons Convention (CWC), article 2: “Riot Control Agent” is defined as “any chemical not listed in a Schedule, which can produce rapidly sensory irritation or disabling physical effects in humans which disappear within a short time following termination of exposure.”

¹⁸⁴ See ICRC position on the use of toxic chemicals as weapons for law enforcement, available at: <https://www.icrc.org/eng/resources/documents/legal-fact-sheet/2013-02-06-toxic-chemicals-weapons-law-enforcement.htm>

¹⁸⁵ The most common chemicals used in law enforcement include o-Chlorobenzylidene Malononitrile (CS), Chloroacetophenone (CN), and Dibenz(b,f)-1,4-oxazepine (CR), which are often referred to as “tear gases”, and oleoresin capsicum (OC) and pelargonic acid vanillylamide (PAVA), often referred to as “pepper sprays”.

Law enforcement agencies should therefore ensure that they only use RCAs which are scientifically tested and that they review the impact of their use. In cases where the riot agent is found to have long-lasting effects, an analysis needs to determine whether long-term effects can be prevented through better supervision and training or whether the use of a particular type of riot control agent should be discontinued.¹⁸⁶

Chemical irritants in a handheld device are widely used by law enforcement officials around the world. This is usually placed at the lower end of the scale of force and in most countries law enforcement officials have broad discretion over its use.

Such devices are employed at close range where the suspect is sprayed in the face in order to temporarily disable or disorient him or her. It can be used for up to 4 metres but optimum accuracy will be achieved over a distance of 1.25 to 2 metres. The PSNI manual, for example, states that the spray should not be used under following circumstances:

- At a distance of less than one metre
- In an enclosed area (e.g. a car)
- On a subject who is restrained or handcuffed
- As a crowd dispersal tactic (due to the possibility of other officers and innocent bystanders being affected)
- In all aforementioned cases, “officers must be prepared to justify not only their use of the spray, but also their decision to use it in these circumstances”. It can take up to one minute before its effects are noticeable, and they can last for hours.

Risks and how to mitigate these

The use of chemical irritants entails the risk of harming oneself or others, including other law enforcement officials.¹⁸⁷ A chemical irritant is not always effective and may lead to more resistance or aggression on the part of the subject. It should not be used against someone who is armed as it may lead to him or her to start firing indiscriminately. As the PSNI manual states that “if the firearm is merely close at hand, the spray may be useful in preventing a subject actually arming themselves. Because of the extreme dangers, use in such circumstances should be carefully considered”. It should not be used against someone who is driving, either.

These sprays can be used against violent offenders, other than those armed with firearms or similar remote injury weapons, where failure to induce “immediate” incapacitation would increase risks to all those present at the scene.

In Northern Ireland, the PSNI acknowledge that the handheld sprays are open to abuse, and therefore their manual starts with stating that any abuse of these devices may amount to assault and lead to further internal or external investigations.

Tear-gas cartridges and grenades are designed to be used for dispersing groups that present an immediate and direct threat and when conventional methods of policing have been tried and have failed, or are unlikely to succeed.

¹⁸⁶ OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, chapter 5.

¹⁸⁷ See also OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, chapter 5 (Human Rights and Use of Force).

In public order situations, using tear gas is clearly placed at the far end of the scale of force, as it is difficult to target specific people and therefore it is likely to affect and harm uninvolved bystanders. By its very nature it is not able to discriminate, and as a result all bystanders are affected. Indeed, it was noted by the Special Rapporteur on the rights to freedom of peaceful assembly and of association that “gas does not discriminate between demonstrators and non-demonstrators, healthy people and people with health conditions.” He also warns against any modification of the chemical composition of the gas for the sole purpose of inflicting severe pain on protestors and, indirectly, bystanders.¹⁸⁸ For this reason some police agencies do not use tear-gas grenades as they do not deem it an appropriate law enforcement tool due to its inability to discriminate, as well as the risk of escalation, and of other harm caused by crowds fleeing.

NATIONAL EXAMPLES ON THE USE OF TEAR GAS

The National Police Manual in the Philippines has an explicit provision that tear gas and water cannon can “only be used [for rallies and demonstrations] when the public assembly is attended by actual violence or serious threats of violence, or deliberate destruction of property”.^a In Tunisia, there is a similar requirement that only the commander in charge (*le commandant d’opération*) can decide to deploy tear gas. The *commandant d’opération* at the scene shall make an assessment of the scene to decide whether the use of tear gas would be necessary, proportionate and effective, and recommend/order the use to the operational commander. After the event the commander-in-charge must check that the site has been properly and completely cleared of the gas.

^a See Philippines National Police Manual, 2010, Rule 23, Section 3 and 10; Rule 24, Section 2.

Guidelines for use of tear-gas grenades

The OHCHR Manual on Human Rights Training for Law Enforcement Officials (2017) recommends, in order to limit the risks of injuries to those targeted, that law enforcement officers (LEOs) always consider the following:¹⁸⁹

- Never use a higher concentration of riot control agents than is approved according to international standards to remain less-lethal.
- Never use riot control agents in confined spaces or expose the same targets to riot control agents several times during a short time period.
- Never use riot control agents against persons who are restrained or confined to a place where they have no escape routes from the chemical.
- Never fire riot control agents from hand held launchers directly towards a person. Many persons have died or been seriously injured from the impact of a riot control agent container.
- Never use riot control agent grenades in wide areas against larger groups, unless the level of violence has reached such a high level that LEOs cannot address the threat by directly targeting violent persons only.
- Always decontaminate a detained person who has been exposed to a riot control agent.

¹⁸⁸ See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27, 21 May 2012, para. 35.

¹⁸⁹ OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, chapter 5. See also Amnesty International and Omega Research Foundation, *The human rights impact of less lethal weapons and other law enforcement equipment*, 2015.

- Always ensure that only experienced and trained LEOs are allowed to launch riot control agents.
- Always document the use of riot control agents, including type, amount and reason for use of force.
- Always conduct effective investigations and apply accountability measures into and for misuse of riot control agents and analyse the cause of any shortcomings of standard operating procedures, trainings or orders.

Another use of chemical irritants is a tear gas or pepper spray that is shot or thrown into a confined area to conduct an arrest of a person who can reasonably be expected to have firearms ready for use, or otherwise poses a great threat to life or limb. In such instances, the use of the chemical is meant to prevent the subject from firing a gun, detonating a bomb or otherwise creating an imminent threat of death or serious injury.

Tactically this is a risky option, as gas can be relatively slow to incapacitate an individual, allowing the suspect to cause harm as long as the effects have not set in. It is also difficult to estimate the exact dosage required, because if the dosage used is too high, it may be lethal, and if it is too low, it may fail to incapacitate the suspect. Due to unpredictability, any use of chemical irritants should be monitored, for example by the National Human Rights Institution (NHRI), including on its long-term medical effects.¹⁹⁰

WHEN TO USE TEAR GAS?^a

In The Netherlands, during riots in a small village which totally overwhelmed the police, it was decided not to use tear gas because there were insufficient riot police to “go forward”, because there were many under-aged youngsters, and also because the riots took place in an area where many people lived so there was a great risk it would cause harm to the residents who had nothing to do with the riots. Indeed, tear gas should not be used in every situation to disperse a crowd, even when it is rowdy, and its use should always be based on a careful analysis of the situation at hand.

^a Otto M. J. Adang and Tom van Ham, “Contextual and Individual Factors Determining Escalation of Collective Violence: Case Study of the Project X-Riot in Haren, the Netherlands”, *British Journal of Criminology*, 5 April 2015.

Water cannon

Description and use

A water cannon is exactly what the name implies: a cannon that “fires” a large volume of water over dozens of metres. It is used in some countries to disperse a violent crowd, to control the movement of a crowd, or to keep a crowd at a distance. Indeed, “the mere presence of a water cannon can have a deterrent effect and experience from Northern Ireland demonstrates that water cannons are often deployed without being employed”.¹⁹¹

¹⁹⁰ See Omega Research Foundation, Briefing for the Special Rapporteur on extrajudicial, summary or arbitrary executions on the Use of Lethal Force during Arrest, 2011.

¹⁹¹ See ACPO and College of Policing, National Water Canon Asset, 2014: https://www.london.gov.uk/sites/default/files/ACPO%20Water%20Cannon%20Briefing%20Document,%20Jan%202014_0.pdf

It should only be used in situations of serious public disorder where there is the potential for violence that may cause loss of life, serious injury or widespread destruction. Considerations for its deployment should include media impact and availability of well-trained officers.

It is essential that the capabilities of the equipment are fully understood prior to deployment and a tactical adviser specifically trained in the use of this equipment should be available. The use of a water cannon should be accompanied by the employment of law enforcement officers on foot.¹⁹² In order to meet the requirements of necessity and proportionality, the deployment of water cannons should be carefully planned and managed with rigorous command and control at a more senior level.

Risks and how to mitigate these

A water cannon should not be used indiscriminately against a crowd.¹⁹³ In using a water cannon, it is important that law enforcement officials pay attention to the pressure that is being used, as when the pressure is too high it can knock people over, hit them on the head, or cause objects or debris to hit them, and may result in serious injuries. Water cannons should not be used against anyone who is unable to move, for example protesters who have locked themselves on a fence, older persons, injured persons or persons with disabilities, children and individuals at elevated height.

There are also issues where law enforcement officials modify the water used in a water cannon.¹⁹⁴ For example, in some countries, law enforcement officials use hot water cannons to prevent the water from freezing, as in cold climates where frozen water may lead to unintended injury or exposure. Law enforcement officers in some countries mix the water with chemicals. Although not expressly forbidden under international law, this is not recommended, as water mixed with chemicals bears a much greater risk of causing harm including physical pain, with effects that may last longer than those caused by tear gas. In some countries the water is coloured so it marks those who have been sprayed. However, there is no policing purpose for which such marking would be useful, in particular as it would have little value (if any) as evidence in a criminal trial.

Electroshock weapons

Description and use

Electroshock weapons¹⁹⁵ come in various forms, and new types are constantly being developed, including electroshock stun guns, shields, belts and batons. The use of electroshock weapons has grown exponentially, with currently more than half of all countries in the world using some type of electroshock weapon.¹⁹⁶

¹⁹² See College of Policing, *Tactical Options*, 2014.

¹⁹³ The United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association has emphasized that water cannons should never be applied indiscriminately, never be used against peaceful protesters and never in such a way that the use itself result in an escalation of tensions. OHCHR, “South Korea: United Nations rights expert calls for independent investigation into lethal use of water cannon,” 28 September 2016, available from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20603&LangID=E>

¹⁹⁴ In some countries water from nearby, polluted rivers is used, with a high risk of spreading disease. This should be avoided.

¹⁹⁵ Other terms can be used, including conducted energy weapon (CEW), electrical-discharge weapon (EDW), electronic control device (ECD), and the brand name “Taser” (often used as a catch-all term).

¹⁹⁶ *Ibid.*

For law enforcement, the most commonly used electroshock weapon is the taser, a “hand held electronic stun gun that can fire two barbed darts up to a distance of 7 metres, which remain attached to the gun by wires. The fish-hook like darts are designed to penetrate up to two inches of the target’s clothing or skin and deliver a high-voltage, low amp, electroshock along insulated copper wires”.¹⁹⁷ It is a single-shot device (recently developed new models can fire two shots) designed to temporarily incapacitate a subject through the use of an electrical current which temporarily interferes with the body’s neuromuscular system; the device delivers its electrical charge in a 5 second cycle which can be stopped, extended or repeated.¹⁹⁸

Taser is the brand name used for products manufactured by Taser International that first produced this weapon, which comes in various forms. Other companies have produced similar weapons, so the variety is increasing and there are other brand names and types of equipment. As taser has become a commonly used term, this resource book will use it with reference generically, while the principles addressed in this section equally apply to all electro shock devices. Some law enforcement agencies equip all their officials with a taser, but in most countries they are only used by specialized units.

What are their effects?

Its effects are, in general, loss of some voluntary muscle control, which can result in “the subject falling to the ground, causing various secondary injuries, or ‘freezing’ on the spot”.¹⁹⁹ The effects are likely to be instantaneous, but the direct incapacitating effect is only likely to last for as long as the electrical charge is being delivered. Indeed, the subject may recover immediately afterwards and is able continue with their previous behaviour. The United Kingdom manual therefore warns that “an incapacitated subject must be controlled quickly and effectively”.

*Risks and how to mitigate these*²⁰⁰

The direct effect of the taser includes barb penetration injury, especially on people with a small or thin stature and children where it can lead to internal organ penetration.²⁰¹ Puncture injuries from barbs penetrating the skin also occur and can be particularly serious if barbs strike the head, neck, eyes or groin. There have been cases where there have been head injuries and eye penetration, and barb injury on the skin when the dart was removed, which should be done by a medical practitioner. Also, there have been cases where the use of the taser was followed by cardiac arrest, leading to the death of the victim.²⁰² Certain methods of use increase the risks to the subject, in particular direct shocks to the chest area, and multiple or repeated shocks.

Secondary injuries may result from unsupported falls, flammability, positional asphyxia and acute behavioural disturbance/excited delirium. Officials should avoid “taser” sensitive areas (such as the head, neck, groin or heart area).

¹⁹⁷ Anneke Osse, *Understanding Policing: a Resource for Human Rights Activists*, Amnesty International, the Netherlands, 2006, p. 133.

¹⁹⁸ See College of Policing, *Conducted energy devices*, 2013.

¹⁹⁹ *Ibid.*

²⁰⁰ See, *Nif In-Custody Death Study: The Impact of Use of Conducted Energy Devices*, National Institute of Justice, 2011; the severity of the health risks associated with use of electrical weapons such as tasers is still debated. It is remarkable for a weapon so widely used that the mechanism of action of the taser is still not fully understood from a scientific and medical perspective.

²⁰¹ DOMILL (Defence Scientific Advisory Council Sub-Committee on the Medical Implications of Less-Lethal Weapons) (2012) Statement on the Medical Implications of Use of the Taser X26 and M26 Less-Lethal Systems on Children and Vulnerable Adults <http://data.parliament.uk/DepositedPapers/Files/DEP2012-0729/96605%20Library%20Deposit.pdf>

²⁰² Douglas P. Zipes, “Sudden Cardiac Arrest and Death Following Application of Shocks from a TASER Electronic Control Device”, *Arrhythmia/Electrophysiology*, *American Heart Association Journals*, 2012.

For pregnant women and people with heart replacements or weak hearts, the effects can be serious and unpredictable, although the effects are yet to be fully appreciated. Using a taser against people with a pre-existing medical condition, children and people of small stature carries additional risk.

The principal difficulties with the deployment of electroshock weapons are that law enforcement personnel on the ground cannot predict the full effect the weapon might have, given their lack of knowledge about the person they are about to use it against. The persons most likely to be at increased risk from any harmful effects of the device include those suffering from the effects of drugs, or those who have been struggling violently and/or present other risk factors. This does not mean that the taser should never be used, but rather that extra care should be taken, and immediate medical assistance should be provided to assess the subject, as the effects may be seriously damaging, or even irreversible.²⁰³

One of the concerns with tasers is that they tend to be used as a substitute for lesser uses of force, “with the result that more serious force is used than would be the case if [electroshock weapons] were not available”.²⁰⁴ In fact, over the years there have been reports that the device carries the risk of being lethal,²⁰⁵ and in any case its use can be very painful for the subject. As such, their use should be placed at the high end of the scale of force, and the United Nations Committee against Torture has stated that its use should be restricted to serving as a substitute for potentially lethal weapons, which means that use should be subject to the same criteria as firearms.²⁰⁶ This does not mean electroshock weapons can always substitute for firearms in operational practice, as the taser has a different operational use—for example, it can only be used at a fairly short distance, and its incapacitating effect is usually temporary.

THE UNITED NATIONS COMMITTEE AGAINST TORTURE AND ELECTROSHOCK WEAPONS

The United Nations Committee against Torture has on several occasions raised concerns that the use of electroshock weapons could in some situations amount to torture.^a The Committee has, for example, recommended that States:

- Refrain from flat distribution and use of electrical discharge weapons by police officials.
- Adopt safeguards against misuse of electrical discharge weapons, providing proper training for personnel to prevent their excessive use, and using electrical discharge weapons exclusively in extremely limited situations where there is a real and immediate threat to life or risk of serious injury, as a substitute for lethal weapons.
- Ensure that all allegations of excessive or inappropriate use of these weapons are promptly, impartially and thoroughly investigated and that victims obtain redress and fair and adequate compensation.

^a See CAT/C/PRT/CO/4, para. 14; CAT/C/NLD/CO/5-6, para. 27; CAT/C/AUS/CO/4-5.

²⁰³ See College of Policing, *Control, restraint and searches*, 2013.

²⁰⁴ Walker, Samuel and Carol Ann Archbold, *The New World of Police Accountability*, Sage Publications, 2014, p.78.

²⁰⁵ This is recognized by TASER company: https://prismic-io.s3.amazonaws.com/axon%2F38b0dca1-458d-4bf8-9c7f-d58db397174b_axon+final+warranty+terms+and+conditions+-+le+non-us.pdf

²⁰⁶ See Conclusions and Recommendations of the Committee against Torture: United States of America, 36th Session, 1–19 May 2006, para. 35; *USA: Stun Weapons in Law Enforcement*, Amnesty International, 16 December 2008; Small Arms Survey, 2011.

Over the years numerous studies have assessed the use of the taser, while courts have also addressed issues related to the use of the taser through national jurisprudence.²⁰⁷ In some cases, the taser has been found to have been used irresponsibly against someone driving or standing on a high building, persons with mental health issues or those with other health problems, in combination with another instrument of force, most typically pepper spray. There is jurisprudence that also addresses situations where the taser has been used repeatedly on an individual, sometimes up to six or seven times, well beyond the time when there was a legitimate law enforcement reason to continue to use this type of force.²⁰⁸

In fact, “taser” someone more than twice may be an indication the device isn’t working or is not effective on this particular subject, and other options for the use of force should be considered.²⁰⁹ A law enforcement official who uses an electroshock weapon should be able to justify its initial use, as well as each subsequent application, as each application of shock must meet the standards of necessity and proportionality.

Some countries, including the United Kingdom and the Netherlands, require that anyone who has been subjected to the taser be provided with an information leaflet describing the taser, its mode of operation and effects. Anyone who has been “tasered” should undergo a medical examination and after that, close monitoring to identify as soon as possible any health risks that may occur as a result. Where the need for medical attention is urgent, this should take precedence over transferring the subject to a custody suite.²¹⁰ Any instance of the use of a taser on a person should be recorded in the custody record, including whether or not an information leaflet has been provided.

Any use of an electroshock weapon should be reported. The device contains a computerized function that retains data of all discharges of the device.

RECORDING OF ISSUANCE OF TASERS AND THEIR COMPONENTS

In Chicago, United States, at every start of a “tour of duty”, the unit should account for all the tasers they are provided with, and for this reason prepare a log, to record issuance and receipt of the taser and its component parts. The log must contain the serial numbers of each taser and all the cartridges distributed.^a

^a See Chicago Police Department, Directives: Uniform and Personal Equipment—Taser Devices: <http://directives.chicagopolice.org/directives/>

Similarly to chemical irritants, any use of electroshock weapons should be monitored, for example by the National Human Rights Institution (NHRI), including on its medical effects. In addition, the need for “long-term monitoring of the use of such devices in order to flag up medical risks that have not previously been identified, and to increase our understanding of the effects of repeated exposures on targeted individuals”²¹¹ needs to be stressed. Such data should be utilized

²⁰⁷ For relevant case law and other findings, see the *Weapons Law Encyclopaedia* by Geneva Academy of International Humanitarian Law and Human Rights, 2013.

²⁰⁸ See United Nations Committee Against Torture (CAT), Conclusions and Recommendations of the Committee against Torture: Portugal (CAT/C/PRT/CO/4), 19 February 2008, para. 14.

²⁰⁹ Charlie Mesloh, Mark Henych and Ross Wolf, *Less Lethal Weapon Effectiveness, Use of Force, and Suspect and Officer Injuries: A Five-Year Analysis*, National Institute of Justice, September 2008: <https://www.ncjrs.gov/pdffiles1/nij/grants/224081.pdf>

²¹⁰ *Ibid.*

²¹¹ Omega Research Foundation (2011).

proactively in order to identify issues such as “failures in training, shortcomings with the equipment or more basic problems with the use of force process”.²¹²

With regard to electroshock stun guns, shields, belts and batons, experts have agreed that there is no tactical utility to any of these that cannot be achieved with another device, and the risk of arbitrary force amounting to torture or other forms of ill-treatment is too great. As such, their use is not advised.

From a preventive perspective, and in order to ensure accountability, effective and independent investigations and oversight mechanisms should be implemented or used in all cases where the use of electroshock devices are alleged to have been used disproportionately, in a degrading or humiliating manner, or in a manner that inflicts pain or violates rights.²¹³

Launched kinetic impact projectiles (rubber and plastic bullets)

Description and use

Over the years a range of less-lethal ammunition has been developed, such as rubber bullets, rubber coated steel bullets and plastic and wooden rounds. These projectiles (“bullets”) usually have a much bigger surface than conventional ones, so that there is less risk of them penetrating the body but only give an intense impact. They are fired from a range of weapons including rifles, shotguns, grenade launchers (often called riot guns) and specialist weapons, such as the FN303 compressed air launcher.

Risks and how to mitigate these

Although less lethal than conventional ammunition, these bullets can still be deadly and can most certainly inflict serious injury and pain. Regardless of their intended use, they sometimes do penetrate the body particularly at short range (both via eye sockets, but also through the skin), and can cause fractured skulls or broken bones. There are particular risks attached to the use of rubber coated metal bullets, which are conceived to be less-lethal but are still potentially lethal and carry a high risk of serious injury to a person depending on the body part hit. Studies have shown that rubber coated metal bullets can lead to death and disability.²¹⁴

Launched kinetic impact projectiles should not be used to disperse a peaceful assembly. In the case of an assembly that has turned violent, this type of ammunition should only be used by trained marksmen capable of individualizing the persons that pose the risk, and only according to the strict requirements of necessity and proportionality.²¹⁵ Weapons that fire multiple projectiles at the same time, or that otherwise cannot be targeted at a specific individual, should never be used due to the risk of injury to bystanders.

²¹² *Ibid.*

²¹³ See also OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, chapter 5 (Human Rights and Use of Force), p. 104-105.

²¹⁴ See for example “Blunt and penetrating injuries caused by rubber bullets during the Israeli-Arab conflict in October, 2000: a retrospective study”, *The Lancet*, Volume 359, No. 9320, 25 May 2002, pp. 1795–1800.

²¹⁵ According to Amnesty International and Omega Research Foundation “ammunition firing multiple projectiles is notoriously inaccurate, indiscriminate and arbitrary and should be prohibited. This prohibition should include all multiple projectiles from any type of ammunition or munition”, Amnesty International and Omega Research Foundation, *The human rights impact of less lethal weapons and other law enforcement equipment*, 2015, p. 17.

Most projectiles are relatively inaccurate, particularly at longer ranges, and cannot be aimed at an individual with accuracy so there is great risk of hitting vulnerable areas above the waist, especially the head, neck, chest and groin. In particular, when shooting multiple projectiles, they are inherently indiscriminate and arbitrary, hence should be avoided. In order to improve accuracy, an accuracy measurement or standard is needed to which these weapons should conform.

Although projectiles may be used for the purpose of incapacitating an individual, they should only ever be used when the situation meets the criteria for the potential use of lethal force, that is when there is an imminent threat to life or limb. When used in a public context, and considering the high risk of lethality of rubber coated metal bullets, only rubber bullets should be used.

In serious disorder the following should be observed:

- Blunt trauma projectiles should not be used at close range (and only at, or beyond, the minimum intended range specified for the weapon and projectile).
- Sensitive parts of the body should not be targeted, in particular the head, neck, chest and groin.
- Projectiles are often inaccurate, especially with increasing range,²¹⁶ which heightens the risks of hitting sensitive parts of the body unintentionally.
- These weapons should only be used against specific individuals. They should not be used against crowds due to the risks of hitting bystanders.

ATTENUATING ENERGY PROJECTILES

Following the history in Northern Ireland, the United Kingdom developed a system, referred to as "attenuating energy projectiles" (AEP), which is claimed to be more accurate than plastic and rubber bullets. An AEP is a form of baton round in which the front part collapses/crumbles on impact with a person and so absorbs some of the energy in itself. This is supposed to make it less severe in its impact on the body. These bullets usually do not immediately incapacitate a subject, and law enforcement officials armed only with these weapons should bear in mind that they are less well protected and therefore not expose themselves or be exposed to unnecessary risks by confronting subjects who may be armed with a firearm.^a

The AEP "is intended for use as an accurate and discriminating projectile, designed to be fired at individual aggressors. The issue, deployment and use of AEP in a public order situation will be subject to authority levels and command measures of the highest integrity". In principle, it is deployed in a two-person team structure, where one officer handles the system while the other assists in the recording of the use and effect of rounds. "The minimum number of AEP System teams will be deployed in order to achieve the lawful objective. The System will only be deployed in open view of the public when its use is imminent. (...) Where the use of the System becomes necessary only the minimum number of rounds will be fired in order to achieve the lawful objective".^b

Every round fired will be reported and the commanders in charge will issue a report spelling out the circumstances and reasons for deployment. There are high standards for AEP gunners which include compulsory training, accuracy standards and regular retraining. The AEP is clearly considered a specialist weapon rather than a generalist tool.

^a 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/> [Accessed 19 February 2015]

^b *Ibid.*

²¹⁶ The recommended safety distance for using many of these types of ammunition is 40 metres.

Every use of plastic or rubber bullets, including the AEP, should be subject to independent oversight, which can assess both the circumstances and use. For the sake of effective oversight, it is important to be able to identify the bullets used. However it should be noted that rubber and other bullets do not have identification markings common in conventional ammunition, making it much more difficult to investigate their use.²¹⁷

It is good practice to log the ammunition issued to a named individual officer, and all projectiles and cartridge cases should be forensically marked to make it possible to identify who fired them.

Firearms

Description and use

While the BPUFF do not define firearms, according to the 2001 Firearms Protocol “firearm” means “any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas”.²¹⁸ Note that firearms can be used to fire less-lethal rounds, yet some less-lethal launchers are firearms. Laws on firearms should reflect such distinctions.

There are many different types of firearms, but law enforcement officials are typically equipped with either handheld guns, such as a pistol or a revolver, which are usually carried in a holster on the belt or under the arm. Officials might also carry long guns, such as a rifle, which need to be mounted against the shoulder when firing. Although more precise, they are more difficult to carry than a handheld gun.

Both handheld guns and long guns can be single-shot, semi-automatic or automatic:

- A single-shot firearm needs to be manually reloaded after each shot, in order to build pressure to ignite that shot.
- A semi-automatic firearm shoots a single shot with each pull of the trigger but does not need to be manually loaded each time, as it uses the energy of one shot to reload the next. As a result, it can shoot much faster than a single shot device.
- An automatic firearm will continue to fire as long as the trigger is pressed until the magazine is empty. However, it could also be set at single-shot mode. While certain law enforcement officials in some countries may be armed with assault rifles, such as AK-47s or M16s, in principle, law enforcement officials should not use their firearms in fully automatic mode. It is difficult to imagine a situation in civilian law enforcement where officers, other than the highly specialized SWAT unit, would need an automatic weapon in view of the great risk of death or serious injury to people that do not pose an imminent threat to life. As such, equipping officers with such weaponry is incompatible with the Basic Principles.

²¹⁷ Osse, A. (2006).

²¹⁸ Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention Against Transnational Organized Crime, article 3(a).

EXPANDING BULLETS

As law enforcement actions are not covered by the 1899 Hague Declaration concerning Expanding Bullets, or customary international humanitarian law, the prohibition on using expanding ammunition does not apply. Expanding ammunition is designed to enable the greatest level of kinetic energy to be delivered to a target, while minimizing over-penetration, such as the bullet going through the body still holding sufficient energy to inflict lethal wounds, because otherwise more shots would perhaps be required to achieve incapacitation, increasing the risk to bystanders. This is a contentious topic, nevertheless. Use of expanding ammunition can lead to massive wounds with a greater likelihood of death, thus some experts argue such ammunition should not be used at all.^a

^a See for example: Robert Hårdh (2012): Swedish police should stop using expanding bullets. Download: <https://roberthard-henglish.wordpress.com/2012/04/23/swedish-police-should-stop-using-expanding-bullets/>

DO LAW ENFORCEMENT OFFICIALS NEED TO BE EQUIPPED WITH A FIREARM?

While in many countries law enforcement officials are routinely equipped with a firearm, not all countries do so. Law enforcement officers in , Iceland, Ireland, New Zealand, Norway, and the United Kingdom, as well as those in twelve out of 16 Pacific island nations, do not carry a firearm when on patrol. In the United Kingdom only specialized officers, so-called "authorised firearms officers" (AFOs), are issued with firearms, and only in specific circumstances and for specific situations. In England and Wales roughly 5-10 per cent of the force are AFOs.^a The role of an AFO is a voluntary one. In all these countries however, there are back-up teams, such as the armed response vehicles in the United Kingdom and in New Zealand, which can be called upon whenever a situation may require the use of lethal force.

^a Punch, M. (2011).

Risks and how to mitigate these

In line with BPUFF, principle 11, rules and regulations on the use of firearms by law enforcement officials should include guidelines which:

- Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted.
- Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm.
- Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk.
- 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.
- Provide for warnings to be given, if appropriate, when firearms are to be discharged.
- Provide for a system of recording and reporting whenever law enforcement officials use firearms in the performance of their duty.

Any potentially lethal force, including the use of a firearm, should only be used in order to protect against the imminent threat of death or serious injury. Thus, when using a firearm, and in accordance with the right to life, the intention should be to stop the threat, rather than to kill (the "shoot-to-live" approach). It follows that as soon as the threat has been stopped, there is no

longer a need to use (potentially) lethal force. Officers should be able to adjust their assessment of the situation, scaling up and down depending on how the circumstances of the incident develop. They should be able to justify each single shot fired.

Factors that must be taken into account when assessing the likelihood that the force may lead to death may include, for example, the kind of firearms used; the likelihood that the law enforcement officer will be able to hit non-essential body parts; the availability of effective medical emergency response and health care; and the presence of other persons who may be affected (and even potentially killed) by the use of force.²¹⁹

In line with BPUFF principle 10, before firing a shot, the law enforcement officials should identify themselves as such and give a clear warning of their intent to use a firearm, with sufficient time for the warning to be observed, unless doing 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 clearly be inappropriate or pointless in the circumstances of the incident. For example, a warning is clearly futile when the target is already firing. Warning shots should be avoided as they carry serious risk of causing damage or injury. Indeed, it is good practice to prohibit warning shots altogether.²²⁰ Shooting at moving vehicles should be avoided, unless it poses an imminent risk of death or serious harm to the official or other persons, as this is also extremely dangerous.

Where possible, when law enforcement officials are routinely armed with a firearm, it is desirable that they be issued with their own force-owned weapon and train with that particular weapon for accountability. This way they are responsible for its care, cleaning and can familiarize themselves with the subtleties and nuances of that particular weapon, which can be adjusted to the needs of the “owner” to achieve better accuracy. It also allows easy record-keeping and tracing. Note that all weapons should be stored at the armoury after use and should be registered with every use.

A firearm that is not maintained properly can discharge or jam accidentally, potentially leading to serious injuries and sometimes loss of life. Care should be taken to maintain weapons in proper state, typically the responsibility of an armourer. Accidental discharge is almost always due to operator error, carelessness or failure to follow procedure, such as when a law enforcement official drops a gun or accidentally pulls the trigger. Whenever a law enforcement official explains that a death or injury has occurred as the result of a malfunction or accidental discharge, this should be subject of an investigation.

The basic principle of accountability is that it must be possible to trace who fired a gun. Hence, modifying or disassembling weapons should not be permitted, as it makes it more difficult to trace who fired the weapon. Also, the trigger of a firearm should require a certain pressure in order to fire, usually indicated in weight, and thus should not be modified. Unauthorized modifications should also be prohibited as they could facilitate careless handling of the instrument.

²¹⁹ See OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, chapter 5 (Human Rights and Use of Force).

²²⁰ When firing a shot in the air, the bullet will come down with a trajectory that cannot be controlled. When firing a shot elsewhere, there is high risk of the bullet ricocheting. In both cases the risk of causing injury or worse to random bystanders is high. In addition, a warning shot could also be perceived as an escalation of the situation rather than an attempt at de-escalation.

Any use of a firearm in the performance of duty should be reported. As the pointing of a firearm is intimidating, even when no shot is fired, it is good practice to define the use of a firearm when the weapon is:

- Pointed at another person
- Fired at another person in self-defence or in defence of another whether or not injury or death results
- Discharged in any other operational circumstances, including unintentional discharge

Whenever the use of force resulted in death or serious injury this should be investigated by an independent organ. The person under investigation should hand in his or her firearm for investigation. Depending on the circumstances of the incident, it may be required to relieve him or her from duties that require the use of a firearm pending the investigation.

Because of their perceived status and their lethal force, firearms are sometimes stolen from law enforcement officials and used for criminal activities. Care should be taken to prevent this from happening; law enforcement officials should be provided with proper holsters in which to keep their firearms and be trained in how to retain their weapons.

SWAT teams

Most countries have one or more specialized units to deal with high-risk situations, where there is a high chance of a violent confrontation, such as arrest squads, SWAT (special weapons and tactics) teams, sniper units, special forces or hostage rescue teams. The culture, operational methods and command structure of such teams tend to have military-type characteristics, and they tend to be secretive about their tactical methods because they prefer them not to be widely known. They are often well-equipped with a variety of firearms and sometimes explosives, distractions and breaching devices. Their operational methods are commonly characterized by stealth, speed and “controlled aggression”, such as a lot of shouting and other noise in order to disorientate the subject of the operation and thus avoid further use of force. Because of the way they are trained and the type of situations they are called in for, these squads tend to rely heavily on the use of lethal force and they have been criticized for lack of restraint.²²¹ Indeed, deployment of this type of units should be subject to high-level authorization and in some situations, judicial oversight, and careful consideration should be given to the question of whether a de-escalation approach could be effective as well, and if so, such an approach should be given preference. Bear in mind that States are required to prevent the loss of life to the greatest extent possible, including by taking all reasonable precautions in the planning and control of the operation,²²² and indeed the principles discussed in chapter 2 equally apply to SWAT teams. All decisions around the deployment of such teams should be logged, and their actions should be recorded in order to ensure full accountability and, when needed, allow for an independent review.²²³

²²¹ See for example Victor E. Kappeler and Peter B. Kraska, *Policing and Society* (2013): “Normalising police militarisation, living in denial.” <http://dx.doi.org/10.1080/10439463.2013.864655> On the other hand, because they are very well trained, usually have the initiative in an operation (rather than having to react) and can prepare for an operation, they tend to use very few shots as compared with common officers.

²²² In *McCann e.a. v. United Kingdom*, the European Court of Human Rights held that in determining whether the force used is compatible with article 2, protecting the right to life, it may be relevant whether an operation has been planned and controlled so as to minimize risk to life. § 150 and 194.

²²³ Osse, A. (2006).

Private security providers and firearms

Where private security workers are permitted to carry firearms, concerns have been expressed about training and proper use, safe and secure storage, leakage into the black market, criminal groups targeting private security personnel in order to steal their firearms by force. Indeed, States should regulate the use of firearms by civilian private security providers (as defined in the UNODC handbook) including:²²⁴

- Rules around firearm safety and storage
- Appropriate penalties and/or administrative sanctions for offences involving the misuse or unlawful possession of firearms
- A definition of unsafe or unwanted firearms
- A licensing system, including the licensing of firearm businesses, to ensure that firearms are not distributed to persons convicted of serious crimes or other persons who are prohibited under domestic law from owning or possessing firearms
- A record-keeping system for firearms, including a system for the commercial distribution of firearms and a requirement for appropriate marking of firearms at the time of manufacture or import, to assist criminal investigations, discourage theft and ensure that firearms are distributed only to persons who may lawfully own or possess firearms under the domestic legislation

In addition, where States contract private security companies to carry out law enforcement functions and permit some civilian private security firms and workers to be armed, they should:

- Regulate the use of weapons such as batons, pepper spray and gas, restraint devices and guard dogs, including basic standard operating procedures.
- License the companies to own, possess, store and transport firearms.
- License individual workers to own, possess, store and transport firearms.
- Set standards for company record-keeping in relation to firearms.
- Set standards for safe storage of firearms.
- Set standards for use of firearms and reporting of all such events to a competent State authority.
- Set standards for training in storage, use, maintenance and transport of firearms.

Similarly to law enforcement officials, private security personnel should maintain records and report incidents to the competent authorities whenever they use any type of force against another person. Such reports allow for a review of the details of the incident and to track incidents for statistical purposes.

6.3. Control, storage, registration and issuance of instruments of force

Control, storage and registration, and issuing of firearms and ammunition, but also of tasers, and rubber and plastic bullets, should be strictly regulated, as provided for in Rule 11 (c) of the BPUFF:

²²⁴ UNODC (2014); see also Report of the United Nations High Commissioner for Human Rights, “Human Rights and the regulation of civilian acquisition, possession and use of firearms”, A/HRC/32/21, 2016.

“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;“

Record keeping and registration

Issuance of a firearm should be conditional on passing the training for that particular class and type of weapon, and be based on a certification procedure to ensure that those entitled to their use are sufficiently proficient and will be re-tested at regular intervals. Anyone who has not participated in or succeeded the initial or refresher training should hand back the firearm and lose his or her certification until passing the required exams.

For accountability purposes, the date and time when someone takes a weapon, the type of weapon as well as its registration number, and type and number of rounds of ammunition should be clearly recorded. This record should be checked when the weapon(s) and ammunition are returned. Any weapon or round that is missing needs to be accounted for, and the respective law enforcement official should file a detailed report explaining the reason and circumstances of firing the weapon, or otherwise explain how he or she lost the ammunition.

In situations where there is no plausible explanation, an investigation should follow, which could lead either to disciplinary proceedings, including the dismissal of the officer involved, if warranted, or to criminal charges.

Weapons that have been stolen should immediately be reported, including their serial numbers, so that they can be traced back, for example when used in another shooting incident.

The type and number of firearms and munitions used in an operation should be accounted for in the report that is submitted afterwards. The person in charge of the armoury should be able to tell at any time how many weapons there are, what types, how many rounds and what type; where they are; and what they can be used for.

It is good practice to keep a similar register for all instruments of force, including batons and handcuffs.

NIGERIA: ALWAYS CARRY YOUR AUTHORIZATION CARD WITH YOU

In Nigeria^a any law enforcement official needs to produce his or her weapon Proficiency/Authorization Card before a weapon is issued, and this card must always be carried by the respective law enforcement official. The authorizing officer may withdraw an officer's authorization to bear firearms if he or she is relieved of duty or is under a criminal or administrative investigation or the subject of any current disciplinary action, or fails to show minimum proficiency in subsequent range practice, or when in the judgment of the authorizing officer, the officer exhibits any impairment, including any physical or mental impairment that would cause concern for the well-being of the officer, fellow officers or the public.

^a This information is based on a presentation by Mr. Fimihan Adeoye at a conference on use of force in the Nigerian Police Force, 21-23 July 2015.

Armoury

Firearms should be returned to the designated armoury at the conclusion of the assignment for which it is issued, and should not be transferred to another officer. The armourer should check the weapon and service it.

Any authorized firearm found to be malfunctioning or needing service should not be issued until it is repaired and inspected; which should only be done by a certified armourer or gunsmith who should be the only ones authorized to repair or modify firearms used by law enforcement officials. Firearms that have not been thoroughly inspected and certified should not be issued.

Riot control agents, chemical irritant sprays, such as pepper spray or CS spray, and tasers and kinetic impact devices should be stored in the armoury. Batons are not required to be stored in an armoury but should be safely stored as well. The armoury should have appropriate levels of physical security, including against fire and explosions. Since an armoury's purpose is to prevent abuse of the weapons available, firearms should be safely locked up under clear procedures regarding access. Ammunition and weapons should be stored separately, so that if one store is compromised, an extra level of safety is left. The armoury must have a facility where weapons used as evidence from criminal investigation cases can be stored.²²⁵

Each location where weapons are kept should have a dedicated armourer to service the weapons. In order to enhance safety and security, it is recommended to differentiate this role from the safe keeper of the register.²²⁶ Both should report to the person-in-charge, who should regularly verify the accuracy of the register and the condition of weapons. Inventory management is a fundamental component of stockpile management, as it helps to detect loss or theft of weapons from stockpiles and facilitates the identification and disposal of surplus weapons.²²⁷ It is also recommended that regular audits be carried out. The respective officers involved should be trained in weapons management and armoury control procedures.²²⁸

Taking weapons home

In principle, officers should not take their firearms or other weapons home, but have them safely locked up in an armoury.²²⁹ Law enforcement agencies should take all reasonable measures to prevent any abuse of firearms or other weapons. Indeed, it should be well understood that issuing officers with firearms or other weapons is to be accompanied by “duty of care” for which the entire organization is to be held responsible.

Where law enforcement officials are allowed to carry their weapon at all times for self-defence, even during non-working hours, it should be based on a threat assessment, and only for the shortest possible time whilst the threat exists. The weapon should be safely locked up at home and checked daily to prevent abuse by the law enforcement official or a third person.

²²⁵ See The HALO Trust, *Somaliland Police Armoury Rehabilitation Project*, 2012: <https://www.halotrust.org/media-centre/news/somaliland-police-armoury-rehabilitation-project/>

²²⁶ See United Nations Coordinating Action on Small Arms (CASA), *International ISACS Small Arms Control Standard, Stockpile Management: Weapons*, 2012.

²²⁷ *Ibid.*

²²⁸ See The HALO Trust, *Somaliland Police Armoury Rehabilitation Project*, 2012.

²²⁹ Note that different jurisdictions may have different ways of implementation. In the United States, many police departments have policy documents containing the provision that police are considered to be on duty at all times whether or not in uniform or in an active service role. Also, based on the Federal Law Enforcement Good Samaritan Act and the Law Enforcement Safety Act, many United States federal states and local law enforcement law agencies authorize, or even *require*, sworn personnel to carry their firearm during “off-duty” status, for example to and from their duty station to their home, as there is an expectation of intervention in dangerous or criminal action even when they are off-duty.

“Personal” weapons

In some countries law enforcement officials procure their own firearms. In principle, no personal weapons or devices should be permitted for policing duties, unless they are duly authorized and registered the same way as other weapons and made traceable.

CHAPTER KEY MESSAGES

- Any instrument of force should, prior to deployment, be appropriately tested and properly authorized; law enforcement authorities should develop regulations and guidelines on their use.
- A law enforcement official employing any use of force should be able to justify the initial use of force and each subsequent application of force, as each use of force must conform to the standards of necessity and proportionality.
- For each use of an instrument of force, an assessment should be made by the law enforcement official to decide whether force is required to achieve the objective, what maximum level of force is permissible, and what minimum level of force may be sufficient. After each instance of force being used, the situation should be re-assessed.
- All law enforcement personnel who either use any instrument of force or supervise others who use any instrument of force should receive adequate training on the use of any and all instruments of force available to them or their subordinates. Training should be scenario-based, as close to reality as possible, emphasize risks involved, recur every six months, and enable officers to articulate the reason for the use of force in a particular instance.
- Any use of force by a law enforcement official should be recorded and reported. Shows of force, such as the unholstering and pointing of a firearm, should also be recorded and reported. Law enforcement officials are personally responsible for the use of an instrument of force and should be personally identifiable.
- Each instrument of force carries specific risks that should be fully understood by the law enforcement official, who should take into account any mitigating measures that may reduce such risks.
- In accordance with the right to life, use of firearms should be intended to stop the threat, rather than to kill, i.e., the “shoot-to-live” approach. As soon as the threat has been stopped, there is no longer a need to use (potentially) lethal force. Law enforcement officials should be able to justify each individual shot fired.
- With respect to the use of firearms, it should be possible to trace who fired a gun; any use of a firearm in the performance of duty should be reported, even if no shots were fired; and whenever the use of force resulted in death or serious injury, this should be investigated by an independent body.
- Control, storage, registration and issuance of all instruments of force should be strictly regulated with records kept that can trace instruments of force, and components of instruments such as bullets, to the assigned officer.
- All allegations of excessive or inappropriate use of these weapons should be promptly, impartially and thoroughly investigated, and victims should obtain redress and fair and adequate compensation.



PART IV

.....
POLICING SITUATIONS
.....

Chapter 7. Public assemblies and protests

Part IV of the resource book deals with a number of specific policing situations that are often characterized by arbitrary or excessive use of force. Chapter 7 deals with the policing of public assemblies and protests, which is specifically referred to in Basic Principles 12-14:

“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.”

The chapter further outlines the international human rights framework regarding assemblies and protests. It explores what can be done to avoid the use of force in the policing of such events, what preparatory measures can be taken, what principles apply to the use of force during assemblies, and offers practical recommendations for their proper management, with appropriate accountability measures.

7.1. Introduction

The right to peaceful assembly, freedom of association and freedom of expression must be guaranteed in domestic law and the law should explicitly allow for both planned and spontaneous assemblies. Where notification procedure is in place, this should be a notification of intent rather than a request for permission.²³⁰ The Human Rights Council has urged States to “facilitate

²³⁰ It should be noted that the United Nations High Commissioner for Human Rights and also the United Nations Special Rapporteurs on the rights to freedom of peaceful assembly and of association, and on extrajudicial, summary or arbitrary executions have underlined that the rationale for a notification system should be to allow State authorities to facilitate the exercise of the right to freedom of peaceful assembly and to take appropriate measures to protect public safety and order, as well as the rights and freedoms of protesters and other individuals affected by the protests. Spontaneous and simultaneous assemblies should be regulated by the same procedure and should also be protected. See for example A/HRC/22/28, para. 11; A/HRC/31/66, para. 21.

peaceful protests by providing protestors with access to public space and protecting them, without discrimination, where necessary, against any form of threat and harassment, and underlines the role of local authorities in this regard”.²³¹

Law enforcement officials should therefore understand and appreciate the rights that apply during assemblies (right to freedom of assembly, association and freedom of expression), the obligations of States to fulfil these rights and what this means for their own role. They should have the professional skills to facilitate assemblies in a fair and professional manner, in order to contribute to them remaining peaceful, and should refrain from provocative actions, and where there are violent elements, contain these so that the rest of the assembly can continue peacefully. This requires law enforcement officials to be well-trained, including on applicable human rights and on crowd behaviour, well-instructed, and well-equipped with protective gear and less-lethal instruments of force.²³²

ACCEPTING DISSENTING VOICES

Although there is no explicit “right to protest”, it has been underlined by many authoritative sources, including the Human Rights Committee, the United Nations High Commissioner for Human Rights and also the United Nations Special Rapporteurs on the rights of peaceful assembly and freedom of association and on extrajudicial, summary or arbitrary executions, that participation in peaceful protests is an important form of exercise of the rights of peaceful assembly and freedom of expression.

In their 2016 joint report, the Special Rapporteurs on the rights to freedom of peaceful assembly and of association and on extrajudicial, summary or arbitrary executions described the importance of peaceful assemblies as follows:

“The ability to assemble and act collectively is vital to democratic, economic, social and personal development, to the expression of ideas and to fostering engaged citizenry. Assemblies can make a positive contribution to the development of democratic systems and, alongside elections, play a fundamental role in public participation, holding governments accountable and expressing the will of the people as part of the democratic processes”^a

The contents of the message of a peaceful assembly are not a relevant consideration in deciding the policing response, provided it does not propagate for war or advocate for national, racial or religious hatred that constitute incitement to discrimination, hostility or violence or acts aimed at the destruction of the rights and freedoms enshrined in international human rights law.^b International human rights law also protects expression that some may find shocking, offensive or disturbing.

^a See Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association. A/HRC/20/27, 21 May 2012.

^b See Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association. A/HRC/20/27, 21 May 2012, para. 18.

When policing assemblies, law enforcement officials at the scene should not be influenced by their own views and opinions, agreement or disagreement with the message conveyed.

²³¹ See A/HRC/25/38, 28 March 2014, para. 4.

²³² See A/HRC/22/28, 21 January 2013, para. 23, A/HRC/31/66, para. 50-67.

Types of assemblies

This resource book will adopt the definition of assemblies as presented by the Special Rapporteur on the rights of peaceful assembly and freedom of association:

“an assembly is an intentional and temporary gathering in a private or public space for a specific purpose. It therefore includes demonstrations, inside meetings, strikes, processions, rallies or even sits-in. Assemblies play a vibrant role in mobilizing the population and formulating grievances and aspirations, facilitating the celebration of events and, importantly, influencing States’ public policy”.²³³

There are many different types of assemblies. Planned assemblies, for example massive rallies to protest a political decision, sometimes with hundreds of thousands of participants, marches and protests against international summits, which are usually fairly well-organized with a clear structure of the organizing group and their leaders.

On the other side of the spectrum are spontaneous protests, often caused by strong and immediate emotions against a decision or action taken by the authorities or in response to an event or incident. Spontaneous protests, by their very nature, are usually less organized, lacking an organizing structure and coordinators or leaders. These are typically characterized by more intense emotions and bear a higher risk of violence.

Sometimes protests attract counter-protests, where people wish to express their disagreement with the message from the original protest group. As long as the messages are within the law, both are equally entitled to assemble peacefully and express their opinions freely. The authorities should make a reasonable effort to facilitate each assembly, and do so within sight and sound of each other.

The authorities should also facilitate assemblies that are unrelated but take place simultaneously. If assemblies are planned for the same place and time, law enforcement bodies should undertake an assessment of risks and develop strategies to mitigate them. If it is necessary to impose restrictions on one or more simultaneous assemblies, such restrictions should be determined through mutual agreement or, where this is not possible, through a process that does not discriminate between the proposed assemblies.²³⁴

GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY

The Organization for Security and Co-operation in Europe (OSCE) has issued Guidelines on Freedom of Peaceful Assembly, which provide detailed guidance on this issue. The guidelines are regularly updated; the latest version is from 2014. They are available in English, French, Russian and Arabic at: <http://www.osce.org/odihr/73405>

²³³ *Ibid.*, para. 24.

²³⁴ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, para. 28 (f).

7.2. Taking precaution: preventing the use of force

The vast majority of peaceful assemblies are not problematic, and law enforcement officials should take that into account when preparing to facilitate them. States should make sure that people can indeed enjoy their right to assemble peacefully and should take appropriate steps to ensure that the assembly remains peaceful.

In order to achieve this, States should pay due regard to the principle of precaution, and take measures beforehand in order to prevent having to use force during the assembly.²³⁵ This means they should prepare a tactical plan and actively engage with the organizers prior to, and during, the assembly.

Notification and subsequent decision-making

Most States have some form of a notification or permitting procedure, but it should be understood that under international human rights law there is no legal requirement for prior notification. Any such procedure must not impose any restriction on peaceful assemblies beyond those permitted by article 21 of the ICCPR. Such procedures are often useful to allow the authorities to put in place necessary arrangements to facilitate the assembly and protect public order and safety, such as redirecting traffic, organizing public transport, giving advance warning to health-care facilities, warning local businesses, and protecting the rights and freedoms of protesters and other individuals affected by the protests.²³⁶ Failure to notify does not render an assembly unlawful and should not be used as justification to ban or disperse a peaceful assembly or have criminal repercussions for the organizers or participants.

There should be an exemption from notification requirements for spontaneous assemblies. However, when the organizers deliberately circumvent reasonable notification requirements, administrative repercussions are possible as long as these are proportionate, and have a legal basis.

It is good practice that the authorities making the decision on the prohibition of an assembly be different from those responsible for its enforcement.²³⁷ This will enable law enforcement bodies to stay out of the discussions about the assembly and focus on professionally and impartially policing the situation.²³⁸

Upon a notification, depending on the individual circumstances and assessment of each assembly, the decision can be any of the following:

- Instructing the law enforcement bodies to facilitate the assembly, and ensure organizers and participants can assemble peacefully
- Placing certain conditions, consistent with article 21 of the ICCPR, i.e. restrictions, on the assembly (for example on the route to be taken, on the timing of the assembly), instructing the law enforcement agencies to facilitate the assembly, ensuring

²³⁵ See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/26/36, 1 April 2014, para. 53.

²³⁶ Report of the United Nations High Commissioner for Human Rights, Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, A/HRC/22/28, 2013, para. 11. In the OSCE Guidelines on Freedom of Peaceful Assembly, Guideline 4.1, this is referred to as a “notice of intent”.

²³⁷ See OSCE Guidelines on Freedom of Peaceful Assembly, Explanatory Notes, para. 61.

²³⁸ See OSCE Monitoring Report, 2013-2014, para. 233; in Bulgaria the municipality (or the mayor) is responsible for receiving assembly notifications and is authorized to ban an assembly or impose prior restrictions, as well as to order to disperse an assembly, and the police are responsible for enforcing any restrictions imposed by the regulatory authority. OSCE Monitoring report, 2013-2014, para. 233.

organizers and participants can assemble peacefully, while at the same time enforcing the restrictions

- Prohibiting an assembly. This should be exceptional and only as a last resort, in line with restrictions permissible under international law, recognising that freedom of peaceful assembly is a fundamental right.

It should be emphasized, in other words, that banning or dispersing an assembly completely should be exceptional, as there would have to be legitimate grounds to do so, that is, for example, where such a measure is “necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others”.

Restrictions should not impair the essence of the right to freedom to peaceful assembly and be proportionate to the legitimate aim pursued. It follows that the grounds for restrictions as listed in ICCPR should not be supplemented by additional grounds in domestic legislation.

FACILITATING COMPETING INTERESTS

In Bern, a senior civil servant stated the following as good practice for public assemblies:

“We do not care about the reason for a demonstration or what it is for, or against. But the City is responsible for organising the public space and for safety and security in this area. Many people are interested in using the space, for many different reasons. Example: in Bern, there is a public square in front of the national parliament building. It is probably the most prominent square in the country. Every Saturday, there is an outdoor fresh market on this square. Dozens of farmers come to this public space to sell their products. They make their living from it. But Saturdays are popular for protests, and on many Saturdays several groups or parties want to use this same square, to make their protests. Should we cancel the market, which is very popular, in favour of the demonstrations? Or should we ask the protesters to come on another day? Neither nor. In the morning, the market takes place undisturbed; in the afternoon, it is time for the demonstrations.”^a

^a Twelfth Round of the Human Rights Dialogue between Vietnam and Switzerland, Bern, 27 August 2014.

Preparation: developing a tactical plan

When the assembly has been announced in advance, the law enforcement authorities can, and should, prepare and develop a tactical plan to facilitate the assembly effectively, and, where applicable, enforce the necessary restrictions that have been put in place.²³⁹ It is good practice to have a standard format to plan for assemblies and facilitate them accordingly. The tactical plan should follow the format discussed in chapter 4. The aim should be to facilitate the assembly. The task of law enforcement bodies is not to decide where or when the assembly should be held, but rather to accommodate the organizers so that they can convey their message within sight and sound of the target audience.

An important tactical decision that should be taken prior to the peaceful assembly concerns the level of tolerance for disruptions, such as traffic jams, and the closure of shops and small businesses. Law enforcement agencies should tolerate some level of disruption, and base their tactics

²³⁹ See HC on HR, FOA, 2013, paras. 14, 15 and 19; Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association. A/HRC/20/27, 21 May 2012, para. 36; Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association. Addendum Mission to the United Kingdom of Great Britain and Northern Ireland. A/HRC/23/39/Add.1, 17 June 2013, para. 68.

on that. However, the plan should include an assessment of what conflicts may arise, for example through developing a number of scenarios, and how this can be dealt with.

Based on a sound risk assessment, the tactical plan should spell out the policing objectives for the event, and how these will be achieved and with what resources, including:

- What units to deploy, such as horses, riot control units etc.
- How many police officers to deploy, the uniforms they wear and the equipment they will carry or display, including self-protective gear.
- Communication techniques such as negotiations, persuasion, when and how to deploy them, and by whom (is there a need to deploy specialized unit?) and ensure that the commanding officer on the ground has the right tools, such as loud speakers.
- Use of barriers to block certain roads to channel the protesters to their destination and back through clear corridors, preferably manned by officials who can explain the reasons for re-routing the protesters. Posting police vehicles and mounted officers strategically can also help to direct crowds in a certain manner.
- In cases where there is an anticipated situation in which life and limb of person may be under imminent threat, and provided that measures have been put in place to meet the criteria reflected in Basic Principle 9, where to have the officers with appropriate firearms on standby (should their presence be needed).

Wearing normal uniforms conveys a very different message than being dressed in riot gear, and will invoke a different response from the protesters, depending on their background and their previous experiences with law enforcement in general and during assemblies in particular.

In general, law enforcement agencies should be reluctant to deploy large numbers of officers in riot-gear. This should only happen when based on a sound risk-assessment. When it is expected that they might be needed, they should be ready in the vicinities, but not immediately visible to participants. This still does not mean they should actually be deployed, as indeed sometimes situations that might turn violent can be resolved through a “show of force”, reducing the need for actual force.

It is necessary to find the right balance, one that suits the situation encountered. Rather than always opting for a “high profile—heavy-handed” approach, law enforcement authorities should reflect on what is the most appropriate approach for the situation at hand.

The tactical plans should also detail how information will be collected during the assembly that can be used as evidence in court in case criminal offences are committed. For example, camera surveillance may be used in order to identify those instigating or committing violence for future prosecutions but this must happen in accordance with national privacy legislation, which itself should be in accord with international human rights law. An element of the tactical plan should be how to engage the organizers and establish dialogue prior to, during and after the assembly.

SETTING UP A UNIFIED COMMAND^a

The unified command is a structure that brings together the commanders of all the major organizations involved in the incident in order to coordinate an effective response while at the same time carrying out their own jurisdictional responsibilities. The unified command links the organizations responding to the incident and provides a forum for these entities to make consensus decisions. It is usually based close to the protests itself and facilitates communication with the demonstrators through a single channel.

^a For more information, visit: https://www.osha.gov/SLTC/etools/ics/what_is_uc.html

Dialogue: engaging with the organizers

Practice shows that actively engaging with the organizers and participants in order to establish a constructive dialogue helps to prevent escalation of violence, and avoids the need to resort to force by law enforcement officials during assemblies.²⁴⁰ It helps achieve a better understanding of the expectations and responsibilities at stake, avoids unnecessary confrontation, releases tensions and prevents violence or contributes to quickly stopping any disruptive or unlawful incidents should they break out. Such engagement is much easier if there is already a basis of mutual trust and mutual recognition of legitimacy.

The authorities and the law enforcement agencies carry joint responsibility, together with the organizers, for ensuring that the participants of the assembly can indeed exercise their rights without undue interference. This is sometimes referred to as the “safety triangle”.

It is reasonable to expect that assembly organizers, especially when it is a big, planned, assembly, will take steps to ensure the peacefulness of an assembly, and liaise with law enforcement officials at all stages of the planning and execution of the event, but this should not be compulsory. Moreover, organizers should not incur liability for the unlawful or violent acts of others unless it is shown that they encouraged such acts.²⁴¹

In most instances, organizers of a large public assembly will notify the authorities of their intent to do so, which provides the first opportunity to engage with them in order to get an idea of what their objectives are and how many participants they are expecting. By getting involved in the preparation phase, law enforcement agencies can negotiate the details of an event with its organizers, but they should also be willing to share with assembly organizers, to the extent possible, information on their security preparations, including when assemblies are considered to be at a higher risk. This has shown to be good practice in many countries and has been helpful in de-escalating tensions.²⁴²

²⁴⁰ See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. A/HRC/17/28, 23 May 2011, para. 13.

²⁴¹ Report of the United Nations High Commissioner for Human Rights. A/HRC/22/28, 21 Jan 2013, para. 10; Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, A/HRC/20/27, 21 May 2012, para. 93; Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Addendum Mission to the United Kingdom of Great Britain and Northern Ireland. A/HRC/23/39/Add.1, 17 June 2013, para. 70.

²⁴² See OSCE Monitoring report 2013-2014.

STEWARDS

Stewards are generally volunteers patrolling the event, directing participants, making sure people stay on the right route and that the event takes place in an orderly fashion. It is good practice for these stewards to receive training, and know how to deal with conflicts whenever they might arise and know how to quell them at an early stage, thus preventing escalation. Law enforcement officials should acknowledge the importance of the role of stewards, engage with them, and treat them with respect, whilst understanding that their effectiveness will vary, depending on the extent of training, numbers of participants and the type of protest (cohesive, single-issue, variety of groups with different agendas, etc.).

Authorities in some countries appoint a liaison officer whom organizers can contact before or during an assembly, sometimes the liaison officer accompanies the demonstration leaders throughout the demonstration in order to provide direct information to the authorities so they can respond to any difficulties in facilitating the assembly. For example, in Greece a senior police officer is appointed to cooperate with the organizers on the spot and to provide real-time information on the assembly to the operations centre; in the Czech Republic there are “anti-conflict teams”, a specialized division, talking to the participants of an assembly and mediating in conflict situations. The anti-conflict teams pay attention to the mood of the people and potential dangers and supply relevant information to the head of the team, who works closely with the commander of the entire police operation. Members of the anti-conflict team are recognizable, as they wear high-visibility vests with “anti-conflict team” written on them.²⁴³

In some countries police and other authorities are experimenting with using social media to communicate with organizers and participants. For example, in Denmark the Copenhagen Police updates participants via Facebook and Twitter with information related to the protest or event.²⁴⁴

A model for effectively facilitating assemblies

Over the years a growing consensus has developed among law enforcement practitioners and researchers that professional policing of assemblies requires law enforcement officials to apply four principles:²⁴⁵

Knowledge: Encompasses any information that is useful to facilitate the assembly, including police intelligence. Law enforcement agencies should, in line with the available regulations and procedures, which themselves must be in accordance with international human rights law, actively acquire information about the assembly, its objectives, intended route, organizers, expected participants and their intentions in order to understand the interests and goals of the groups involved and facilitate their legitimate goals. With this knowledge, law enforcement officials can develop the tactical plan. It also helps to identify whether there may be potential “troublemakers”, and whether the organizers intend to deploy stewards.

Facilitation: In line with the duty on States to respect peaceful assemblies, police strategies should aim to help the assembly achieve its legitimate objectives. The underlying premise is to assume that

²⁴³ *Ibid.*, paras. 216-218.

²⁴⁴ See Report of the United Nations High Commissioner for Human Rights. A/HRC/22/28, 21 Jan 2013, para. 49.

²⁴⁵ See OSCE Human Rights Training Guide to Policing Assemblies, *Dialogue Police: Experiences, Observations and Opportunities*, Swedish Police, 2010: https://polisen.se/Global/www%20och%20Intrapolis/Informationsmaterial/01%20Polisen%20nationellt/Engelskt%20informationsmaterial/Dialogue_bok100630Webb.pdf.

most people who take part in an assembly will have peaceful intentions. By making it easier for them to achieve their goals, the police can avoid violence, and get support from participants in order to reduce the potential for disorder. Special attention should be given to members of groups that are vulnerable to abuse by either State or non-State actors (including by agents provocateurs) and care must be taken to ensure they can fully exercise their rights to peaceful assembly.

Communication: The police should actively communicate in order to create relationships with participants in an event and provide a foundation for future conflict prevention. They should be culturally knowledgeable about the groups in the crowd and be trusted and respected by such groups. Communication should take place during all phases of the assembly, but it is of particular importance when tensions begin to rise. If restrictions have to be imposed, it is important to inform people about the reasons in order to avoid misunderstandings and to suggest alternatives. It is recommended to adopt a “no surprises” approach by sharing as much planning as possible with the organizers and where possible with all involved groups so that they know what to expect. This means that all police officers should be able to communicate with and inform participants and members of the public about the police intentions at an event.

Differentiation: Participants in the assembly are not one faceless mob and are not all the same.²⁴⁶ One way to differentiate between individuals is to observe what they do rather than what category they belong to. A group of people is never homogeneous from the beginning but may begin to behave as such if they are treated as a single entity. Police should know what groupings there are at an assembly and the different ways they may act and react. If someone initiates a conflict, it is important that the police reaction to this does not lead to others being drawn into the conflict. Differentiation also means that police are aware of the different vulnerabilities that members of different subgroups may have and take these into account. It also allows for pinpointed action against individuals breaking the law, which then has a low impact on the assembly, as it does not affect uninvolved bystanders, who can carry on without interruption.

“NEGOTIATED MANAGEMENT”^a

Negotiated management is based on the idea that it is more productive, where possible, to work with crowds, rather than against them. Under this approach, the task of the police is to protect rights and to facilitate, rather than frustrate, peaceful assemblies. Under the negotiated management approach, groups are different from individuals but they do not necessarily act in a random, incomprehensible way.

Groups react according to their own logic and a number of external influences, including how the authorities treat them. The negotiated management approach entails accepting some of the spill-over effects of the protest in return for assurances as to the peaceful nature of the event.

The emphasis of this approach is therefore on ensuring the peaceful development of the assembly, rather than enforcing the law. In this paradigm of “under-enforcement” of the law, force should be used by the police in self-defence or defence of others, rather than to assert the authority of the law in the abstract.

^a See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/17/28, 23 May 2011, paras. 109-115.

²⁴⁶ See ICRC, 2011.

Spontaneous assemblies

Sometimes assemblies gather spontaneously to protest, for example, service delivery issues, a decision by the authorities or in response to an event or incident, even in another country, and sometimes to protest the actions of law enforcement officials. Spontaneous assemblies by definition mean the authorities have not been notified, but this does not mean they cannot plan for it. In fact, law enforcement officials who are well embedded in the communities they serve will probably be aware of discontent about a certain issue.

PROTESTING AGAINST THE POLICE

Sometimes spontaneous protests arise to protest against actions of the police, such as a wrongful police assault or custodial death. Because the message is directed at police officers, who are simultaneously the targets and the regulators, such protests often lead to a violent response. It is recommended to organize for the immediate arrival at the site of senior law enforcement officers who are not connected with the original act, which triggered the protest, as it might be better to communicate with the protesters.

With spontaneous assemblies, the decision whether or not to allow the assembly, or place restrictions, and the enforcement of that decision, are taken at the same moment and probably by the same person and this decision can only be reviewed afterwards.

As a basic principle, as long as these assemblies are peaceful and there is no criminal activity, they should be permitted, and authorities should facilitate them just like planned assemblies. It is considered good practice to have the right to assemble spontaneously explicitly covered in law.

When dealing with spontaneous assemblies, the authorities will have to rely on their general training and operational preparedness. It is especially in this situation where it is important that law enforcement officials be well versed in how to protect the right to peaceful assembly and have a sound understanding of their responsibility to facilitate this right.²⁴⁷

Public order management during sports, music, and other events

Other major events also pose distinct challenges for law enforcement, such as major sports events, especially when they are likely to involve violence initiated by supporters, and social gatherings with many people who may be affected by alcohol. Social media has added to this dynamic by facilitating the ability of people to assemble quickly. Such situations differ from other public assemblies in that they usually do not have the objective of conveying a particular message, and they may present public order challenges, which the vast majority of peaceful assemblies do not.

Nevertheless, the same principles apply. It is important to prepare for the event, based on sound knowledge, including intelligence, and draft an appropriate tactical plan. Police should reach out to the supporters prior to and during the event and establish dialogue, differentiate the different participants in the crowd and respond accordingly.

²⁴⁷ *Ibid.*

7.3. Use of force during assemblies

General principles

Law enforcement officials should prepare well for an assembly and do their utmost to facilitate it in such a manner that force will not be needed. It should be remembered that any public assembly must be presumed to be peaceful and lawful, until proven otherwise. The burden of proof is with the authorities.²⁴⁸ Under no circumstances should force be used against peaceful demonstrators who are unable to leave the scene.

Principles 12, 13 and 14 of the BPUFF specifically deal with the policing of assemblies. As peaceful assemblies should be allowed, in principle law enforcement officials should not be authorized to disperse them, even when they are unlawful under domestic law. When an assembly occurs in violation of applicable laws but is otherwise peaceful, non-intervention or active facilitation is generally seen as the best way to respond to ensure a peaceful outcome. If however it has to be dispersed, all reasonable attempts should be made to have participants do so voluntarily; law enforcement officials should use force only if absolutely necessary and only to the minimum extent required. The dispersal of an assembly by law enforcement authorities should only ever be undertaken as an exceptional, necessary and proportionate measure, based on lawful grounds that are compliant with international human rights standards.

When an assembly is violent, law enforcement officials may decide to use force to disperse. However, even in those circumstances firearms may only be used to protect against an imminent threat of death or serious injury. The BPUFF expressly state that firearms should not be used to disperse a peaceful or a non-violent assembly, even when it is unlawful. Principle 14 of the BPUFF only allows the use of firearms to disperse the participants when an assembly is violent, and provided that:

- Less dangerous means are not practicable, and
- They are used only to the minimum extent possible and
- Only in accordance with principle 9, that is in self-defence or in defence of others against an imminent threat of death or serious injury.

Firearms should not be used during an assembly, unless the law enforcement officers have individualized those posing an imminent threat of death or serious injury from uninvolved bystanders or others that do not pose such threat, are capable of neutralizing those persons without risk to others, and when no other less violent means are available or are likely to be effective. They should only be used against those violent individuals within the assembly posing an imminent threat of death or serious injury. Firearms shall never be used to fire indiscriminately into a crowd.²⁴⁹

It is considered good practice to invite a human rights adviser to the control room to advise and assess the necessity and proportionality of the actions taken, as it is the case in Northern Ireland.²⁵⁰

²⁴⁸ See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27, 21 May 2012, para. 45. The High Commissioner on Human Rights has stressed that “an assembly should be deemed peaceful if its organizers and participants have peaceful intentions and do not use, advocate or incite violence; such features should be presumed”; Report of the United Nations High Commissioner for Human Rights, A/HRC/22/28, 21 Jan 2013, para. 10.

²⁴⁹ See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/17/28, 23 May 2011, para. 61; “nothing can ever justify the indiscriminate use of lethal force against a crowd, which is unlawful under international human rights law.” United Nations Doc. A/HRC/25/L.20, 24 March 2014, Operative paragraph 11.

²⁵⁰ See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Addendum Mission to the United Kingdom of Great Britain and Northern Ireland, A/HRC/23/39/Add.1, 17 June 2013, para. 71.

Arrests

It may be necessary to arrest one or more participant(s) in the assembly who have violated the law, including when participants vandalize public or private property, such as looting a shop, or a participant who is trying to convey a message that amounts to incitement to discrimination, hostility or violence. In these instances, the police can arrest the individual and law enforcement officials should make sure to have provisions in place for apprehending, searching, arresting, holding and transferring persons for prompt judicial review in order to ensure their rights are respected. Special procedures should be provided for children that come into contact with law enforcement in these contexts.

It may be useful in this regard to record video footage of what is occurring for use as evidence, should a case be brought to court, and to be able to make further enquiries and arrests when order is restored. Law enforcement officials can also gain access to public and private CCTV for these investigations, as the public may have recorded events and posted them online. Search warrants may be required to seize CCTV recordings

Mass arrests should be avoided at all times as they fail to differentiate between participants and could amount to unlawful deprivation of liberty.²⁵¹ Such arrests may amount to indiscriminate and arbitrary arrests, which are in violation of human rights law.²⁵² Though there may be occasions when numerous arrests based on unlawful conduct are deemed necessary, this should not be because the law enforcement agencies do not have sufficient resources to individualize arrest decisions based on particularized facts.²⁵³

Dealing with pockets of violence

It should be clearly understood that when some elements in the assembly behave violently, this does not mean that from that moment on the whole assembly is to be regarded as violent.²⁵⁴ Law enforcement officials should continue to differentiate between the violent elements and peaceful protesters and protect the peaceful protesters and only act against the violent protesters.²⁵⁵

In cases where a group starts to behave aggressively, action should be taken against these individuals. Whenever possible, these people should be removed from the crowd and possibly arrested, depending on their conduct, in order to allow other protesters to exercise their rights to assemble peacefully and express themselves. Assembly organizers should not be held liable for the violent behaviour committed by others.²⁵⁶

²⁵¹ See OSCE Monitoring Report 2013-2014, para. 54.

²⁵² See Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, para. 45.

²⁵³ See ICCPR, article 9; OSCE Monitoring Report 2013-2014, para. 283.

²⁵⁴ European Court of Human Rights, *Ziliberg v. Moldova*, Application No. 61821/00, 2004; according to the ECHR, “an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour”; Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/17/28, 23 May 2011, para. 42; Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27, 21 May 2012, para. 25.

²⁵⁵ See OSCE Guidelines on Freedom of Peaceful Assembly, Explanatory Notes, para. 167.

²⁵⁶ See Report of the United Nations High Commissioner for Human Rights. A/HRC/22/28, 21 Jan 2013, para. 10; Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association. A/HRC/20/27, 21 May 2012, para. 93; Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association. Addendum Mission to the United Kingdom of Great Britain and Northern Ireland. A/HRC/23/39/Add.1, 17 June 2013, para. 70.

For those that are intent on using violence, law enforcement authorities should make it clear that such acts will not be tolerated, and take necessary precautionary measures.

It is not always clear where isolated acts of violence within a protest, because of the nature, scale or frequency of the violence, reach a level where the protest can be characterized as “violent”, but when it does, the situation becomes much more challenging from a law enforcement perspective. As the ICRC takes note:

“Riots can be frightening experiences for any law enforcement official, and it takes considerable courage to stand in front of an angry and possibly armed mob. A well-trained, professional and disciplined force is needed to calm or disperse a crowd without resorting to the use of force. The challenge is great for police or security forces, which may be ill-prepared or ill-equipped for such a task. (...)”²⁵⁷

When an assembly becomes violent, it may become necessary to disperse the assembly or contain its participants. Where this happens, law enforcement officials should continue to abide by the principles of knowledge, communication, facilitation and differentiation.

Dispersal and containment

Prior to dispersal

Dispersal should not occur unless law enforcement officials have taken all reasonable measures to facilitate and protect the assembly from harm and unless there is an imminent threat of, or actual, violence.

Dispersing a crowd should always be a measure of last resort and should be clearly regulated in domestic legislation detailing the circumstances when dispersal is warranted and who can give the order to disperse. The decision to disperse is usually up to a mayor or a magistrate and sometimes to the police. Grounds for dispersal should be limited and may include cases where participants in the assembly carry arms, explosive devices, or otherwise dangerous items,²⁵⁸ when the assembly, or part of it, has turned violent or when demonstrators refuse to vacate the protest location after a judicial order calling on them to do so.²⁵⁹

Law enforcement officials should decide on the appropriate and proportional response, and make a tactical decision on how to disperse in a manner that will seek to minimize harm to persons and property. Voluntary dispersal is always preferred over dispersal by force. This can be achieved by asking participants to leave, through communication with the organizers, or simply by waiting. Time is on the side of law enforcement as the participants of an assembly will ultimately want to go home.

However, if it is not possible to wait, law enforcement officials can opt to relocate the assembly and move its participants to another location. When this option is not feasible, depending on the circumstances of each situation, it can be decided to disperse the assembly with force.

²⁵⁷ See ICRC, 2011, pp. 17-18.

²⁵⁸ See OSCE Monitoring Report 2013-2014, para. 289.

²⁵⁹ See also Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, para. 61-63.

However, this can only be done in accordance with the law. In Poland, the penal code sets up penalties for those who disperse a lawful gathering using violence.²⁶⁰

Steps to take when dispersing an assembly

Law enforcement officials should first inform the organizers and participants, using verbal instructions, ordering people to disperse and informing them where they can or should go by using a microphone or loudhailer or, when that is not available, simply their own voice, unless doing so would be clearly inappropriate or pointless. People should be given sufficient time to comply with the order and disperse voluntarily.²⁶¹

GIVING A WARNING AND MAKING SURE IT IS UNDERSTOOD

In France law enforcement officials need to give such orders twice before they can actually disperse a crowd.^a In Portugal the order to disperse, and the reasons for it, needs to be handed over in writing to the organizers of the assembly.^b Some States also provide warnings in two or more languages to ensure wider and more comprehensive communication.^c

^a See Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/26/36, 1 April 2014, para. 91.

^b See OSCE Monitoring Report 2013-2014, para. 297.

^c See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/26/36, 1 April 2014, para. 91.

Before forcibly dispersing a crowd, participants should know that a warning has been given and should be given sufficient time to comply with it. Those that do comply should be facilitated to do so, and protected, for example by being taken to a safe space.

Only those participants who fail to comply with the order to disperse can be dispersed by force, but the type of force to be used will depend on:

- The characteristics of the scene: can people run away? Force should never be used against trapped people
- The number and characteristics of the demonstrators: are there children, elderly people, pregnant women, people with disabilities
- The number of law enforcement officials present
- Type of equipment available

For dispersing a crowd, law enforcement officials can make use of horses to direct the crowd, or various types of equipment, provided they are adequately regulated, including water cannon, tear gas and batons. Whenever law enforcement officials apply any of these tools in order to disperse the crowd, particular care should be taken to allow for the crowd to leave, that is: there should be somewhere they can go to rather than being driven into a corner, and also the police should be prepared to take control over the area immediately after the dispersal. As mentioned before, firearms should not be used to disperse a crowd.

²⁶⁰ See OSCE, Office of the Secretary General Strategic Police Matters Unit, 2009.

²⁶¹ See OSCE, Guidelines on Freedom of Peaceful Assembly, Explanatory Notes, para. 168.

When force is used for the dispersal of an assembly the following principles should be respected.²⁶²

- Where pepper spray or other irritant chemicals are used, decontamination procedures must be set out.
- The use of baton rounds or plastic/rubber bullets, water cannon and other forceful methods of crowd control must be strictly regulated and there must be prompt medical care available.
- It must be possible to identify individual law enforcement officials who used arbitrary force or used force irresponsibly; for this reason they should wear name tags or numbers.²⁶³
- The use of force should trigger an automatic and prompt review process after the event. It is good practice for law-enforcement officials to maintain a written and detailed record of force used, including deployed weapons.
- Moreover, where injuries or deaths result from the use of force by law-enforcement personnel, an independent, open, prompt and effective investigation must be established. These should address responsibility at all levels of command.

Containment

The exact opposite of dispersal is called “containment” (also known as “kettling”) where the participants are grouped together and cordoned off from outside, with a view to preventing other protesters from joining the “kettled” group.²⁶⁴

Containment is a problematic tactic from a human rights perspective, especially when used for long periods of time, preventing those contained from access to water or sanitary facilities and may amount to deprivation of liberty or, under certain circumstances, inhuman or degrading treatment.²⁶⁵ The Special Rapporteur on the rights of freedom of assembly and association has repeatedly raised concerns about the use of containment as a tactic while policing protests, calling it “intrinsicly detrimental to the exercise of the right to freedom of peaceful assembly, due to its indiscriminate and disproportionate nature”. He has recommended that States stop using kettling.²⁶⁶

In any event, containment should only be used in exceptional circumstances, i.e. when there are reasonable grounds to believe there is actual violence, or a threat of imminent violence, and should be used for no longer than is reasonably necessary.²⁶⁷ It should only be employed when necessary to prevent serious damage or injury and when there is no other alternative police tactics, less restrictive to the rights to liberty and the freedom of movement that can be employed.²⁶⁸

²⁶² See OSCE Guidelines on Freedom of Peaceful Assembly, Explanatory Notes, para. 176.

²⁶³ See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Addendum: Mission to the United Kingdom of Great Britain and Northern Ireland. A/HRC/23/39/Add.1, 17 June 2013, para. 93; Report of the United Nations High Commissioner for Human Rights. A/HRC/22/28, 21 Jan 2013, para. 51.

²⁶⁴ See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association. Addendum Mission to the United Kingdom of Great Britain and Northern Ireland, para. 36.

²⁶⁵ *Ibid.*, para. 37.

²⁶⁶ See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/23/39, paras. 37-38 and 93.

²⁶⁷ See College of Policing, *Core principles and legislation*, 2014; College of Policing, *Tactical options*, 2014.

²⁶⁸ See OSCE Monitoring Report 2013-2014, para. 55.

When containment is used on an exceptional basis, strict mitigation measures should be taken, including:

- The decision to deploy containment tactics should be communicated to the protesters and they must know the purpose and reason for it. Continuous sharing of information about the process is recommended.
- When implementing and maintaining containment, the police should, where possible, differentiate between non-violent persons, including peaceful protesters, innocent bystanders, vulnerable persons, media and violent protesters. This implies a thorough assessment of the particular vulnerabilities of individuals and ensuring the extraction of those in distress.
- Production of a Press Card should in principle allow the holder release from any area subject to containment, unless their behaviour justifies their containment.
- Those identified as non-violent should be released as soon as it is safe to do so.
- The welfare of those who are subjected to the tactic must be considered (e.g. access to toilets, water—and in situations of prolonged containment—food and shelter).
- A dispersal plan for after the containment comes to an end must be in place.
- The strategic objectives and operational decision logs should reflect the considerations listed above.

It is a tactical decision whether it is better to disperse or contain, but before dispersing or containing, emphasis should always be on de-escalating tension. Law enforcement officials should be adequately trained before deploying any of these tactics, and be adequately resourced and equipped, including with protective gear and less-lethal technologies.²⁶⁹

When violent protests evolve into tensions and disturbances

When isolated incidents of violent protests become related, and viewed together, they may constitute a more or less consistent pattern referred to as “internal disturbances or tensions”.²⁷⁰ Such situations pose great challenges to the authorities in terms of maintaining public safety and law and order and can eventually lead to situations that threaten the life of the nation and lead the State to proclaim a state of emergency.

It is of great importance that these situations are handled well by the law enforcement agencies. The ICRC advises the following:

“The law enforcement action taken in such situations can have far-reaching consequences. Lawful, non-arbitrary and precisely targeted forms of action directed at initiators and perpetrators of disturbances and tensions can lead to a reassertion of control and defuse a situation. Random action, as well as unlawful, arbitrary and discriminatory, can erode confidence in law enforcement, further endanger public safety and be at least partly responsible for the further escalation of a situation”.²⁷¹

What should be remembered is that the basic principles of legality, necessity and proportionality continue to apply. Professional conflict management is based on good preparations, even in tense situations.

²⁶⁹ *Ibid.*, paras. 56-58.

²⁷⁰ See Protocol II Additional to the Geneva Conventions of 1949, article 1, Paragraph 2; examples of “riots, isolated and sporadic acts of violence and other acts of a similar nature”.

²⁷¹ See ICRC, 2011, pp. 20-21.

Law enforcement agencies should make sure to continue to differentiate between the different groups involved. It is unlikely that all of them will be violent, or be equally violent. Therefore, it is important for law enforcement officials to make sure that the violent elements are contained and cannot influence others, which would make it a much bigger conflict that would be much more difficult to manage, while at the same time facilitating those that have legitimate objectives. This also means they should make sure they have adequate knowledge, including intelligence, about the different groups and their objectives. And law enforcement officials handling the events should make sure to continue to communicate with the different groups involved and, where applicable, the organizers or leaders.

In exceptional situations—for example where protests get violent and continue for a longer time—governments sometimes opt to deploy the military, instead of or in support of, the civilian law enforcement agencies, to restore order.²⁷² In view of their training and equipment, and also in terms of appearances, it is questionable whether armed forces should be given the task of enforcing the law and maintaining law and order.²⁷³ Basic law enforcement responsibilities should arguably be left in the hands of regular law enforcement agencies for as long as possible. As a general rule, the military should not be used to police assemblies.

Where, in exceptional circumstances, members of the military carry out law enforcement functions they are bound by the applicable law enforcement standards, including the BPUFF. Moreover, international human rights law is always applicable, and must be respected at all times by military and civilian forces alike. Equally, members of the military should be held to the same standards when they use force as civilian law enforcement officials. The Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that when it is necessary to involve members of the military in law enforcement, they should be adequately trained in human rights and human rights-based law enforcement.²⁷⁴

An important issue when calling in for military assistance is to ensure there are clear lines of command, defining the different responsibilities of military and law enforcement units for each joint action. The military should be subordinate to the civilian authorities and shall be held accountable to civilian law.²⁷⁵ Where military staff is placed under law enforcement command, strict regulations should be required. The actions of military staff in law enforcement operations should be subjected to democratic and civilian oversight.

When there is a transition, there have to be well-defined modalities of cooperation and clear benchmarks that indicate when the transition is to take place. These should be stipulated in operation-specific documents. In principle, law enforcement agencies should not transfer primary responsibility for resolving law and order incidents. Military primacy should only be considered if the local threat reaches a level, which should be determined by proper authorities on a legality basis, to be beyond police capacity.

²⁷² Even if the situation does not qualify as a non-international armed conflict and international humanitarian law does not apply.

²⁷³ ICRC (2011, p. 40) states that “armed forces are usually neither trained nor equipped for [law enforcement] tasks. It should therefore be clear that whenever such responsibilities are entrusted to the armed forces, the quality of law enforcement and the maintenance of public order may suffer”

²⁷⁴ See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/66/330, 30 August 2011, para. 96. See also Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, para. 66.

²⁷⁵ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, para. 66.

PRACTICAL RECOMMENDATIONS FOR STATES REGARDING THE PROPER MANAGEMENT OF ASSEMBLIES

In March 2016, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions presented a joint report on the proper management of assemblies. The report included a compilation of practical recommendations, aimed at providing guidance on how applicable international human rights standards may be operationalized in domestic law and practice to ensure greater protection of the rights involved. The report was based on wide consultations with Member States, civil society, national human rights institutions, regional human rights mechanisms, and policing and other experts.^a

The recommendations are organized around 10 overarching principles, and principle 5 relates to the use of force in the context of assemblies:

“Force shall not be used unless it is strictly unavoidable, and if applied it must be done in accordance with international human rights law”

The Special Rapporteurs made the following recommendations regarding this principle:^b

States should ensure that law enforcement officials have the equipment, training and instructions necessary to police assemblies wherever possible without recourse to any use of force:

- Tactics in the policing of assemblies should emphasize de-escalation tactics based on communication, negotiation and engagement. Training of law enforcement officials should include pre- and in-service instruction in both classroom and scenario-based settings.
- Before the selection and procurement of equipment, States should subject such equipment to a transparent and independent assessment to determine compliance with international human rights law and standards. In particular, equipment should be assessed for accuracy, reliability and its ability to minimize physical and psychological harm. Equipment should be procured only where there is sufficient capacity to train officers effectively on its proper use.
- Specific regulations and detailed operational guidance should be developed and publicly disseminated on the use of tactical options in assemblies, including weapons, which, by design, tend to be indiscriminate, such as tear gas and water cannons. Training must encompass the lawful and appropriate use of less-lethal equipment in crowds. Law enforcement officials should also be properly trained on protective equipment and clearly instructed that such equipment should be used exclusively as defensive tools. States should monitor the effectiveness of the training in the prevention of abuse or misuse of weapons and tactics.
- Automatic firearms should not be used in the policing of assemblies under any circumstances.
- Autonomous weapons systems that require no meaningful human control should be prohibited, and remotely controlled force should only ever be used with the greatest caution.
- States should develop comprehensive guidelines on the dispersal of assemblies in accordance with international human rights law and principles. Such guidelines should be made public and provide practical guidance to law enforcement officials detailing the circumstances that warrant dispersal, all steps required to be taken before a decision to disperse (including de-escalation measures), and who may issue a dispersal order.
- Effective systems for monitoring and reporting on the use of force must be established by the State, and relevant information, including statistics on when and against whom force is used, must be easily accessible to the public.

^a Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, para. 67.

^b *Idem.*

7.4. Allowing monitors and journalists

An important measure to prevent excessive or otherwise arbitrary use of force is to organize for transparency and scrutiny, and States are encouraged to explore ways they can actively facilitate the presence of independent monitors, such as from police oversight bodies, National Human Rights Institutions (NHRI) and others, during assemblies.²⁷⁶ Monitoring of assemblies can provide an impartial and objective account of what takes place, including a factual record of the conduct of both participants and law enforcement officials.²⁷⁷ This supports law enforcement officials by giving independent validation when their actions were lawful. An example is provided by Malaysia, where representatives of SUHAKAM, the NHRI, acted as observers during a sensitive public protest, by deploying teams of observers.²⁷⁸

Human rights defenders, from both local and national/international NGOs should be expressly recognized and guaranteed to monitor and report on human rights abuses and violations that may have occurred before, during and after the assembly and more generally how it was handled.²⁷⁹ For this purpose the OSCE has trained assembly monitors in Armenia, Georgia, Kazakhstan, Kyrgyzstan, Republic of Moldova and Serbia, and issued the Handbook on Monitoring Freedom of Assembly in September 2011.

Journalists, community media workers, other media professionals, “citizen journalists” and bloggers form another important group playing an important role in ensuring transparency and the right to information. Law enforcement and other authorities should facilitate their coverage of public assemblies, including the actions of the police, without official hindrance and regardless of their accreditation status.²⁸⁰ Media coverage must be recognized as an element of protection of human rights in the context of peaceful assemblies and protests, and the right to information should not be conditioned by the holding of a press card or press accreditation. States should ensure access for journalists to places of public protest to film and interview, and law enforcement officials should respect the neutrality of journalists and receive training on respect for international norms and standards on freedom of information as well as on the work of the media during assemblies and protests. Law enforcement agencies should develop a strategy for facilitating media coverage of public events.

²⁷⁶ See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27, 21 May 2012, para. 48.

²⁷⁷ See Report of the Special Representative of the Secretary-General on human rights defenders, A/62/225, 13 Aug 2007, para. 91.

²⁷⁸ See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27, 21 May 2012, para. 49.

²⁷⁹ See OSCE Monitoring Report 2013-2014, paras. 59-62. See also <http://www.osce.org/odihr/82979> and Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27, 21 May 2012, para. 50.

²⁸⁰ See Report of the United Nations High Commissioner for Human Rights, A/HRC/22/28, 21 Jan 2013, para. 68; OSCE Monitoring report 2013-2014, paras. 59-62.

GOOD PRACTICES FOR LAW ENFORCEMENT AGENCIES FOR THE PROTECTION OF JOURNALISTS

In its publication *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*,^a OHCHR notes the following good practices for law enforcement agencies for the protection of journalists when policing assemblies:

- Conducting training to both media professionals and law enforcement officials to enhance the safety of journalists, including during protests.
- Proactively engaging with journalists before, during and after the protests, including briefings where command officials explain how crowd control will be conducted and agree on a code of conduct and channels of communication.
- Incorporating protection of journalists in protest situations in internal law enforcement regulations, planning and operational orders.
- Establishing a safe area for journalists during protests where they will be given information and will be able to observe the event.
- Using social media to inform journalists and the public of decisions and actions of the police, including if an event has been banned and participants have been asked to disperse.
- Conducting effective, prompt, thorough, independent and impartial investigations into suspected attacks against journalists. During investigations, any link between the suspected attack and the relevant journalist's professional activities should be considered. Where the evidence requires, the person allegedly responsible for the attack must be prosecuted.
- Publicly condemning attacks against journalists.
- Ensuring protection mechanisms for journalists and/or their family members who have been threatened. Law enforcement officials should conduct risk assessments and as necessary initiate protective measures, including police protection.
- Arranging press conferences and public debriefing events in the wake of any major violence in order to address public anxiety and concern, and explain how law enforcement officials follow up on the events.
- Increasing transparency, including by inviting journalists to be a part of law enforcement trainings on policing protests and discussion events to exchange professional good practices.

^a OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, chapter 9 (Human Rights and Policing of Public Assemblies and Protests).

7.5. Accountability after the event

Any use of force during the policing of assemblies should be documented in detail by the law enforcement officials and be reviewed by their supervisors. In some countries it is compulsory to organize a “post-event debriefing” for law enforcement officials with the involvement of assembly organizers after the assembly.²⁸¹

Such reviews, however, should not replace independent judicial review mechanisms for the investigation and sanctioning of any allegations of human rights violations.²⁸² All allegations should be investigated promptly, thoroughly, independently and impartially, and those who are

²⁸¹ See OSCE Monitoring Report 2013-2014, paras. 34-38.

²⁸² Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, para. 94.

responsible should be prosecuted.²⁸³ It is important that the judicial system establishes criminal responsibility for serious human rights violations. Following manifestly unlawful orders cannot be used as a defence for unlawful conduct. Instances of sexual and gender-based violence occurring during assemblies or protests should be investigated and prosecuted as a matter of priority. Any use of deadly force or discharge of firearms during assemblies should be reported and investigated.

In addition to judicial processes, States should implement non-judicial oversight, including an effective internal investigation process and an independent oversight body. Such an oversight body should receive a broad mandate allowing it to investigate complaints from the public, to accept referrals from police and to initiate investigations itself in the public interest. The work of such a dedicated civilian oversight body can be complemented by the work of national human rights institutions. It is also good practice to facilitate law enforcement agencies in conducting non-adversarial peer reviews of policing operations, if possible by another law enforcement agency.

In any investigation undertaken into policing operations, due regard must be given to command responsibility²⁸⁴ and liability should extend to officers with command control where they have failed to exercise effective command and control.²⁸⁵

CHAPTER KEY MESSAGES

- The right to freedom of assembly, association and freedom of expression should be guaranteed in domestic law and the law should explicitly allow for both planned and spontaneous assemblies. It is important that law enforcement officials understand the meaning and scope of these rights, as they are called upon to ensure that people can enjoy those rights and that assemblies remain peaceful.
- The task of law enforcement bodies is not to decide where or when the assembly should be held, but rather to reasonably accommodate the organizers so that they can convey their message within sight and sound of the target audience.
- Any restrictions that are imposed on the assembly should be in line with international human rights law and should not impair the essence of the right to freedom of peaceful assembly and be proportionate to the legitimate aim pursued.
- Law enforcement officials should take measures to prevent the use of force in the policing of assemblies and protests. They should prepare a tactical plan and actively engage with the organizers prior to, and during, the assembly.
- Professional policing of assemblies can be based on four principles: knowledge; facilitation; communication; and differentiation.
- Any public assembly should be presumed to be peaceful and lawful until proven otherwise. The burden of proof is with the authorities.

²⁸³ See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/17/28, 23 May 2011, para. 119.

²⁸⁴ See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Addendum Mission to the United Kingdom of Great Britain and Northern Ireland. A/HRC/23/39/Add.1, 17 June 2013, para. 93.

²⁸⁵ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, para. 91.

- Under no circumstances should force be used against peaceful demonstrators who are unable to leave the scene.
- When an assembly occurs in violation of applicable laws but is otherwise peaceful, non-intervention or active facilitation is generally seen as the best way to respond to ensure a peaceful outcome.
- If an assembly has to be dispersed, all reasonable attempts should be made to have participants do so voluntarily. Force can only be used if absolutely needed and only to the minimum extent necessary to achieve a legitimate policing objective. Firearms should only be used to protect against an imminent threat of death or serious injury, and only against those violent individuals within the assembly posing such imminent threat.
- Mass arrests should be avoided at all times as they fail to differentiate between participants, and may amount to indiscriminate and arbitrary arrests.
- When some elements in the assembly behave violently, this does not mean that the whole assembly is to be regarded as violent. Law enforcement officials should continue to differentiate between the violent elements and peaceful protesters, while continuing to facilitate their right to peaceful assembly.
- Dispersal of assemblies should not occur unless law enforcement officials have taken all reasonable measures to facilitate and protect the assembly from harm and unless there is an imminent threat of, or actual, violence.
- Containment, or “kettling”, is problematic from a human rights perspective, as it may amount to a deprivation of liberty or, inhuman or degrading treatment.
- As a general rule, the military should not be used to police assemblies.
- Independent monitoring of assemblies can provide an impartial and objective account of what takes place.
- Media coverage should be recognized as an element of protection of human rights in the context of peaceful assemblies and protests.
- Accountability after the event is essential and any use of force during the policing of assemblies should be documented in detail and reviewed by supervisors. A post-event debriefing between law enforcement officials and assembly organizers is considered good practice.

Chapter 8. Criminal investigation

Depending on the circumstances, some use of force may be warranted during a criminal investigation, e.g. to protect evidence from destruction or to restrain an individual who opposes a house search. At the same time, force can also be abused during an investigation, for example when questioning a suspect. This chapter examines the use of force during criminal investigation, looking more closely at criminal investigation methods, the suspect interview and measures that can be taken to prevent the abuse of force in such situations.

8.1. Introduction

Law enforcement officials can start a criminal investigation when there are reasonable grounds to believe that a criminal offence has been committed. This must be based on credible information that a crime has or is suspected of having been committed, for example because the law enforcement officials actually witnessed it, a victim reported to the police station, because of found stolen goods, or a dead body that has been discovered. The prime aim of the investigation is to establish the truth and bring the alleged offender, if any, to justice. Regardless of whether or not the identity of the suspect is known at the early stage of the investigation, the aim is to identify and verify the perpetrator.

8.2. Criminal investigation methods

For establishing the facts, law enforcement officials have various information collection methods, including but not limited to:

- Crime scene investigation
- Body search
- House search
- Witness interview
- Forensics, including taking of fingerprints and medical examinations to detect blood, semen, hair and other forensic materials

- Surveillance
- Door-to-door inquiries
- Line-up
- Suspect interview

The only legitimate aim of employing these methods is to collect information in order to establish the truth. Each investigative method should be provided for in the law, usually in the Criminal Procedures Code or equivalent piece of legislation, and should only be used for a particular, well-specified, purpose. It should be carried out in such a way that it causes minimal harm to person and property, and interference with affected people's human rights should be limited to a minimum.²⁸⁶

Most investigative methods will have an impact on the human rights of the suspected individual, including his or her right to privacy, as well as that of others with whom he or she may have had contact. Law enforcement officials normally will need to obtain the authorization, on a case-by-case basis, of either a higher ranked law enforcement official or from a judge or prosecutor, depending on the measure and the domestic criminal justice system.²⁸⁷ As a general rule, the more intrusive the method, the higher authorization there should be, with the most intrusive methods being subjected to independent assessment by a judge.

Law enforcement officials may use force to:

- Protect a scene of crime
- Preserve or seize evidence
- Prevent destruction of evidence

In addition, force may be necessary to restrain an individual who is opposing, for example, a house search. Restraints should only be used when necessary, and in a manner that is proportional to the objective sought and the resistance encountered.

Force also may be used in order to get physical access to information, for example where force is required to open a door in order to access a house that is subject to a search warrant. In all cases, the use of force should be restricted to what is necessary and proportionate.

It can never be a legitimate policing objective to intimidate or punish. Law enforcement officials are never allowed to use force against a person in order to collect information, such as when interviewing suspects, victims, relatives of the alleged offender, conducting a door-to-door inquiry, meeting with informers and so forth in order to get information. Not only is this unlawful, it may amount to torture or ill-treatment and may have criminal and disciplinary repercussions. It is also ineffective as information collected in violation of criminal procedure rules and, in particular, confessions or witness statements obtained under torture or other ill-treatment, may be inadmissible as evidence in criminal proceedings. Evidence collected through torture or ill-treatment can be used against the law enforcement official collecting the information in such a manner.

²⁸⁶ See United Nations Human Rights Committee General Comment No. 16, para. 8; searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment.

²⁸⁷ See United Nations Human Rights Committee General Comment, No. 16, article 17, para. 8.

8.3. The suspect interview

An investigative method where the likelihood of abusive use of force, and of torture or other ill-treatment, is high, is the suspect interview, where the suspect is asked to give their statement. In many countries police officers and some sections of the public believe that the use of force or threat thereof is an acceptable means of extracting information. This is wrong and a violation of international norms and standards. A law enforcement agency that tolerates abusive use of force, torture or ill-treatment also diminishes its own effectiveness and precludes the professional investigation of crimes based on forensic science, intelligence analysis, and checking every lead.

CONFESSION-ORIENTED INTERROGATIONS

In many countries, when there is reason to believe a crime has been committed, law enforcement officials quickly identify a presumed offender and take him or her to the police station for interrogations. Lacking adequate information, as there has been no investigation, they have little to confront the suspect with, other than, indeed, force. The interrogation that follows is often confession-oriented, as confession is seen as the quickest way to ensure a conviction. This is not only ineffective from a law enforcement perspective; it also raises the risk of human rights violations. To avoid this, law enforcement officials should receive training on how to conduct a criminal investigation professionally and in accordance with international norms and standards.^a

^a For more information on human rights compliant investigation procedures, see OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, chapter 8 (Human Rights and Investigations).

Prior to the interview, the suspect is often arrested, but this does not have to be the case. An arrest can also take place during the suspect interview, or can be postponed until after, or may not take place at all. It can also happen that during the interview a witness becomes a suspect. Where this happens, law enforcement officials should inform this person at once of their new status as a suspect, and inform them of their rights. Also, at this moment it may be decided to arrest the person.

The only legitimate objective of a suspect interview should be to help establish relevant facts and collect information. This may involve a confession but this need not be the case, as indeed, the suspect may be innocent, or may decide to invoke his or her right to remain silent. After having given the statement, it is important to seek corroboration of what the person has said. For example, if a suspect has said she was with a certain person, that person should be located in order to confirm the statement.

A suspect should never be forced to answer questions or to incriminate him or herself. It is important for the law enforcement officials involved to restrain their own emotions when a suspect refuses to confess or otherwise cooperate, as any use of force, whether to extract information or to punish the suspect, would be in violation of international norms and standards, and may render any information that has been collected as a result of such use of force, inadmissible in court. Yelling at the suspect or insulting him or her may not necessarily be unlawful, but is unprofessional and should be avoided. Violence, threats and undue pressure not only violate human rights but may also produce false information or false confessions.²⁸⁸

²⁸⁸ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 2016, (A/71/298), para. 19.

“COERCIVE INTERROGATIONS”: THE CIA TORTURE REPORT (2014)^a

In 2014, the United States Senate Select Committee on Intelligence published in redacted form the summary findings and conclusions of its study on the programme of detention and interrogation operated by the Central Intelligence Agency (CIA) between late 2001 and 2009. According to the summary, the Senate Committee study detailed a “program of indefinite secret detention and the use of brutal interrogation techniques in violation of United States law, treaty obligations and [...] values” which was initiated “by CIA personnel, aided by two outside contractors”. Among the summary findings was the conclusion of the Senate Committee that the use of what were termed “enhanced interrogation techniques” was an ineffective means of eliciting intelligence or gaining cooperation from detainees.

^a Senate Select Committee on Intelligence, United States. Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program, Declassified Revisions, 3 December 2014: <http://www.intelligence.senate.gov/press/committee-releases-study-cias-detention-and-interrogation-program>

A case that is often used to justify applying force in a suspect interview is the “ticking bomb” scenario.²⁸⁹ The scenario typically involves a suspect who allegedly has information about an impending major terrorist attack, and therefore the information must be retrieved as soon as possible in order to prevent the attack. Yet, ill-treatment has long been associated with high risks of obtaining false confessions and unreliable information.²⁹⁰ In any event, even when the suspect is believed to be preparing a major terrorist attack, there is no justification for torture or other cruel, inhuman or degrading treatment or punishment as indeed, such acts are prohibited at all times.²⁹¹

Apart from the moral and legal argumentation against torture, such practices are also proven to be ineffective as a tool to extract truthful information.²⁹² As the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has stated, “irrefutable evidence from the criminal justice system demonstrates that coercive methods of questioning, even when not amounting to torture, produce false confessions”.²⁹³ Someone who is subjected to torture is likely to give any information they believe the torturer wants to hear, as long as this may stop the torture.²⁹⁴ This is particularly problematic when it concerns finding information about something unknown as then it is likely to divert precious human resources who will be used to verify the information retrieved.

²⁸⁹ See also: The Association for the Prevention of Torture, “Defusing the Ticking Bomb Scenario: Why we must say No to torture, always”, 2007: http://www.ap.t.ch/content/files_res/tickingbombscenario.pdf

²⁹⁰ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 2016, (A/71/298), para. 17.

²⁹¹ UNODC Counter-Terrorism Legal Training Curriculum Module 4, *Human Rights and Criminal Justice Responses to Terrorism*, p. 74 http://www.unodc.org/documents/terrorism/Publications/Module_on_Human_Rights/Module_HR_and_CJ_responses_to_terrorism_ebook.pdf

²⁹² See Senate Select Committee on Intelligence, United States. *Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program*, Declassified Revisions, 3 December 2014; Rejali, Darius, *Torture and Democracy*, New Jersey, United States: Princeton University Press. 2007.

²⁹³ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 2016, (A/71/298), para. 19.

²⁹⁴ Rejali, Darius, *Torture and Democracy*, New Jersey, United States: Princeton University Press. 2007.

8.4. Measures to prevent coercion, ill-treatment and torture during a suspect interview

Using force to get a confession

International law prohibits coerced or forced confessions. In addition, violence, threats and undue pressure violate human rights and may produce false information or false confessions. Article 14 of the ICCPR guarantees the right not to be compelled to testify against oneself or to confess guilt. Principle 21(2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment also prohibits violence or threats during interrogations. In addition, information or evidence obtained through torture or ill-treatment cannot be used before a court and jeopardizes the fairness of the trial. For this reason, use of force with the purpose of obtaining information does not pursue a legitimate law enforcement objective. Such use of force is frequently employed with the aim of intimidating, punishing or humiliating the subject and as such can further amount to torture or other ill-treatment.

Apart from not being in line with international norms and standards, such practices are also widely considered ineffective and harmful: they bear severe negative psychological consequences not only for the subject of the interrogation, but also the interrogators. Moreover, obtaining information through such methods undermines the reliability of the information and dramatically reduces the likelihood that the subject will willingly cooperate in the future.

An effective interrogation, but also an effective witness interview, requires proper preparation, based on the information that has come out of the criminal investigation. Threatening a suspect with deprivation of food, water or sleep is prohibited, as is the threatening of family members. Exceptionally long interrogations should also be avoided, and it is good practice to allow the suspect the same amount of rest as the interrogators have.

Enhancing the tools and skills of law enforcement officials to acquire forensic information that may be used as evidence in trial is an important means for reducing reliance on information from interviews and interrogations.

In order to prevent torture or other ill-treatment or other violations of rights, the legal counsel of the suspect should be allowed to be present during all interrogations; the interviewing authority should document clearly that the detained person is not ill-treated;²⁹⁵ and interrogations should be recorded, preferably with a video recorder but at least with an audio recorder,²⁹⁶ and submitted to the tribunal for scrutiny. The cameras help to prevent abuse, while at the same time they protect law enforcement officials against false accusations of abuse.

The time, place and duration of all interrogations, and the intervals between interrogations and when the suspect was provided with food and drinks, should be recorded, together with the names of the officials who conducted the interrogations and all those present. This information must be accessible to the affected person or his or her counsel, and should also be available for

²⁹⁵ Impugned evidence should be excluded unless the State can demonstrate that it was collected lawfully. The State might satisfy this burden by documenting the health of the detained person before and after the interview, or by submitting evidence to show that the person was not mistreated.

²⁹⁶ See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/22/53/Add.2, 28 Feb 2013, para. 44.

purposes of judicial or administrative proceedings.²⁹⁷ The victim, witness or suspect should get a copy of their statements.

Whenever children are interviewed, this should be carried out using specialized police officers trained in interviewing children, and their parents or custodians should be notified. No child should be interviewed without their parent or custodian present and if they are not available, an independent support person or other appropriate adult should be present. It is good practice to record all interviews with children.

PRESUMPTION OF VULNERABILITY

In New Zealand the law has introduced a “presumption of vulnerability”, which entitles children to special protection during any investigation relating to the commission or possible commission of an offence.^a Under that law, the child must have an adult present during the interview, the adult must have the child’s rights explained to them and the adult and child are allowed to speak in private to decide what they will do. The child may decline to be interviewed and even if the child initially agrees to be interviewed, consent can be withdrawn at any time. Moreover, a statement that is not made in the presence of the adult is not admissible as evidence.

^a See Children, Young Persons and their Families Act 1989, s208(h).

Suspects who are detained should not be held in facilities under the control of their interrogators or investigators for more than the required time under law to obtain a judicial warrant of pre-trial detention. Article 9(3) of the ICCPR requires any person arrested or detained on a criminal charge to be brought promptly before a judge or other officer authorized by law to exercise judicial power. In its General Comment on article 9, the United Nations Human Rights Committee has noted that “48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing” and that “any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances”.²⁹⁸ After this time, they should be transferred to a pre-trial facility under a different authority. This reduces the risk of abusive use of force, including torture and ill-treatment.

The interrogation rules, instructions, methods and practices should be kept under systematic review.²⁹⁹ SOPs and instructions to law enforcement officials should include clear reference to the prohibition of the use of torture or other forms of ill-treatment.³⁰⁰

²⁹⁷ See Body of Principles, principle 23; General Comment No. 20, article 7, para.11; Osse, Anneke. *Understanding Policing: a Resource for Human Rights Activists*, Amnesty International, the Netherlands, 2006.

²⁹⁸ Human Rights Committee, General Comment No. 35: article 9 (Liberty and security of the person), United Nations Doc CCPR/C/GC/35 (2014), para. 33.

²⁹⁹ See CAT, article 11.

³⁰⁰ See CAT, articles 10 and 16.

CHAPTER KEY MESSAGES

- The only legitimate aim of employing criminal investigative methods is to collect information in order to establish the truth. Each investigative method should be provided for in the law and only used for a particular, well-specified purpose. As such methods can be intrusive, law enforcement officials do not usually have the discretion to apply such methods on their own initiative, but need authorization.
- Law enforcement officials may, if necessary, use force to: protect a scene of crime; preserve or seize evidence; and prevent destruction of evidence. Force may also be necessary to restrain an individual who is opposing, for example, a house search.
- It can never be a legitimate policing objective to intimidate or punish. Law enforcement officials are never allowed to use force against a person in order to collect information, such as when interviewing suspects, victims, etc.
- Likelihood of abuse of force, torture or other ill-treatment is high in the case of the suspect interview. Yet, the use of force in such situations, or the threat of the use of force, is wrong and violates international norms and standards. It is also proven to be ineffective.
- Measures to prevent abuse of force during a suspect interview include: (a) enhancing the tools and skills of law enforcement officials to acquire other types of information than confessions; (b) allowing legal counsel of the suspect to be present during each interrogation; (c) recording of interrogations; (d) generally not detaining suspects in facilities that are under the control of the interrogators or investigators; and (e) regularly reviewing interrogation rules, instructions, methods and practices.

Chapter 9. Stop and search, arrest and detention

This chapter looks more closely at the use of force in the context of arrest and detention, in particular examining what the principles of necessity, proportionality and precaution mean in practice. The chapter also looks at measures that can be taken to avoid the abusive use of force during arrest and detention, as such abuse is unfortunately not uncommon.

9.1. Stop and search

A “stop” is the act by which a law enforcement official requires a person, in a public space, to account for himself or herself. A stop may take place, for example, when a person is walking or driving in the street; at a checkpoint; at an airport, train or bus station; or at a border. A “search” is the act that may follow a stop, by which a law enforcement official or any person authorized by the law, inspects a person and the area immediately within that person’s control, including clothes, any objects being carried, or a vehicle. A “stop and search” can be followed by an arrest.

Stop and search interventions impact on a person’s rights to privacy and right freedom of movement and if carried out illegally or arbitrarily may violate these rights. As such, the use of such tactics should comply with the principles of legality, necessity, proportionality, and non-discrimination. There must be valid legal grounds to justify a stop and search of a person and established procedures for how to conduct a stop and search, and such protocols should be made public.

THE RIGHT TO BE PROTECTED FROM UNREASONABLE SEARCH AND SEIZURE

In the United States, the Fourth Amendment of the Constitution requires that all searches and seizures must be conducted in a reasonable manner. The “reasonableness” standard for seizures of persons is a balance of interests between “the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interests.” (United States Supreme Court Decision *Graham v. Connor*, 490 U.S. 396 (1989)).

A similar rationale has been applied by Courts in the United States in assessing the “reasonableness” of individual cases of use of force by law enforcement officials. The assessment is based on a balancing of interests, focusing on the need for the type of government action under the circumstances of each particular case. Many police departments in the United States have developed policies, practices and training on use-of-force issues that go beyond this standard, as reflected in the Guiding Principles on the Use of Force of the Police Executive Research Forum.^a

^a <http://www.policeforum.org/assets/guidingprinciples1.pdf>, page 35.

9.2 Arrest

Introduction

The Human Rights Committee defines arrest as “any apprehension of a person that commences a deprivation of liberty”.³⁰¹ Arrests should at all times comply with the following fundamental principles:

- *Legality*: arrests must have a sufficient legal basis and may only be used to achieve a legitimate law enforcement objective
- *Necessity*: arrests should only be made when strictly necessary
- *Proportionality*
- *Respect for human dignity*: law enforcement officials should ensure that arrests are carried out with respect of the inherent dignity of the person, which applies to both the way in which an arrest is carried out, and to the conditions in which a person is kept after arrest
- *Non-discrimination*: the arrest should not be affected by the race, ethnicity, religion, gender or other characteristics of the person

In addition, international law unequivocally prohibits arbitrary arrests.³⁰²

Arresting a person may be a very physical situation, with the law enforcement officials literally laying their hands on the suspect. For this reason, the arrest of a woman or girl should whenever possible be conducted by a female law enforcement official.³⁰³ Being arrested can be a stressful and unpleasant situation for the suspect, and may cause feelings of anger, loss of control, aggression and possibly also embarrassment and shame.

When carrying out an arrest, law enforcement officials often resort to using force to restrain individuals. As with any use of force by law enforcement officials, the use of force in the context of an arrest should be absolutely necessary, and proportional to the law enforcement objective and the resistance encountered. Firearms should only be used to protect against “imminent threat of death or serious injury or to arrest someone presenting such a danger and resisting their authority” (principle 9, BPUFF). This means that a person resisting or fleeing from arrest must present a danger to the lives of other persons. Resisting without presenting such danger to the life of someone else cannot be sufficient justification for the use of firearms. The analysis must be made on a case-by-case basis and should not be based on general assumptions. It should be remembered at all times that any suspect is presumed to be innocent, and establishing guilt is the prerogative of a competent, lawfully established tribunal. Furthermore, the gravity of the suspected criminal offence may not always constitute a reliable indicator of whether the person is indeed dangerous.

³⁰¹ Human Rights Committee, General Comment No. 35, para. 13. Please note that other instruments have different definitions of arrest, for example the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment defines arrest as “the act of apprehending a person for the alleged commission of an offence or by the action of an authority”. See GA/RES/43/173,9 December 1988.

³⁰² For more information, see OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, chapter 6 (Human Rights and Arrest), as well as OHCHR, *Human Rights in the Administration of Justice – A Manual on Human Rights for Judges, Prosecutors and Lawyers*, 2003, chapter 5 (Human Rights and Arrest, Pre-trial Detention and Administrative Detention).

³⁰³ Osse, Anneke, *Understanding Policing: a Resource for Human Rights Activists*, Amnesty International, the Netherlands, 2006.

ABUSIVE USE OF FORCE DURING ARREST

Some countries have provisions in their domestic law allowing for the use of lethal force to effectuate an arrest based on the crime the person is suspected to have committed or on the penalty for the suspected criminal offence, but regardless of the threat posed by the alleged offender. Also, in many countries it is allowed to use force to prevent someone escaping arrest, again regardless of the threat posed. Such provisions disregard the principles of necessity and proportionality and are thus in violation of international norms and standards.

In most countries police can conduct an arrest at their own initiative only where they see the crime happening (i.e. *in flagrante delicto*) or when they have “reasonable suspicion” someone has committed or is about to commit a crime. In all other situations, law enforcement officials will need an arrest warrant, authorizing them to conduct the arrest, for which they will have to substantiate the necessity of the arrest. Those that have wilfully carried out an unlawful arrest, or have used excessive force during the arrest, should be held liable in the context of criminal or disciplinary proceedings, or both.

For accountability purposes, it is considered good practice to ensure that officials conducting an arrest are clearly identifiable. For example, the Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa (hereafter “the Luanda Guidelines”) recommend that officials conducting an arrest must “clearly identify themselves and the unit to which they belong by showing an official identity card which visibly displays their name, rank and identity number. Any vehicles used shall have clearly visible number plates and any other required or legally prescribed identity markers or numbers”.³⁰⁴

Taking precautions: preparing for an arrest

In situations where the arrest is carried out with a warrant, there is generally time for the law enforcement officials involved to prepare for the arrest, and decrease the risk that force will be needed.

The plan as to how to conduct the arrest must be based on the type of resistance that is expected. Questions to consider when planning an arrest include:³⁰⁵

- What are the charges against the arrestee/suspect?
- What kind of person is the arrestee?
- Is the person expected to resist the arrest? Might he or she be armed?
- Has the person been arrested before? If so, how did the person react?
- Have there been previous encounters between the person and law enforcement officials?
- Have such encounters resulted in violent behaviour?
- Are there associates of the person being arrested and could they cause problems?
- What is the location where the person is to be arrested; could people in the neighbourhood be hostile?

³⁰⁴ See Guideline 3(b). Adopted during its fifty-fifth Ordinary Session held from 28 April to 12 May 2014 in Luanda, Angola: http://www.achpr.org/instruments/guidelines_arrest_detention.

³⁰⁵ *Ibid.*, p. 158.

- What other persons may be likely to be in the vicinity during the arrest?
- Is there a place where the suspect can be arrested with a lower risk of harm to himself, the law enforcement officials or others?
- What actions can be taken to ensure third parties are not harmed?

Based on the nature of the allegations or charges, as well as the prior assessment, it may be advisable to first invite the person to voluntarily come to the police station and only consider going out to make an arrest if the person does not cooperate. When a cooperative attitude is expected, this will often be the preferred option as it requires fewer resources and is relatively risk-free. India, for example, has recently introduced the system of “notice for appearance” so that arrest can be avoided in minor offences.³⁰⁶

However, based on the answers to the questions above, the arresting authority must decide when and where to conduct the arrest: at home, at work, in a public location? It is impossible to provide general recommendations on where to carry out the arrest, or when, as this depends on the circumstances of the particular case. This is why each case, whenever possible, should be carefully prepared.

At home there might be a lower probability of resistance, but there may be family members, including children, for whom it may be traumatizing to see their parent(s) or family member being arrested. Protocols should be developed for law enforcement personnel to follow when a child will be present at the time of arrest of their parent and for informing children not present at time of arrest.³⁰⁷ Conducting the arrest at work may have a negative impact on the person’s reputation and lead to loss of employment. When conducting the arrest in a public space, there may be a risk for innocent bystanders if the person acts in a violent manner.

Some law enforcement agencies recommend conducting the arrest in the early hours of the morning, as most people will be fairly disoriented when suddenly woken up, thus will be less able to resist effectively. In some countries, arrests are not allowed or require additional conditions during certain time frames. For example, in India it is prohibited to arrest a woman between sunset and sunrise, except under specified conditions, in order to prevent abuse.³⁰⁸

When there is reason to believe that the person to be arrested is armed, preparing for the arrest becomes even more important, and extra precautionary measures should be taken to prevent the use of firearms. Indeed, in line with principle 9 of the BPUFF, firearms can only be used when “less extreme measures are insufficient”, implying such measures must be exhausted first. Many countries have specialized arrest teams for these situations, consisting of officers that have been specifically trained for such purpose (see the section on SWAT teams on page 99).

If the arrestee is the main caretaker of one or more children, the rights of the child should be taken into account during the planning process.³⁰⁹ Arrangements should be made for the care of the children during the arrested person’s absence, or the arrested person should be allowed to do so him or herself. If possible it is preferred to have another family member or someone close to the children to care for them in their own home. If there is no suitable candidate, the situation

³⁰⁶ See Criminal Procedure Code of India, Section 41A.

³⁰⁷ United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, E/CN.15/2014/L.12/Rev.1 of 15 May 2015, para. 31.

³⁰⁸ This was an amendment to the Criminal Procedure Code in 2005 which inserted a new subsection in the code as Section 46 subsection (4).

³⁰⁹ United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, para. 34(l).

should be referred to a social worker. Either way, children should never be left unattended as a result of the main caretaker's arrest.

When the person to be arrested is under the age of 18, the juvenile justice law should be applied. Children above the age of criminal responsibility set by domestic law should only be arrested in conformity with the law, and arrest and detention should only be used as a measure of last resort and for the shortest appropriate period of time.³¹⁰ In addition, to prevent violence during arrest and police detention, the United Nations Model Strategies provide for the following recommendations:³¹¹

- (a) To ensure that all arrests are conducted in conformity with the law, to limit the apprehension, arrest and detention of children to situations in which these measures are necessary as a last resort, and to promote and implement, where possible, alternatives to arrest and detention, including summonses and notices to appear, in cases involving children as alleged perpetrators;
- (b) To implement the principle that the apprehension or arrest of children should be conducted in a child-sensitive manner;
- (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;
- (d) To require, ensure and monitor police compliance with the obligation to notify parents, legal guardians or caregivers immediately following the apprehension or arrest of a child;
- (e) To ensure that, when considering whether a parent, legal guardian, legal representative or responsible adult or, when necessary, a child protection professional is to be present at, or to observe a child during, the interview or interrogation process, the best interests of the child as well as other relevant factors are taken into consideration;
- (f) To ensure that children are informed of their rights and have prompt access to legal aid during police interrogation and while in police detention, and that they may consult their legal representative freely and fully confidentially;
- (g) To review, evaluate and, where necessary, update domestic laws, policies, codes, procedures, programmes and practices to implement policies and strict procedures for searching children while respecting their privacy and dignity, for taking intimate and non-intimate samples from child suspects and for assessing the age and gender of a child;
- (h) To implement measures to specifically prevent violence related to unlawful practices by the police, including arbitrary arrests and detention and extrajudicial punishment of children for unlawful or unwanted behaviours;
- (i) To establish accessible, child-appropriate and safe procedures for children to complain about incidents of violence during their arrest or interrogation or while in police custody;

³¹⁰ CRC, article 37.

³¹¹ United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, para. 34: http://www.unodc.org/pdf/criminal_justice/Model_Strategies_violence_children.pdf

(j) To ensure that alleged incidents of violence against children during their contact with the police are independently, promptly and effectively investigated and that those alleged to have been implicated in violence against children are removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation;

(k) To take measures to address the risk of violence and protect children during their transport to a court, hospital or other facility, including the risk of violence while being held in court holding cells together with adults;

(l) To ensure that, when a parent, legal guardian or caregiver is arrested, the child's best interests, care and other needs are taken into account.

In all cases, the arrest should be carried out in a manner that results in the least damage and injury: indeed, the principles of necessity and proportionality should also apply here. How the arrest is conducted is likely to affect the arrested person's willingness to cooperate in the future, for example during a suspect interview. From a purely tactical point of view, it is also better to carry out the arrest in such a manner that it does not decrease cooperativeness.

The actual arrest and body search

Anyone arrested should be informed, at the time of the arrest, in a language he or she understands³¹² regarding:

- The reasons for the arrest and the charges against him or her³¹³
- His or her rights and how to avail himself of such rights,³¹⁴ including of the right not to confess guilt, not to testify against him- or herself and, thus, the right to remain silent and also the right to legal counsel³¹⁵

The person arrested should give some form of acknowledgement that he or she has understood his or her rights, for example, by repeating, in their own words, what has been explained to them.

An arrest is often followed by a body search, which can take place either on consent or based on a warrant. In some jurisdictions the law allows for a search following an arrest. A body search has two objectives. As an investigative method, it is meant to find information or evidence about the alleged offence, for example when the person is expected to carry an instrument or substance with which the alleged offence was committed. The other reason for conducting a body search is to check whether the arrested person carries anything with which he or she can harm the law enforcement officials, others, or him or herself. A body search for any other than the two reasons given above is likely to amount to abuse, and may constitute inhuman or degrading treatment.

Searches should be carried out in accordance with the law, and in a manner consistent with the inherent dignity of the person and the right to privacy.³¹⁶ A body search incident should never be used to punish, intimidate or embarrass the affected person, which would be likely to constitute inhuman or degrading treatment and may amount to torture, or to "unlawful attacks on his or her

³¹² See ICCPR, article 9; Body of Principles, principle 14.

³¹³ See ICCPR, article 9; Body of Principles, principle 10.

³¹⁴ See ICCPR, article 9; Body of Principles, principle 13.

³¹⁵ See ICCPR, article 14(3)(g).

³¹⁶ See Human Rights Committee, General Comment No. 16 (Right to Privacy), para. 8.

honour or reputation”.³¹⁷ This requires clear regulations or SOPs that give guidance on how a body search should be carried out, and also specify what is not allowed.

The Luanda Guidelines provide such guidance, stating that officials conducting a search shall:³¹⁸

- For all types of searches, including pat-down searches, strip searches and internal body searches, be of the same gender as the suspect, which should be defined by the suspect and not based on the assessment by the police.
- Inform suspects of the reason for the search prior to the conduct of the search.
- Make a written record of the search, which is accessible to the person searched, his or her lawyer or other legal service provider, family members, and, if the person searched is in custody, any other authority or organization with a mandate to visit places of detention or to provide oversight on the treatment of persons deprived of his or her liberty.
- Provide a receipt for any items confiscated during the search.
- Ensure that strip searches and internal body searches are only conducted in private.
- Ensure that internal body searches are only conducted by a medical professional and only upon informed consent or by a court order. Such searches should not be carried out on children, except under very exceptional circumstances and would require consent from the child and his/her legal guardian.

PROVISIONS REGARDING BODY SEARCH IN INTERNATIONAL AND REGIONAL INSTRUMENTS

At regional level, the Inter-American Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (2008) have incorporated specific provisions dealing with body searches of persons deprived of their liberty. As far as body searches in the course of pretrial detention under the authority of prison administrations is concerned, the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules, 2015), the United Nations Rules for the Treatment of Women Prisoners (Bangkok Rules, 2010) and the European Prison Rules (2006) provide detailed guidance.³¹⁹ Recommendations have also been included in visit reports of monitoring bodies, such as the United Nations Subcommittee on the Prevention of Torture and the European Committee for the Prevention of Torture.

³¹⁹ See Nelson Mandela Rules, Rule 50-52; Bangkok Rules, Rules 19-21; European Prison Rules, Rule 54.

The law enforcement officials who conducted the arrest should file a report about the arrest and who was present, which should contain:³¹⁹

- The identity of the arrested person
- The reasons for the arrest
- The date, time and location of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority
- Any force that was used during the arrest

³¹⁷ See ICCPR, article 17.

³¹⁸ See Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa (the Luanda Guidelines), Guideline 3.

³¹⁹ See Body of Principles, principle 12.

- The identity of the law enforcement officials concerned in the arrest
- When applicable: precise information concerning the place of custody

This record should be communicated to the detained person or his or her counsel, if any, in the form prescribed by law. Keeping appropriate records is also a key part of ensuring accountability.

Measures to prevent abuse of force during arrest

The actual arrest is a situation where the person to be arrested is vulnerable and sometimes subject to abuse. In terms of prevention of such abuse, it is critical that legal procedures and safeguards are followed scrupulously.

For example, after the arrest, the person should be brought promptly before a judge or other officer authorized by law to exercise judicial power.³²⁰ In the view of the United Nations Human Rights Committee, “promptly” means that delays should in principle not exceed 48 hours, but in fact many jurisdictions establish a much shorter period.³²¹ An especially strict standard of promptness, such as 24 hours, should apply in the case of children.³²²

Anyone under arrest must also have the right to legal assistance of his or her own choosing.³²³ In addition, persons arrested on a criminal offence punishable by a term of imprisonment or the death penalty are entitled to legal aid at all stages of the criminal justice process. Legal aid should also be provided, regardless of the person’s means, if the interests of justice so require, for example, given the urgency or complexity of the case or the severity of the potential penalty.³²⁴

MAKING ARRESTS IN THE PRESENCE OF WITNESSES

In India, the law requires arrests to be made in the presence of witnesses, and that the witness and the arrested person must sign a “contemporaneous memorandum”:^a Every police officer while making an arrest shall:

- Bear an accurate, visible and clear identification of his name which will facilitate easy identification;
- Prepare a memorandum of arrest which shall be:
 - Attested by at least one witness who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made
 - Countersigned by the person arrested
- Inform the person arrested unless the memorandum is attested by a member of his family that he has a right to have a relative or a friend named by him to be informed of the arrest

^a See Criminal Procedure Code India, Section 41B, 2008.

³²⁰ See ICCPR, article 9; Body of Principles, principle 9.

³²¹ See Human Rights Committee General Comment No. 35, para. 33 (CCPR/C/GC/35, 16 December 2014).

³²² See Human Rights Committee General Comment No. 35, para. 33 and Committee on the Rights of the Child, General Comment No. 10, para. 83. See also the UNODC Model Law on Juvenile Justice: (3) A child who is detained by the police after being apprehended or arrested shall be brought promptly before the children’s [juvenile] court authorized by law to exercise judicial power, and in any event no later than 24 hours after the child’s apprehension or arrest.

³²³ ICCPR, article (13) (d).

³²⁴ United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

Following the arrest, the arrested person is likely to be taken to the police station for further investigations, for example the taking of fingerprints and pictures and recording a statement.

After such procedures are finalized, the arrested person may in principle be sent home to await his or her trial. Nonetheless, such release may be subject under domestic law to the payment of bail. Additional conditions may also apply, for example that the person cannot leave the country and has to be available for further investigation.³²⁵ When necessary, the person may be detained, but this “shall not be the general rule” (article 9, ICCPR). Pretrial detention should only be decided if the criteria set down by law are complied with. Diversion and alternatives to pretrial detention should be the preferred option.

9.3. Use of force in detention

Detainees

Law enforcement officials may detain a person by exercising lawful powers of arrest or by following a decision of a judicial authority. As with arrest, detention needs to comply with the fundamental principles of legality, necessity, proportionality, respect for dignity and non-discrimination.³²⁶

Depriving someone of his or her liberty is considered one of the most extreme measures a State can take against a person under its jurisdiction. Therefore, detention carries an immense responsibility on the part of the detaining authority to fulfil the duty of care with due diligence. As stated in article 10 of the ICCPR, “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”.³²⁷ This applies regardless whether the person is in police custody or remand, and regardless of whether the facility is run by the State or a private security company. All measures that affect the human rights of the detainee shall be ordered by or be subject to the effective control of a judicial or other authority.³²⁸

PRETRIAL DETENTION OF CHILDREN

To protect children from violence and abuse, the United Nations Model Strategies reiterate the obligation set out in the Convention on the Rights of the Child^a that the detention of children should be a measure of last resort and for the shortest appropriate time. It encourages States to avoid, wherever possible, the use of pretrial detention of children and to endeavour to reduce pretrial detention by, inter alia, adopting legislative and administrative measures and policies on its preconditions, limitations, duration and alternatives.^b Particular measure should be taken to protect girls in view of their special needs and vulnerabilities.

^a See Convention on the Rights of the Child, article 37 (b): “The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”

^b United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, 25 September 2014, A/C.3/69/L.5, preamble and para. 37 (d).

³²⁵ See Body of Principles, principle 39.

³²⁶ For more information, see also OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, chapter 7 (Human Rights and Detention).

³²⁷ ICCPR, article 10.2.

³²⁸ See Body of Principles, principle 4.

Use of force in detention

The fact that a person is deprived of their liberty does not give law enforcement officials greater power to use force. The same fundamental principles of legality, necessity and proportionality remain applicable.

In fact, police custody and the pre-trial detention phase of the criminal justice process more generally constitute the time period during which an alleged offender is most vulnerable to abuse, including by law enforcement officials. Female detainees are particularly vulnerable and States should adopt appropriate measures in policies and practice to guarantee women's safety at all times.³²⁹ Other groups facing higher risks of violence during detention include children, minorities, LGBT and intersex persons, persons with physical or mental disabilities, older people, refugees, migrants and foreigners. Law enforcement officials should be aware of these vulnerabilities and must take precautions to mitigate the risks.

Clear guidelines should be provided for in law on the conditions and circumstances under which force may be used against persons deprived of their liberty. Custody officials should do everything possible to avoid the use of force, and should always aim to apply non-violent means first. Any use of force against a detained person should be in accordance with the principles of necessity and proportionality. Use of lethal force should only be permitted when strictly unavoidable to protect life or to protect against serious injury.

Principle 15 of the BPUFF reiterates the principle of necessity and underlines that the use of force is only allowed “when strictly necessary [to maintain] security and order within the institution, or when personal safety is threatened”.³³⁰

PROVISIONS OF THE UNITED NATIONS STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS (NELSON MANDELA RULES)

The revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) adopted by the General Assembly in December 2015 provide for the following in 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.

The Bangkok Rules also recommend that clear policies and regulations on the conduct of prison staff aimed at providing maximum protection for women prisoners from any gender-based physical or verbal violence, abuse and sexual harassment should be developed and implemented.³³¹

³²⁹ See Bangkok Rules, Rule 56.

³³⁰ See BPUFF, principle 15.

³³¹ See Bangkok Rules, Rule 31.

As a matter of principle “staff performing duties which bring them into direct contact with prisoners should not be armed”.³³² According to principle 16 of the BPUFF, the use of firearms are only allowed under very strict circumstances, “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”, such as a person who presents a “great threat to life” and only when less extreme means are proven insufficient. The carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained.³³³

Torture and any other forms of ill-treatment are strictly prohibited, and States should ensure that any place of detention is free from any equipment intended to be used for inflicting torture or ill-treatment.³³⁴

According to the Body of Principles “it shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement”.³³⁵

Detainees may be subjected to disciplinary measures, however as the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has noted “these should be used on an exceptional basis and only when the use of mediation and other dissuasive methods to resolve disputes proves to be inadequate to maintain proper order”.³³⁶

Disciplinary measures should be described in the law or regulations specifying what constitutes a disciplinary offence, what punishment may be inflicted and who can impose such punishment. It is also important that such regulations strike a balance between maintaining security and protecting human dignity. Corporal punishment should be strictly prohibited.³³⁷ When there is reason to suspect someone of having committed a criminal offence, this should be dealt with by the judicial authorities and not by penitentiary or prison staff.³³⁸

³³² See Nelson Mandela Rules (SMR), Rule 82(3).

³³³ See United Nations Rules for the Protection of Juveniles Deprived of their Liberty (“Havana Rules”), adopted by General Assembly resolution 45/113 of 14 December 1990, Rule 65; United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, 25 September 2014, A/C.3/69/L.5, para. 39 (*d*).

³³⁴ See Human Rights Committee, General Comment No. 20, article 7, para. 11.

³³⁵ See Body of Principles, principle 21.

³³⁶ See Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/68/295, 9 Aug 2013, para. 57.

³³⁷ See Nelson Mandela Rules (SMR), Rule 43; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), adopted by General Assembly resolution 40/33 of 29 November 1985, Rule 17.3.

³³⁸ See Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/68/295, 9 Aug 2013, para. 57.

DISCIPLINARY MEASURES PROHIBITED BY THE NELSON MANDELA RULES

The Nelson Mandela Rules (SMRs) list a number of practices that are prohibited.^a These should of course also be prohibited in police custody:

- (a) Indefinite solitary confinement;
- (b) Prolonged solitary confinement (in excess of 15 days);
- (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

In addition to the general rule, there are also specific rules and guidelines for children in detention. These include article 37 of the Convention on the Rights of the Child and General Comment 10 of the Committee on the Rights of the Child, underscoring that "disciplinary measures in violation of article 37 of CRC must be strictly forbidden, including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned". Furthermore, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty explicitly prohibit solitary confinement of children (Rule 67) and the United Nations Special Rapporteur on Torture has repeatedly called for the abolition of solitary confinement of persons under 18 years.^b

^a See Nelson Mandela Rules (SMR), Rule 43. Note that there is a separate report by the Special Rapporteur on torture on solitary confinement: "Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment". 5 Aug 2011, A/66/268.

^b See for example Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, A/66/268.

In the case of children, countries should adopt clear and transparent policies and procedures that encourage the use of positive and educational forms of discipline and to establish in law the duty of managers and personnel of detention facilities to record, review and monitor every instance in which disciplinary measures or punishment are used.³³⁹ They should also prohibit any form of violence or threats of violence against children by staff of places of detention in order to force children to engage in activities against their will.³⁴⁰

As a general rule, under exceptional instances it may be necessary to use instruments of restraint, but only when strictly necessary, in accordance with the law, and in a manner that complies with the principle of proportionality and for the shortest possible time.³⁴¹ Instruments of restraint should only be used:³⁴²

- (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.

³³⁹ United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, 25 September 2014, A/C.3/69/L.5, para. 36 (a) and 39 (e).

³⁴⁰ *Idem*, para. 39 (f).

³⁴¹ See BPUFF, principles 4, 9 and 16; Nelson Mandela Rules (SMR), Rule 47.

³⁴² See Nelson Mandela Rules (SMR), Rules 47-48; Body of Principles are silent on the issue of restraints.

Instruments of restraint should 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. Instruments of restraint should never be used on women during labour, during childbirth and immediately after childbirth.³⁴³ Instruments of restraint should never be applied as a sanction for disciplinary offences.³⁴⁴ Strict policies guiding the use of force and physical restraints on children during their detention should also be adopted and implemented.³⁴⁵

Measures to prevent abuse of force during detention

Medical care

Article 6 of the United Nations Code of Conduct states that law enforcement officials “shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required”. Whenever a detainee arrives at a new detention facility he or she should receive a medical examination “as promptly as possible upon admission”³⁴⁶ to avoid the spread of contagious diseases and assess basic medical needs, but also because it is an important measure to prevent torture and other forms of ill-treatment, and detect it where it has occurred already. The fact that the detainee was examined, the results of the examination, and the name of the physician should be duly recorded and these records should be accessible, for example to the detainee but also to oversight bodies.³⁴⁷

Custody officer responsible for care, not for criminal investigation

When the detainee is under the care of the police, it is good practice to designate a separate official as the custody officer, responsible for the welfare of the detainees, to report to the authorities when a detainee arrives who is injured without a clear explanation for the injuries by the arresting officer.

Registers

Regularly updated and complete registers in all places of detention are an additional practical measure prescribed in international instruments to prevent abusive use of force in detention. These records should include: the reasons for arrest, the time of the arrest and the taking of the arrested person to a place of custody; the persons appearances before a judicial or other authority; the identity of the law enforcement officials concerned; and precise information on the place of custody.³⁴⁸

Contact with the outside world

The detained person, or a competent authority on his or her behalf, should be permitted to notify family or other appropriate persons of the arrest as soon as possible. This may be

³⁴³ See United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Rule 24.

³⁴⁴ See Nelson Mandela Rules (SMR), Rule 43(2).

³⁴⁵ United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, 25 September 2014, A/C.3/69/L.5, para. 39 (c); see also United Nations Rules for the Protection of Juveniles Deprived of their Liberty (“Havana Rules”), adopted by General Assembly resolution 45/113 of 14 December 1990, Rules 63-64.

³⁴⁶ See Body of Principles, principle 24.

³⁴⁷ See Body of Principles, principle 26.

³⁴⁸ See Body of Principles, principles 12.

delayed “for a reasonable period where exceptional needs of the investigation so require” but never more than a few days.³⁴⁹

Right to know your rights

There is no point in having rights if you don’t know you have them.³⁵⁰ Therefore, detainees should be informed, in writing, about the regulations applicable, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to understand both his or her rights and obligations. If a detainee is illiterate, this information should be conveyed orally.

Access to counsel

An additional measure to prevent abusive use of force in detention is to ensure access by all detained persons to legal counsel promptly after the arrest and at all times throughout the duration of the detention.³⁵¹

Oversight

In order to prevent torture or other forms of ill-treatment, custody arrangements and the treatment of detainees should be kept under systematic review.³⁵² The various human rights norms and standards all call for a system of oversight, noting the particular importance of judicial oversight mechanisms. Without access to judicial remedies, persons deprived of their liberty are at heightened risk of suffering abuse of authority, humiliation, ill-treatment and other unacceptable deprivations of rights.³⁵³

Safety and security

Safety and security in prisons can benefit from creating a positive climate which encourages the cooperation of prisoners. External security (preventing escapes) and internal safety (preventing disorder) can be supported by building positive relationships between prisoners and staff. These efforts may include, when possible:

- Developing positive relationships with prisoners
- Diverting prisoners’ energy into constructive work and activity
- Providing a decent and balanced regime with individualized programmes for prisoners

Creating a positive climate in prisons and using disciplinary measures as appropriate should comprise essential components of prison management. Gender sensitive programming should also be explored to assist with specific issues facing female offenders. Such an approach may also lead to the reduced need to use force in prisons.

An emphasis on dynamic security in women’s prisons is especially suitable to the needs of female prisoners, due to the particularly harmful effects high security measures can have on women to the detriment of their mental well-being and social reintegration prospects. Creating a positive climate in prisons and using disciplinary measures only when strictly necessary should comprise

³⁴⁹ See Body of Principles, principles 16(4), 15.

³⁵⁰ See ICCPR, article 14(3)(d).

³⁵¹ Principles 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Rule 61 of the Mandela Rules.

³⁵² See CAT, articles 11 and 16.

³⁵³ A/HRC/10/21, para. 47.

essential components of a gender-sensitive approach to prison management. Such an approach should also lead to the reduced use of force in the prisons.³⁵⁴

OTHER RELEVANT STANDARDS

- United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Beijing Rules)
- Guidelines for Action on Children in the Criminal Justice System, Guideline 17
- United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice: chapter 12, Part 3 on preventing violence associated with law enforcement and prosecution activities and chapter 15 on preventing and responding to violence against children in places of detention in particular.

CHAPTER KEY MESSAGES

- Depriving someone of his or her liberty is considered one of the most extreme measures a State can take against members of the public. Being arrested is an unpleasant situation for the suspect, and likely to cause feelings of anger, loss of control, aggression and possibly also embarrassment and shame. As a result, it may trigger resistance in the affected person who may do all they can to avoid arrest.
- When carrying out an arrest, law enforcement officials often resort to using force to restrain the individual, but any force used should be absolutely necessary and proportional to the law enforcement objective and the resistance encountered.
- Arrests should be carefully prepared for, in an effort to minimize the need for the use of force. In all cases, the arrest should be carried out in a manner that results in the least damage and injury. The principles of necessity and proportionality should also apply here.
- Body searches have two legitimate objectives: (a) to find information or evidence of an offence; and/or (b) to check whether the individual has any object which is contraband or with which he or she can harm officers, others or him- or herself. A body search for any other reasons may amount to abuse, constituting inhuman or degrading treatment. They should never be used to punish, intimidate or embarrass.
- In principle, staff performing duties that bring them into direct contact with prisoners should not be armed. In facilities where children are detained, no weapons should be carried by any personnel.
- As in any other policing situation, firearms should only be used to protect against imminent threat of death or serious injury or to arrest someone presenting such a threat and who is resisting authority.

³⁵⁴ For more details, see UNODC Resource books on Women and Imprisonment and on Dynamic Security and Prison Intelligence.

- Measures to prevent abuse of force during arrest include strict adherence to legal procedures and safeguards, including bringing the person promptly before a judge or other judicial authority and respecting the person's right to legal assistance.
- The fact that a person is deprived of their liberty does not give law enforcement officials greater power to use force. The same principles of legality, necessity and proportionality apply.
- Clear guidelines should be provided for in laws on the conditions and circumstances under which force may be used against persons deprived of their liberty.
- Custody officials should do everything they can to avoid use of force, and should always aim to apply non-violent means first.
- Detainees may be subjected to disciplinary measures, but these should be exceptional and only applied when mediation and other dissuasive methods have proven inadequate. Disciplinary measures should be described in laws or regulations. Corporal punishment should be strictly prohibited, and so should indefinite and prolonged solitary confinement, collective punishment, and placing a person in a dark or constantly lit cell.
- Exceptionally, it may be necessary to use instruments of restraint on a detainee, but it should only be in accordance with the law, and in a manner that complies with the principle of proportionality and for the shortest possible time. Instruments of restraint should never be applied as a sanction for disciplinary offences.
- Measures to prevent abuse of force during detention include ensuring full protection of the health of persons in custody, ensuring contact with the outside world, ensuring that the detainee knows their rights, ensuring adequate safety and security in the detention facility, and ensuring appropriate oversight.

PART V

.....
**ACCOUNTABILITY FOR THE USE OF FORCE
AND FIREARMS IN LAW ENFORCEMENT**
.....

Chapter 10. Reporting, monitoring and review

Part V of the resource book looks at accountability in the use of force and firearms in law enforcement. The key to accountability is transparency: it has to be known when law enforcement officials resorted to the use of force, in which circumstances and why. Chapter 10 examines the procedures developed by law enforcement agencies to report the use of force and firearms, as well as relevant monitoring and reporting mechanisms.

Law enforcement officials should report to their supervisor instances where they have resorted to using force, any incident involving use of firearms and all incidents that resulted in death or injury. Due to advanced technology, there are more options available to monitor the actions of law enforcement personnel from afar through equipment such as cameras and GPS. The data collected through reporting and recording should be analysed to detect patterns, establish lessons and, where needed, make recommendations for policy, training programmes, planning or regulations.

10.1. Introduction

To a large extent, the work of law enforcement officials takes place without the supervisor's presence. Reporting procedures and monitoring tools enable the supervisor to exercise command and control. Reporting and monitoring the use of force in law enforcement are essential components of effective accountability and important indicators of professionalism within the agencies.

Any use of force should be carefully monitored, including the use of newly introduced instruments of force, such as less-lethal weapons, in order to control the use of force and intervene when it is found that these weapons are abused, leading to arbitrary use of force and sometimes to unnecessary harm or even death.³⁵⁵

³⁵⁵ See BPUFF, principle 3.

10.2. Collecting information: reporting afterwards and recording in “real time”

Reports concerning incidents involving use of force

Principles 6 and 11(f) of the BPUFF oblige law enforcement officials to report to their superiors promptly whenever the use of force or firearms resulted in death or serious injury, and also when firearms were used. It is considered good practice to report any use of force, including incidents that involve a “show of force”, such as the pointing of a firearm, or taser, at any person.³⁵⁶ Principle 22 also tasks law enforcement authorities to establish effective reporting and review procedures for this purpose. The law enforcement operational framework should qualify a failure to report, as well as failure to report accurately and truthfully, as a disciplinary offence.

Each incident report should be reviewed by the supervising officer, who should always formulate an opinion on the use of force: was the force applied justified or is (disciplinary or other) action required? Are there lessons to be learned? Are there any needs for training that should be identified?

The incident reports should be written and registered in chronological order, immediately after the incident to make delayed reporting easy to detect. Such real time registration also prevents contamination afterwards to conceal or alter facts of the incident.

When law enforcement officials are ordered to use force by a commander or superior officer, they are not always able to report every use, display, or threat of such force. In such instances, where the law enforcement officials acted on the orders of a commander, the commander or superior officer is responsible for both the order and reporting. The commander may require certain officials for additional reporting in cases where he or she failed to apply the force in accordance with the regulations, instructions provided during the briefing, or the order given.

It is good practice to develop detailed forms to systematize the reporting process, enabling officers to describe as accurately as possible what has occurred and why. Complaint forms with generic tick boxes, where law enforcement officials can simply tick the alleged behaviour of the suspect that caused the use of force or firearms (i.e. “armed resistance”, “faulty firearms”, “tried to escape” etc.) should be avoided. Where it has become a habit for law enforcement officials to use such categories and further details are not required, accountability is easily tainted with cover-ups. Thus, it is recommended to establish a more careful and descriptive incident review, where law enforcement officials describe in their own words what happened and why.

Some of the report forms are paper based, others are electronic.

For example, in Indonesia, the “regulation of the Indonesian National Police Chief” on “Use of Force in Police Action”, which contains a form, lists that the following should be contained in the report:³⁵⁷

- Date and place of the incident
- Brief description of the incident and the details of the subject’s or suspect’s behaviour that required police action
- The reason/consideration for using force

³⁵⁶ Walker, Samuel and Carol Ann Archbold, *The New World of Police Accountability*, Sage Publications, 2014, p. 76; whenever a law enforcement official draws a firearm or points it at someone, there is a risk that it might accidentally discharge and injure or kill someone, or act as an “intimidating expression of police power”.

³⁵⁷ See Regulation of the Indonesian National Police Chief, *Use of Force in Police Action*, Number 1, 2009.

- The details of the force used
- Evaluation of the results of the use of force
- Effects and problems caused by the use of force

In addition, the Indonesian regulation explains why this reporting is important. It states that the reasons for submitting the form are to report the use of force, record the levels of use of force, gather and analyse data related to the safety of police personnel and or the community, as material for analysis and evaluation in the continuous development and improvement of the professional capacity of the police, as a form of legal liability in use of force application and as the material for legal defence when there is a criminal or civil suit regarding the use of force by a police member.

Some countries find that new information technology has proven valuable in facilitating reporting in general, and consistency of reporting in particular. For example, Northern Ireland uses an electronic form that allows managers to assess whether there are problems (e.g. if one officer in a unit is using force much more than others, this can be investigated further). Also in New Zealand, the “TOR”—Tactical Options Report—is an electronic form and has a series of drop-down boxes and options.³⁵⁸ Electronic reports have the advantage that they are immediately available, and can be used by the supervisor to identify issues. Moreover, collecting information electronically makes it easier to utilize the information for an Early Intervention System (as discussed in chapter 4), as it can be used to easily analyse data over time for each individual officer, in order to detect whether there are issues in his or her performance that require intervention.

In some countries, reports of use of force are automatically forwarded to independent oversight institutions. For example, in Northern Ireland, any allegation of an assault by a police officer, and also any use of force that involved instruments such as the AEP system, taser or a firearm must be immediately referred to the Office of the Ombudsperson, the independent oversight body. In Tajikistan, the Government is working on a proposal that every instance of the use of firearms should be immediately reported not just to a senior officer but also to the prosecutor.³⁵⁹

Reporting deaths, serious injuries or other grave consequences

In cases of death and serious injury or other grave consequences resulting from the use of force during a law enforcement action or while a person is in police custody, it is not sufficient to report internally to one’s line manager. Rather, principle 22 of the BPUFF states that “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.”

Governments and law enforcement agencies should establish clear guidelines for this reporting, specifying who is responsible for the reporting, what exactly should be reported, and to whom. In some countries deaths have to be reported to the judicial authorities (in addition to senior officers), who will initiate an inquest.

An independent review process is necessary, i.e. independent from the law enforcement official or unit involved in the incident (see chapters 11 and 12).

³⁵⁸ A police officer from New Zealand mentioned how time consuming filling out the e-form is, which in itself is “a pretty effective disincentive to using anything more than trifling force”.

³⁵⁹ See Republic of Tajikistan Police Reform Strategy 2013-2020, approved by Decree of the President for the Republic of Tajikistan, 18 March 2013.

OPERATION KRATOS IN THE UNITED KINGDOM

After the 9/11 attacks on the World Trade Centre in New York, the Association of Chief Police Officers (ACPO) in the United Kingdom developed a policy in response to the threat of suicide bombers. Under “Operation Kratos”, guidelines were developed that allowed police officers to use lethal force with the aim of instant incapacitation of the brain of the potential suicide attacker, without giving prior warning to the suspect, in order to prevent him or her from detonating the bomb. Operation Kratos therefore instructed law enforcement to shoot at the head rather than the torso (which would have been the standard firearms procedure), in such situations.^a Kratos would only be implemented on the basis of sound intelligence indicating a credible serious threat, by officers who are fully trained, and following clear guidelines, and when authorized on senior decision-making levels.^b

On July 7 2005 there were four suicide attacks in London, taking place simultaneously, killing over 50 people. There was a second attempt on July 21, which failed. Not taking any further chances, the police were on high alert. Based on information that an alleged suicide attacker would carry out an attack on July 22, members of the specially trained Firearms Unit of the London Police (the Metropolitan Police Service) committed a series of operational errors that resulted in them mistakenly following a man, Mr. de Menezes, believing he was someone else, and in killing him when he embarked on a train, believing he was going to set off a bomb. The victim turned out to be an innocent man who was on his way to work. The case has led to an investigation by the Independent Police Complaints Commission, concluding *inter alia* that the existing Firearms Manual and the Kratos policy were “patently insufficient to deal with the terrorist threat”.^c

^a Minutes of the meeting explaining the Kratos policy. Metropolitan Police Authority, 8 Aug 2005. Download: <http://policeauthority.org/metropolitan/downloads/foi/log/kratos-attach.pdf>

^b Punch (2011) criticizes ACPO for drafting the Operation Kratos policy without any external scrutiny or public debate, even when it meant a big leap from the policing style as it was known in the United Kingdom.

^c IPCC (2007): Stockwell One, Investigation into the shooting of Jean Charles de Menezes at Stockwell underground station on 22 July 2005. Download: http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/08_11_07_stockwell1.pdf Stockwell Two: An investigation into complaints about the Metropolitan Police Service’s handling of public statements following the shooting of Jean Charles de Menezes on 22 July 2005. Download: <http://www.statewatch.org/news/2007/aug/ipcc-menezes-report.pdf>. See also the judgment of the European Court of Human Rights, Grand Chamber, Case of *Armani da Silva v. the United Kingdom* (applicant number 5878/08) of 30 March 2016, concluding that the United Kingdom authorities did not fail to discharge their obligation to conduct an effective investigation into the shooting.

The use of modern technology: body worn cameras, video-recording, GPS

In addition to reporting procedures, law enforcement agencies have started employing methods to record the actions of their officers in “real time”, i.e. while the event is unfolding. Technology has played an important role in this.

It is becoming established practice in ever more countries to audio or video record everything that happens during interviews and interrogations, which is even more relevant when the person interviewed is a child, as well as during assemblies and protests. Such records serve evaluation purposes, i.e. to learn what went well and what could be improved, as well as accountability purposes. Also, some cars have cameras recording what happens both inside the car, and outside, for example the traffic situation in a pursuit. In the case of the Metropolitan Police of Buenos Aires, for example, car cameras are used not only as an operative tool for the police, but also to prevent abusive use of force by police inside the car, and to provide evidence when there are allegations of abusive use of force.

On a similar note, more law enforcement agencies have equipped their patrol cars, and sometimes individual officers, with GPS facilities, in order to be able to track and trace where they are. Apart from efficiency purposes (GPS makes it easier for the dispatch room to decide which

car is best to send to an incident), it has also helped to prove or disprove an officer's presence during a certain incident and hence has facilitated accountability.

In some countries law enforcement officials have started using body worn cameras that record everything they do (not just when they engage in using force). There are indications that wearing body cameras results in less use of force, improved resolution of complaints, more effective evidence in judicial proceedings, and enhanced accountability and transparency; yet on the other hand there are privacy concerns raised by employing this measure both for the law enforcement official and those, for instance victims, coming in contact with him or her, as well as issues related to data protection.³⁶⁰ The benefits and challenges of using such devices should be carefully considered, and legislation regulating their use should be in line with international human rights law.³⁶¹

Some newly developed instruments of force, for example the taser and also certain types of stun guns, are equipped with recording facilities, for example keeping track of each shot that has been fired, or for how long (relevant for the taser). Some of these also have video recording facilities.

Installing measures to record video or audio footage of the actions of law enforcement officials and to track and trace them have often been received with initial resistance, as law enforcement officials felt that they were now under constant scrutiny. However, the records have proven useful to defend against allegations of abuse and to provide supporting evidence for the law enforcement officials who claim the force used was necessary and proportionate.

Note that any recordings made should be in compliance with international norms and standards as well as domestic privacy legislation.

TECHNOLOGY: SOCIAL MEDIA, APPS

Members of the public are sometimes witnesses to incidents where law enforcement officials resort to force. Since cameras in mobile phones are common throughout the world, it is getting ever more common that such incidents are recorded, and sometimes resurface on (social) media. As a police chief said during a conference on use of force: "any time anything happens, I just assume there will be a video of it. And I tell my officers to always work on the premise that they are being recorded all the time."^a

Some human rights groups have developed "apps" to facilitate the sharing of such information.^b However, law enforcement authorities could also consider inviting the public to upload photos and videos of operations or actions they have witnessed, for example to a link in a police website. This will serve as an immediate cross check on the claims of the individual law enforcement officials or his or her team and the member of the public.

^a See Police Executive Research Forum (PERF), 2015, p. 10.

^b Walker and Archbold (2014) refer to the American Civil Liberties Union (ACLU), which developed an app that helps members of the public record and store information from their interactions with police; a copy is saved on the user's mobile phone and another copy is automatically uploaded and saved by ACLU.

³⁶⁰ Such cameras are now used in South Africa, the United States and the United Kingdom. In the city of Rialto in California, United States, an assessment of Police Body Worn Cameras (2013) concluded that the portable camera was very effective in preventing the misuse of force: the study recorded more than a 50 per cent reduction in the total number of incidents of use of force compared to control-conditions, and a 88 per cent decrease in complaints against police concerning use of force; Farrar, T., *Self-awareness to being Watched and Socially-Desirable Behaviour: a Field Experiment on the Effect of Body-Worn Cameras on Police Use-of-Force*, Police Foundation, March, 2014.

³⁶¹ See also OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, chapter 21 (Law Enforcement and Accountability for Human Rights Violations).

10.3. Collecting and analysing the data

The data of all the individual incidents where force or firearms have been used, including from complaints about use of force and firearms, and otherwise, need to be collected to allow meaningful monitoring of use-of-force practice, through further analysis and establish trends and patterns.

It is recommended to collect the data regarding use of force and deaths and serious injuries that are the result of law enforcement action, and complaints about the same, at a central level, under the authority of an independent body, rather than an internal unit, as they may be put under pressure to give a more favourable representation of the agency than the facts merit. Central data collection also facilitates central data analysis.

The data should provide answers to questions such as how many incidents of force there have been; how many people died as a result of police action; how many got seriously injured; and how many of these incidents were unlawful, providing statistical data that are crucial to developing appropriate interventions to remedy overreliance on force or otherwise abusive use of force, where applicable. An important statistic is the number of people killed during law enforcement actions, compared to the number that survived, which gives an indication of whether law enforcement officials in a particular context are overrelying on (potentially) lethal force, attempting to kill rather than arrest.³⁶²

For these data to be useful, they need to be collected in such a way that they allow for further analysis:

- At various levels (national, state/province, municipality, precinct)
- Per affected group (sex/gender, ethnicity, immigrants, age, etc.)
- Per type of incident (arrest, stop and search, public order, etc.)
- Per unit involved (patrol, specialized unit, investigations, etc.)
- Per instrument of force that was used (baton, pepper spray, taser, firearm, dogs, etc.)

Collecting data without analysis has little value. Indeed, the data on use of force must be analysed to distil patterns, and learn what this reveals about the legality, necessity, proportionality, as well as effectiveness of the force used. This is for example what happens in the city of Pittsburgh, in the United States. The consent decree tasks the city to conduct regular audits and reviews of uses of force by its officers and analyse use-of-force data from the automated early warning system “on a quarterly, cumulative basis to detect trends in use of force. The analysis shall include a review by officer, by injury, and by type of force used. Senior supervisors shall act on this data to ensure that officers are using appropriate types and amounts of force.”³⁶³

Interventions based on this analysis may involve reviewing and where necessary amending the laws, regulations or policies in use, adapt training, improve control and command procedures, acquire less-lethal instruments of force, improve community contacts in a certain area, etc. More and more law enforcement agencies have started disclosing statistical data about incidents of force. Such transparency, even about incidents that have gone wrong, has proven to contribute to building public confidence. Also, it is good practice to involve other stakeholders in the review process, in particular independent national human rights institutions, and see if and how their concerns can be addressed.

³⁶² Osse, Anneke, *Understanding Policing: a Resource for Human Rights Activists*. Amnesty International, the Netherlands, 2006.

³⁶³ For Pittsburgh, visit: <http://www.justice.gov/crt/about/spl/documents/pittssa.php>; Robert C. Davis, *Turning Necessity into Virtue: Pittsburgh's Experience with a Federal Consent Decree*, Vera Institute of Justice, September 2002.

An example of how this can work is the Independent Commission of Investigation (INDECOM) in Jamaica, which collects, analyses and publishes on a regular basis data of use of force and its effects since 2010. As a result, fatalities linked to police use of force have gone down by around 50 per cent over the last years.

CHAPTER KEY MESSAGES

- Law enforcement officials should report to their supervisor instances where they have resorted to using force, any incident involving use of firearms or other weapons and all incidents that resulted in death or injury. Reporting procedures and monitoring tools enable the supervisor to exercise effective command and control.
- It is good practice to report any use of force, including incidents that involve a “show of force”, such as the pointing of a firearm or taser, at any person.
- The data collected through reporting and recording should be collected and analysed to detect patterns, establish lessons and, where needed, make recommendations for policy, training programmes, planning or regulations.
- It is good practice to develop detailed forms to systematize the reporting process, enabling officers to describe as accurately as possible, in their own words, what has occurred and why.
- In cases of death and serious injury or other grave consequences, a detailed report should be sent promptly to the competent authorities responsible for administrative review and judicial control—only reporting to one’s supervisor is insufficient.
- Technological advances are better facilitating the monitoring of law enforcement, including with body-worn cameras, and also videos recorded by the public. These advances also pose challenges, notably with respect to privacy and data protection. The benefits and challenges need to be carefully considered, and legislation regulating the use of such devices needs to be in line with international human rights norms and standards.
- Collecting data without analysis has little value. The data on use of force should be analysed to distil patterns, and learn what this reveals about the legality, necessity, proportionality, as well as effectiveness of the force used.
- Transparency in disclosing the statistical data about incidents of force contributes to building public confidence in law enforcement.

Chapter 11. Complaints and investigations

Members of the public should be able to file a complaint against law enforcement officials when they believe the force that was used against them or someone else was unlawful, excessive or arbitrary and/or resulted in torture or other forms of ill-treatment. When there are credible allegations of unwarranted use of force, this should be subject to a prompt, effective, transparent, independent and impartial investigation in order to establish what happened and why.

The investigation can be conducted by an independent oversight body or by the law enforcement agency, as long as the independence and impartiality of the investigation can be guaranteed. Investigations can follow disciplinary (or administrative) or criminal proceedings, or both. When abusive use of force is proven, sanctions should follow for those responsible and remedy provided to the victim(s) or their family.

HANDBOOK ON POLICE ACCOUNTABILITY, OVERSIGHT AND INTEGRITY

In 2011, UNODC published a Handbook on police accountability, oversight and integrity.³ Readers are recommended to take note of this Handbook and refer to it for more in-depth information about complaints and investigations procedures.

³ For more information, visit: http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/PoliceAccountability_Oversight_and_Integrity_10-57991_Ebook.pdf

11.1. Introduction

Information of an incident where force allegedly has been abused can surface through various channels, including an incident report—either filed by a law enforcement official or by another official who observed or was involved—social media report, complaint, or witness report by a respective commander.

Whenever there is a reason to question whether the force used in a particular incident was in accordance with the law, necessary and proportionate, or under allegations of torture or other ill-treatment,³⁶⁴ there should be prompt, impartial and effective investigations in order to establish

³⁶⁴ See CAT, articles 4, 5-8, 12 and 16.

the truth. Why the incident happened, and whether this should lead to criminal prosecution, disciplinary sanctions, or both, as well as possible remedies for the victim(s) are all considerable factors.

Such investigations should also be initiated *ex officio*, in particular for serious events, even in the case where there is no complaint. They should address the responsibility, if any, of commanding officers and not just those directly involved in the incident.

There are two distinct, yet related, objectives for carrying out such investigations. The first is, as with any investigation, to establish the facts about what has happened and whether it is necessary to take further action. The second objective is to restore and build public confidence. Any incident that is perceived to have involved unlawful, excessive or arbitrary use of force, torture or other ill-treatment, can gravely damage the relationship between law enforcement and the public. When such actions are left unresolved, public confidence will further erode. In addition, investigations will facilitate the resolution of complaints and claims from victims for justice and remedy.

Although in theory law enforcement officials may be perfectly able to conduct the investigations themselves, it is mainly for this second reason that it is important that the investigation is conducted in an independent and impartial manner, and is also perceived as having been conducted in such a manner. This does not necessarily exclude the police from conducting the investigations, but care should be taken to ensure that the investigation is carried out without interference from anyone that was involved in the incident.

11.2. Receiving and handling complaints

The Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials state that “particular provisions shall be made, within the mechanisms [of internal discipline and external control], for the receipt and processing of complaints against law enforcement officials made by members of the public, and the existence of these provisions shall be made known to the public”.³⁶⁵

Domestic law should provide for an avenue for members of the public, as well as for law enforcement officials who believe a violation has occurred,³⁶⁶ as well as for detainees,³⁶⁷ to file a complaint against a law enforcement official about abuse of force (including torture or other ill-treatment) without fear of reprisals either directly with the law enforcement agency such as the station commander, district chief, or headquarters or at the prosecutor’s office. In addition, it is good practice to establish an independent body where people can file complaints. This is for example recognized by the African Commission on Human and Peoples’ Rights. Expressing concern “that in many of the African states, there exist no independent policing oversight mechanisms, to which members of the public may report police misconduct and abuse of their powers for redress and that where they do, they are directly under police authorities”, it called on States to “establish independent civilian policing oversight mechanism[s] where they do not exist which

³⁶⁵ See Under B, Specific Issues 4.

³⁶⁶ See United Nations Code of Conduct, article 8; “Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.” Note that the United Nations Code of Conduct allows for law enforcement officials to “take lawful action outside the chain of command” but only when “no other remedies are available or effective”. As a last resort, law enforcement officials may take the matter “to the attention of public opinion through the mass media”.

³⁶⁷ See Body of Principles, principle 33.

shall include civilian participation”.³⁶⁸ The European Code of Police Ethics also requires public authorities to “ensure effective and impartial procedures for complaints against the police”.³⁶⁹

Complaints procedures should be easy to understand, easily accessible, non-discriminatory and not create any unnecessary burden, such as the payment of a fee. All complaints should be recorded; recording should never be left at the discretion of the receiving officer. A failure to register a complaint should be treated as neglect of duty and have disciplinary consequences. It is recommended to install a traceable system of recording all complaints, and give each complaint a number, as this will help to prevent officers from refusing or dismissing complaints. The person who decides on how to respond to the complaint, i.e. on its disposition, should be someone else than the one who received it, to allow for an objective assessment.

ALTERNATIVE DISPUTE RESOLUTION

Not always will the complaints procedure be the best way to restore confidence, and indeed there may be cases where alternative dispute resolution methods may be more effective than filing a complaint. If this is the case, the complainant should be informed. If, however, the complainant insists on filing a complaint, he or she should be given the opportunity to do so. If the complainant opts for an alternative procedure after being fully informed, this should also be recorded.^a However, mediation and alternative dispute resolution should in principle be considered only if, on the face of the complaint, there is no proof of facts leading to disciplinary or criminal charges and both the complainant and the law enforcement agency must agree to mediation in such situations, which may also help to restore confidence. The State duty to investigate, prosecute and punish gross human rights violations relating to the use of force, such as extrajudicial executions, enforced disappearances, torture or sexual violence, cannot be renounced through mediation or other alternative justice mechanisms.

^a See UNODC *Handbook on Police Accountability, Oversight and Integrity*, 2011, p. 35.

Throughout the process complainants should be kept informed of the progress and outcome of the complaint. Human rights good practice also underlines the importance of the participation of victims in disciplinary proceedings. In Colombia, the National Police has adopted the practice of holding the audiences of disciplinary processes in public, and encouraging members of the institution to observe them in order to raise awareness. When the complaint is found to be groundless, the complainant should have the opportunity to appeal against the decision.

Complaints are an important piece of management information as they are indicators of possible issues regarding the performance of staff.³⁷⁰ This is true regardless of whether the complaint is sustained as indeed, an officer whose conduct is the subject of many complaints, even when these are mostly unfounded, might still have performance problems that need to be corrected, and also complaints may reveal shortcomings in training, equipment, policy, instructions, command and control, tactics, discipline or other aspects. Care should be taken that a complaint is not just used to identify a wrongdoer, who then is used as a “scapegoat”. Rather, it should lead to identify shortcomings in the organizational procedures, structures or supervision, so that they

³⁶⁸ The African Commission on Human and Peoples Rights at its 40th Ordinary Session held in Banjul from 15-29 November 2006; resolution on police reform, accountability and civilian police oversight in Africa.

³⁶⁹ See Council of Europe, *The European Code of Police Ethics: Recommendations*, 2001; adopted by the Committee of Ministers of the Council of Europe on 19 September 2001, article 61.

³⁷⁰ Samuel Walker and Carol Ann Archbold, *The New World of Police Accountability*, Sage Publications, United States, 2014.

can lead to organizational change—and prevent future problems.³⁷¹ In addition, complaints are “opportunities to counsel, coach and train officers in how to be better officers.”³⁷²

It is for this reason that anonymous complaints should be allowed. The complaints process should not just be seen in the narrow format of a criminal investigation procedure, but rather as a tool that provides additional, useful pieces of management information, allows for appropriate analysis and can enhance internal guidance and learning.

11.3. Investigations into (alleged) arbitrary or excessive use of force

Disciplinary or criminal proceedings

When there is information about possible abusive use of force from a complaint, filed report or footage from a body worn camera, the first step in many instances will be to verify whether the case needs investigation. In some countries, an exploratory investigation is conducted first, in order to verify whether there is a need for a disciplinary (also known as “administrative”) or criminal investigation, or both.³⁷³ Such exploratory investigation can be conducted either by an independent body or the law enforcement agency, but should not be used to dispose of the complaint or avoid a more thorough method of investigation.

Sometimes it is clear whether criminal or disciplinary proceedings need to be opened. For example, principle 7 of the BPUFF states that “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”. It asserts that such investigations must follow criminal procedures, as the law enforcement official affected is a suspect in the legal sense and entitled to all the rights of a suspect, including the right to be presumed innocent and have access to a fair trial, as guaranteed in the ICCPR.

The principle of fair trial also means that the suspect is entitled to legal counsel of his or her own choosing. In some countries this is provided by the police union. Some countries assign a senior officer—someone of higher rank than the accused—as a legal counsel to the accused. Not being allowed to choose another may be in violation of his or her due process rights.³⁷⁴

It is possible that abusive or arbitrary force will also involve “neglect of duty”, which is a disciplinary offence and may lead to the law enforcement official’s removal from the agency. The law enforcement official involved is now a “subject” rather than “suspect” of the investigation. As an employee, the subject can be ordered to cooperate by handing in his or her docket-book. Also, the rules of evidence are more lenient, as meeting the balance of probabilities suffices under disciplinary law whereas guilt has to be proven beyond reasonable doubt under criminal proceedings.

Answers provided in a disciplinary investigation should not be admissible in any subsequent criminal prosecution. Sometimes investigators may feel tempted to use the procedures of a disciplinary proceedings even when it is a criminal case, and use the information acquired under disciplinary proceedings in the criminal proceedings, but this may be problematic as it may

³⁷¹ *Ibid.*

³⁷² *Ibid.*, p. 19.

³⁷³ See UNODC Resource book on *Police Accountability, Oversight and Integrity*, 2011, p. 37. A criminal investigation will in many countries also automatically trigger a disciplinary inquiry, for example to assess whether the officer concerned can stay on duty during the criminal investigation.

³⁷⁴ See ICCPR, article 14(3) (b).

involve information they would not have been able to obtain in the context of the criminal procedures (in accordance with evidentiary standards applicable in criminal proceedings).³⁷⁵ In the event of a criminal investigation, it is recommended to establish a different investigative team for a criminal investigation that has no contact with internal investigators. Indeed, when a subject becomes a suspect, it is recommended to grant him or her the rights of a suspect under fair trial throughout the investigation.

Table 1. Differences between disciplinary and criminal proceedings

	Disciplinary proceedings	Criminal proceedings
Legal framework	Administrative law (employee versus employer or more specifically, civil servant versus administration)	Criminal law (suspect versus State)
Status	Subject or accused	Suspect
Rights	Presumption of innocence Fair trial	Presumption of innocence Fair trial
Obligations	Employees are obliged to cooperate, for example by disclosing dockets and other pieces of work-related information that may be self-incriminating	No obligations
Rules of evidence	Balance of probabilities	Beyond reasonable doubt
Result	Decision (by superior or by disciplinary panel)	Verdict (of criminal court)
Maximum sanction	Dismissal ^a	Imprisonment
Appeal	With next line manager Ultimately, administrative court	Common appeal procedures under criminal law

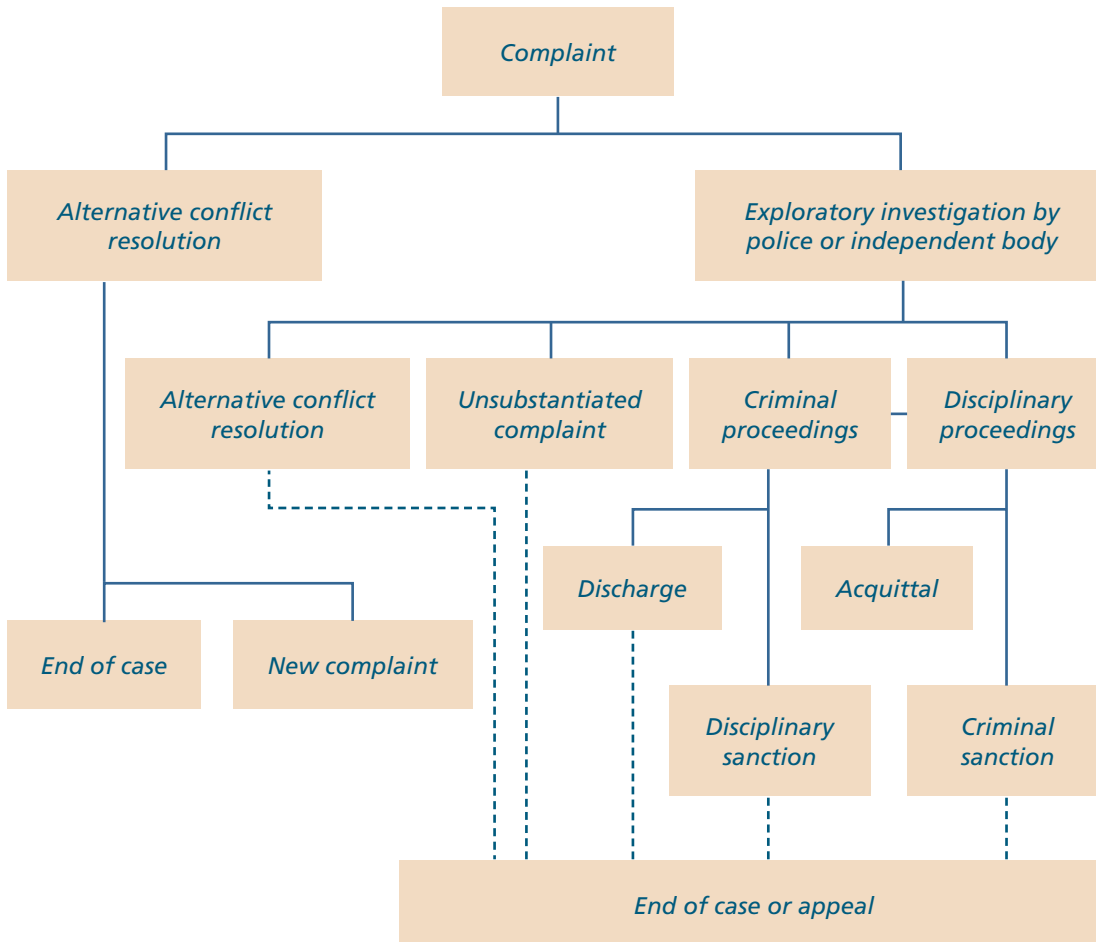
^a Few countries allow for detention under disciplinary proceedings

Either system will ultimately be subjected to judicial control, whether in a criminal or administrative court. In any case, situations should be avoided where abuse of force is entirely dealt with internally without any external scrutiny.

³⁷⁵ See UNODC *Handbook on Police Accountability, Oversight and Integrity*, 2011.

In sum, whenever a complaint is filed it will follow any of the routes as depicted in the flowchart below:

Figure I. Complaints flowchart



Independence and impartiality of investigations

Many countries have established separate units for conducting investigations of police use of force, called the Internal Affairs Unit or Professional Standards Bureau. In addition, it is good practice to establish a civilian independent complaints body that can either conduct the investigation or oversee and review its quality.

In line with principle 22 of the BPUFF, any case resulting in death or serious injury as well as all incidents involving the use of firearms should be subjected to an “effective review process” and “independent administrative and prosecutorial authorities” shall have jurisdiction. The Basic Principles do not specify explicitly whether the review and investigation should be carried out by an external body, or whether the investigation can also be done by the law enforcement agency itself and then forwarded for further review. Principle 23, however, states that “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”.

Indeed, whenever the use of force has resulted in death or injury, the onus is on the State to prove that the conduct was justified, which is best established through an impartial and independent inquiry.³⁷⁶ It is good practice when deaths and serious injuries are automatically investigated by fully independent oversight bodies, such as the Police Ombudsperson in Northern Ireland, Independent Police Investigative Directorate in South Africa or the Independent Commission of Investigations (INDECOM) in Jamaica.

ENSURING INDEPENDENCE AND IMPARTIALITY OF AN INTERNAL INVESTIGATION

Where the police carry out the investigation themselves, it is important that this is done in an independent and impartial manner. This means investigations should be done by another unit than the one involved in the incident and preferably in another office. Being a hierarchical organization, it is good practice that the investigation is done by someone who holds a rank that is at least one step higher than the person(s) under investigation.

Increasingly law enforcement agencies have established separate units for carrying out such investigations, usually called Internal Affairs Unit or Professional Standards Department. In countries having a separate judicial police conducting criminal investigations, this is often also the unit that conducts investigations against law enforcement officials. Where this is so, it is recommended to establish a separate specialized branch within the judicial police for carrying out internal investigations.^a Also, the establishment of a separate unit within the prosecution that deals with police misconduct cases may be considered.

^a See UNODC *Handbook on Police Accountability, Oversight and Integrity*, 2011.

Investigations of deaths and alleged extra-legal, arbitrary and summary executions

Whenever someone dies as the result of law enforcement action, this should be investigated promptly, effectively, independently, impartially and in a transparent manner. Whenever there is reason to suspect that the use of force resulted in extra-legal, arbitrary or summary executions, it is of particular importance that this is duly investigated. Principles 9 to 17 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions³⁷⁷ also address investigations of any death that is suspected to involve an extra-legal, arbitrary or summary executions. Such investigations should aim to establish “cause, manner and time of death”, and for this the investigation should encompass an autopsy, all physical and documentary evidence, and statements from witnesses. The investigative authority should have the power to summon witnesses, including to summon the law enforcement officials who may have been involved, and take evidence. The principles give guidance on the actual autopsy and if and how the body can be disposed of, and that the person(s) doing the autopsy must be able to function “impartially and independently”.

Principle 11 states that “in cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall

³⁷⁶ See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 1 April 2014. A/HRC/26/36, para. 57.

³⁷⁷ Recommended by E/RES/1989/65, 24 May 1989: <http://www.ohchr.org/Documents/ProfessionalInterest/executions.pdf>. See also the companion document: United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, also referred to as the Minnesota Protocol (http://www.ohchr.org/Documents/Issues/Executions/UNManual2015/Annex1_The_UN_Manual.pdf).

pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles”.

Whenever a detainee dies in custody or is seriously injured, the State should take account and allow a prompt and independent investigation. In order to be effective, the investigation should be initiated within hours or within days at the latest.³⁷⁸ The Body of Principles state that:

“Whenever the death or disappearance of a detained person occurs during his or her detention, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation”.³⁷⁹

Investigations into torture and ill-treatment

According to the Committee against Torture (CAT), States must ensure that all “acts of torture are offences under its criminal law”, this also applies to attempts to commit torture and complicity or participation in torture.³⁸⁰ As a result, investigations into torture allegations should follow the procedures for criminal investigations. The Special Rapporteur on Torture has stated that complaints about torture or other forms of ill-treatment should be transmitted without screening to an external independent body for investigation.³⁸¹

The Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment³⁸² identify three purposes of the investigation and documentation of torture or other ill-treatment:

- Clarification of the facts and establishment and acknowledgement of individual and State responsibility for victims and their families
- Identification of measures needed to prevent recurrence
- Facilitation of prosecution and/or, as appropriate, disciplinary sanctions, and demonstration of the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation

The principles place conditions on the investigators, who shall be “independent of the suspected perpetrators and the agency they serve”, be granted access to impartial medical or other experts, and have “all the necessary budgetary and technical resources for effective investigation”.

³⁷⁸ See ICPAPED; Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/68/295, 9 Aug 2013, paras. 62-63.

³⁷⁹ See Body of Principles, principle 34. On this issue, see also the ICRC Guidelines for Investigating Deaths in Custody: <https://www.icrc.org/eng/assets/files/publications/icrc-002-4126.pdf>

³⁸⁰ See CAT, article 4.

³⁸¹ See Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/68/295, 9 Aug 2013, para. 65; for untried prisoners who fall under the prison administration, this is also captured in the Nelson Mandela Rules, Rule 57(3).

³⁸² Recommended by GA/RES/55/89, 4 December 2000.

Similarly, whenever there is reason to question the quality or impartiality of an investigation, an independent commission of inquiry or a similar procedure should be established. In addition, the principles have a section dealing with medical experts involved in the investigation, who shall “behave at all times in conformity with the highest ethical standards and, in particular, shall obtain informed consent before any examination is undertaken. The examination must conform to established standards of medical practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials”.³⁸³ The principles spell out the details that should be included in the medical examination report.

THE ISTANBUL PROTOCOL

The comprehensive Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, also known as the Istanbul Protocol, is intended to serve as international guidelines for the assessment of persons who allege torture and ill-treatment, investigation of cases on alleged torture, documentation and reporting such findings to the judiciary or other investigative body.^a

^a See Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, principle 6.

Procedural safeguards and witness protection

With any investigation against a law enforcement official, care should be taken to ensure the integrity of the investigation process. Care should be also taken that the suspect/accused, or other colleagues, cannot influence the outcome of the investigation, through manipulating information or intimidating witnesses, victims or the investigators.³⁸⁴

The suspect has become a complainant

The person complaining about abusive use of force, will in some instances also be the suspect in a criminal investigation or have been detained for some violation of the law. Where this is the case, this person is extremely vulnerable to further abuse and reprisals, and the law enforcement officials involved may make an extra effort to expeditiously investigate the case and make sure they so-to-speak “win” the case, even when this involves acts such as bribing witnesses, falsifying evidence or intimidating victims). By the time an internal or external complaints body starts the investigations, the victim of the abuse of force may already be facing trial or even have been convicted. This may create complications and difficulties. Therefore, whenever a complaint about abuse of force has been filed, whether with an internal or an independent body, it may be preferable to keep the criminal case against the complainant (if any) on hold, unless the internal or the independent body requests the investigators to proceed with it. Judicial authorities should also be receptive to any signals of excessive or arbitrary use of force by law enforcement officials, and inquire any such suspected or alleged abuse.

³⁸³ See Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, principle 6.

³⁸⁴ See CAT, article 13; Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, principle 15.

Protect complainants/victims and witnesses

Victims and witnesses who come forward and lodge a complaint or provide evidence about an instance of abusive use of force must be protected against any form of intimidation, threat, violence or ill-treatment. The Convention against Torture, for example, states that “steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given”.³⁸⁵ This is particularly relevant when complaints are lodged against law enforcement officials who may have a conflict of interest. Those potentially implicated should be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.³⁸⁶

Where there is reason to believe that the accused law enforcement official(s) have made an attempt to influence the case, this should be investigated at once and may lead to (additional) charges. If such interference is proven, it should result in opening a second case against the accused officer, one for the original abuse of force, and then the second for the intimidation and interference. For this reason, in Jamaica, the Independent Commission of Investigations, INDECOM, has established a protocol with the police, which obliges the police to contact INDECOM when they know of an incident involving a police officer falling within INDECOM’s remit.³⁸⁷

Responsibility of the line of command

Another problem is that the complaint is often filed against one law enforcement official, with the possibility that others (i.e., colleagues or supervisor) are also involved, or at least know of the abuse. Principle 24 of the BPUFF states 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”. As such, an investigation into abusive use of force should, in principle, also examine the role of the supervisor and the organ in charge of the investigation must have the requisite powers, and position, to do so.

Actions towards the officer(s) involved

Officials potentially implicated in torture or ill-treatment should immediately and for the duration of the investigation be suspended, at a minimum, from any duty involving contact with the public and access to detainees.³⁸⁸

When the case involves a fatal shooting, in some countries any law enforcement official involved is considered a suspect, until preliminary investigations prove otherwise. Though there may be good reasons for such an approach (it grants the law enforcement official involved all the rights of a suspect under criminal investigation, including the right to remain silent and the presumption of innocence), it goes without saying that this causes enormous stress for the officer involved. In some countries the person under investigation is suspended and sent home.

³⁸⁵ See CAT, articles 13 and 16.

³⁸⁶ See Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions; Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

³⁸⁷ See INDECOM, 1st Quarterly Report for 2015, p. 15: <http://www.indecom.gov.jm/1st%20INDECOM%20Quarterly.pdf>.

³⁸⁸ See Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/68/295, 9 Aug 2013, paras. 66 and 77.

The suspect/accused should be required to hand in his or her firearm pending the investigations, and relieve him or her from duties that carry the risk of further abuse, nor should they go back to the communities where the alleged abusive use of force took place until the investigation has been completed and a determination made as to appropriate action.

Repositioning or suspending the accused person is not only helpful in ensuring that good investigations are possible but also to protect the reputation of the agency. When a person is charged, suspension should follow as a rule, until the criminal case is decided.

PRESERVE SCENE OF THE INCIDENT

In Brazil it used to be common for police officers to remove the bodies of the persons they had killed. These actions were perceived to be attempts to cover up the killings and make any subsequent investigation more difficult. In an effort to prevent this from happening, the São Paulo State Government issued a resolution in January 2013 prohibiting police from removing victims' corpses from the scenes of shootings. Police killings in the state subsequently fell by approximately 34 per cent in the first six months of 2013, according to government figures.^a

^a See Human Rights Watch, World Report 2014, Brazil.

Transparency about findings

The findings of the investigation should be shared with the victim or his or her relatives. Moreover, they should be made public,³⁸⁹ even when unfavourable for the law enforcement agency, as this is more likely to contribute to restoring public confidence. The Government should, within a reasonable period of time, either reply to the report of the investigation, or indicate steps to be taken in response.³⁹⁰

Audit investigations

It is good practice to set up a mechanism to audit the investigation process.³⁹¹ In some countries, such as the United States, police agencies have established a Police Auditor for this purpose. The Auditor reviews how the complaint was investigated, and can either send it back with recommendations, such as to conduct more witness interviews, if in disagreement.

Providing aftercare

In general, having to resort to lethal force is rare in law enforcement practice and quite a number of law enforcement officials will not fire a single shot in their entire careers outside of the training range. Indeed, it must not be overlooked how big the impact on someone's (emotional) life can be when he or she has been involved in a shooting incident, or other incident involving force. For this reason, the BPUFF have included principle 21, calling for providing stress counselling to law enforcement officials who are involved in situations where force and firearms were used.

³⁸⁹ See Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, principle 17; Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, principle 5(b).

³⁹⁰ See Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, principle 17.

³⁹¹ Samuel Walker and Carol Ann Archbold, *The New World of Police Accountability*, Sage Publications, United States, 2014.

11.4. Remedy

Where force is deemed unlawful, excessive or arbitrary, victim(s) may be entitled to an effective remedy.³⁹² Also victims of torture should receive full rehabilitation; whenever torture or ill-treatment has been proven, or where it has been established that the death was the result of torture, ill-treatment or extra-legal, arbitrary or summary execution, fair and adequate compensation should be paid to the families and dependents of the victim(s).³⁹³

An effective complaints system is just one way to implement the right to remedy. Another method for the complainant is to file a civil suit against the law enforcement official accused of abusive use of force or even against the agency. The National Human Rights Institution may also provide an avenue for redress, when they have an established mechanism to access remedies for victims of human rights violations.

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power³⁹⁴ has a section dealing with victims of abuse of power, which includes victims of abuse of force. The declaration specifies that “States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support.”³⁹⁵

³⁹² See ICCPR, article 2(3); the obligation to States to provide effective remedy is reiterated in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; adopted and proclaimed by GA/RES/60/147, 16 December 2005.

³⁹³ See CAT, article 14; Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, principle 20.

³⁹⁴ Adopted by GA/RES/40/34, 29 November 1985.

³⁹⁵ See Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, article 19.

CHAPTER KEY MESSAGES

- Members of the public, including also law enforcement officers and detainees, must be able to file a complaint against law enforcement officials when they believe the force that was used against them or someone else was unlawful, excessive or arbitrary and/or resulted in torture or other forms of ill-treatment.
- Credible allegations of unwarranted use of force should be subject to a prompt, effective, transparent, independent and impartial investigation.
- The two objectives of carrying out proper investigations are: (a) to establish the facts about what happened and whether it is necessary to take further action; and (b) to restore and build public confidence.
- Investigations not only serve to identify the alleged wrongdoer, but should also lead to identification of shortcomings in the organizational procedures, structures or supervision, leading to organizational change and prevention of future problems. For this reason, anonymous complaints should be allowed.
- Investigations should also be initiated ex officio, in particular for serious events, even if there are no complaints.
- It is crucial that investigations are conducted in an independent and impartial manner, and are also perceived to have been conducted in such a manner.
- Complaint procedures should be easy to understand, easily accessible, non-discriminatory and not create an unnecessary burden. All complaints should be recorded.
- In the course of investigations, care must be taken that the suspect, or other law enforcement officials, cannot influence the outcome of the investigation, through manipulating information or intimidating witnesses, victims or the investigators. Victims and witnesses must be duly protected.
- When abuse of force is proven, sanctions should follow for those responsible and remedy provided to the victim(s) or their family.
- It is good practice to establish a civilian independent complaints body that can either conduct the investigation or oversee and review its quality.

Chapter 12. Independent oversight bodies

This chapter looks into different forms of external oversight. More and more countries have established independent bodies to oversee the performance of law enforcement agencies and investigate complaints against them. In order to be effective and enhance public confidence, such bodies should be fully independent of the institution(s) that they have a mandate to oversee; and have the (investigative) powers and resources to effectively carry out their work, including the power to access necessary people, places and documents, and make public recommendations on their findings.³⁹⁶

12.1. Introduction

Installing an independent mechanism with specific expertise to assess law enforcement operations and to oversee human rights compliance by law enforcement bodies can play a vital role in enhancing or restoring public confidence, and is a key prerequisite for effective law enforcement.³⁹⁷

Through its 2006 resolution, the African Commission on Human and Peoples' Rights "urge[d] State Parties to the African Charter to establish independent civilian policing oversight mechanisms, where they do not exist, which shall include civilian participation."³⁹⁸ The preamble in which the resolution was adopted refers to the need for members of the public to be able to report police misconduct and abuse of powers, and seek redress, and recognizes that police in many countries on the continent need to require reform "in order to become effective instruments of security, safety, justice, and respect for human and peoples' rights across the continent."

Most States have established a National Human Rights Institution (NHRI) dealing with human rights issues involving State organs. The Principles relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights (Paris Principles)³⁹⁹ lay down the guiding principles for NHRIs. In many countries the majority of issues dealt with by

³⁹⁶ The UNODC *Resource book on Police Accountability, Oversight and Integrity* was published in 2011. Readers are recommended to take note of this resource book and refer to it for in-depth information about the role of external oversight bodies and how internal and external accountability interrelate.

³⁹⁷ See African Commission on Human and Peoples Rights, resolution on police reform, accountability and civilian police oversight in Africa; 40th Ordinary Session, Banjul, 15-29 November 2006; and Council of Europe, *The European Code of Police Ethics: Recommendations*, 2001; adopted by the Committee of Ministers of the Council of Europe on 19 September 2001, article 61.

³⁹⁸ Adopted by the GA/RES/48/134, 20 December 1993.

³⁹⁹ *Ibid.*

the NHRI are related to law enforcement, and the NHRI can sometimes be given a specific oversight role vis-à-vis law enforcement.⁴⁰⁰

STUDY ON INDEPENDENT POLICE OVERSIGHT^a

The former Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, wrote in a 2010 report that “one of the most important causes of continued police killings is impunity for past killings. As part of a system of accountability for addressing impunity, countries should consider creating external police oversight mechanisms, which can provide an important complement to internal police investigations, internal discipline, the criminal justice system, and legislative oversight.” The Special Rapporteur released a study examining the obstacles to effective external oversight, and proposing guidelines for governments on the creation and operation of effective external mechanisms.

^a The UNODC Resource book on Police Accountability, Oversight and Integrity was published in 2011. Readers are recommended to take note of this resource book and refer to it for in-depth information about the role of external oversight bodies and how internal and external accountability interrelate.

12.2. Setting up an independent external body

Complementarity with other accountability structures

An independent body to oversee law enforcement needs to complement existing accountability structures. In some cases, an existing structure can be altered to meet the criteria for independence, or a police-specific chapter can be added to an existing independent oversight body for the entire public sector. As such, the first step should involve an assessment of strengths and weaknesses of the present system, and challenges and their causes to ensure that the new body is complementary. Attention should be paid to ensuring proper coordination among different oversight structures. Any process to establish an independent oversight institution should involve participation and consultation with a wide range of stakeholders, including civil society.

Criteria for independence

An important objective of establishing an independent mechanism is to build or restore confidence in the law enforcement agency. It is important that the mechanism acts with integrity, impartiality and professionalism, and is operated by individuals chosen as a result of a competitive, transparent and independent selection process. Not only should its independence be guaranteed by law, but it also needs to be seen as fully independent from the entity it oversees, such as the law enforcement sector. It is also good practice to authorize the independent body to send their findings directly to public prosecutor (as this would for example avoid possible interference by the executive).

⁴⁰⁰ For more information, see also OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, chapter 21 (Law Enforcement and Accountability for Human Rights violations).

Criteria for true independence include:⁴⁰¹

- Complete discretion in the exercise of functions or powers
- Statutory underpinning
- Reporting to the legislature
- Independent funding
- Transparent process, based on merit, for the appointment of commissioners and staff

Criteria for success

A number of independent oversight models have been set up around the world. A set of criteria has been identified to ensure the effectiveness and legitimacy of an independent oversight and complaints mechanism. These criteria apply both to oversight bodies dealing with complaints against law enforcement only and to those dealing with complaints against the public sector as a whole (and, in fact, they also apply to internal complaints investigative bodies).

These criteria are:⁴⁰²

- Political commitment
- A clear mandate and matching powers
- Adequate financial and human resources
- Engagement with the law enforcement agency
- Engagement with the general public

Mandate

Independent oversight bodies can have various mandates. Some of them review policies and legislation, such as the use-of-force legal and operational framework in place, and make recommendations based on their reviews. Some have mandates that involve handling complaints. They do not always conduct investigations themselves, but sometimes review the way complaints are investigated internally, like a quality control mechanism. Roughly there are four different models for independent bodies whose mandate includes complaints.⁴⁰³

- Investigative and quality assurance models
- Review and appellate models
- Evaluative and performance-based models
- Mixed models

Powers

For effective oversight bodies, sufficient powers to carry out their mandate must be given. Those with investigative mandates should have sufficient powers to conduct effective investigations, including investigative powers similar to those of the police, and in some instances also prosecutorial powers. This will prevent them from becoming a “toothless dog”. For example, they must be able to respond quickly and be able to investigate the scene where the incident occurred as early as possible, and record statements of those involved expeditiously, as delays

⁴⁰¹ See UNODC *Handbook on Police Accountability, Oversight and Integrity*, 2011.

⁴⁰² *Ibid.*

⁴⁰³ For more information on the different models for independent bodies whose mandate includes complaints, see Police Assessment Resource Centre, *Review of National Police Oversight Models for the Eugene Police Commission*, Los Angeles, February 2005.

often causes manipulation of evidence. For example, in Jamaica where the law states that the Independent Commission of Investigations (INDECOM) has primacy at the scene of incidents. The Incident Scene Protocol (a protocol with the police) acknowledges that most scenes will be jointly processed. If INDECOM is not present within two hours of being notified by the police, contact must be made with INDECOM's Director of Complaint, with responsibility for that region, to determine INDECOM's arrival time and whether the scene can be processed by the police only.⁴⁰⁴

EXAMPLES OF INDEPENDENT OVERSIGHT BODIES

In Jamaica, INDECOM was founded through the Independent Commission of Investigations Act of 2010 to offer effective and independent investigations into deaths and injuries and the abuse of the rights of persons by members of the Jamaican Security Forces (JSF).^a According to the Act, INDECOM is to conduct investigations, and is entitled to have access to all reports, documents and other information relating to any incident of complaint. It can require security officers to furnish information, take charge and preserve the scene of an incident, have access to any location related to the incident, to enter any premises and make such enquiries or inspect documents and can make recommendations. The commission has the power to arrest and can press charges against the accused. It reports directly to the Parliament and is given full independence.

The Police Service of Northern Ireland (PSNI) is overseen by two independent bodies: the Northern Ireland Police Board (NIPB) and the Police Ombudsman for Northern Ireland (PONI). The statutory duties of the Board and the Ombudsman are laid down in the Police (Northern Ireland) Act 2000. The Board is responsible for general oversight of the overall effectiveness and efficiency of the Service, and also for direction setting. The Board also monitors the functioning of the internal disciplinary system and compliance with the Code of Ethics and the Human Rights Act. The Board has appointed a local barrister as a human rights adviser, who produces an annual human rights report on all aspects of policing for human rights compliance.^b The report has a chapter on use of force, which includes data on how often lethal and various less-lethal instruments were used. The police are required to report back on a regular basis on how they have addressed the recommendations included in the annual report.

The Board does not deal with complaints, as that is the remit of the Police Ombudsman, who independently and fully investigates all complaints against the police. Even when a member of the public files a complaint with the police, the police will forward it to the Ombudsman, whose investigating staff has full investigative powers. After investigation the Ombudsman recommends the case for prosecution or disciplinary action by the police or dismissal. Its recommendations regarding disciplinary action are binding on the police. Its investigation reports are published through the Ombudsman website.^c The Ombudsman distils lessons learnt based on its investigations.

^a For more information visit: <http://www.indecom.gov.jm>

^b The report for 2014 can be found on the website of the Board: http://www.nipolicingboard.org.uk/human_rights_main_report.pdf

^c For more information, visit: <http://www.policeombudsman.org/Investigation-Reports>

Ad hoc independent commissions of inquiry

In addition to the permanent oversight structures, there are various ad hoc commissions established to look into a particular incident, issue (such as a new less-lethal weapon) or policing practice.

⁴⁰⁴ See INDECOM, 1st Quarterly Report for 2015.

MARIKANA COMMISSION^a

In 2012, employees of the Lonmin Mines in South Africa went on strike to protest against working conditions. The strike lasted for weeks during which there were a range of unsuccessful negotiations between company management and the mineworkers' unions. Consequently, the strike became more militant. During mid-August, the police were sent in to end the strike and restore a state of normalcy. In the following events, the police opened fire with automatic weapons, and approximately 44 people lost their lives, more than 70 persons were injured and approximately 250 people arrested.^b

The President established a Commission of Inquiry mandated to look into the actions of all stakeholders involved, including the mining company, the South African Police Service (SAPS), mineworkers' unions, the department of mineral resources and other governmental departments or agencies, and various individuals and groups. The South African Human Rights Commission jointly participated in the proceedings after receiving a complaint to investigate the events at Marikana to prevent duplicating the investigations.

The Marikana Commission assessed the tactical plan(s) as prepared by SAPS, described the events as they unfolded, addressed public statements made by SAPS leadership and the Minister, and attempts by the police to frustrate inquiries into the events. The report was released in 2015, and recommended referring various cases to the prosecutor for further investigation, establishing a panel with experts in public order policing, revising current standing orders, legislation and practice and in order to align them with good international practice, implementing training programmes accordingly. Further recommendations included demilitarizing and professionalizing SAPS; enhancing operational independence; acquiring certain police equipment; improving capabilities to provide first aid and enhancing accountability.

^a For more information, visit: <http://www.marikanacomm.org.za>

^b See Marikana Commission of Inquiry, Report on matters of public, national and international concern arising out of the tragic incidents at the Lonmin Mine in Marikana, in the North West Province, 2015.

Hybrid systems

Some countries have established hybrid systems, combining elements of internal and external mechanisms. For example, in Argentina, with the creation of the Metropolitan Police of the City of Buenos Aires in 2008, an External Police Audit Unit was established to investigate deaths and injuries as a result of use of force by the police. In Alberta, Canada, the Alberta Serious Incidents Response Team is independent, with joint composition of police officers and civilian staff, to investigate incidents and complaints involving death or serious injury and matters of a serious or sensitive nature.

CONSENT DECREES

In the United States, in an effort to hold local law enforcement agencies more accountable, the United States Justice Department entered into so-called "consent decrees" with around fifteen municipalities, including Pittsburgh, New Orleans, Seattle and Los Angeles. The aim of a consent decree is to ensure that the law enforcement agency takes specific reform measures in order to reduce incidents involving conduct by law enforcement officers that violates the rights of citizens, such as excessive force, false arrests and unreasonable searches and seizures.^a

^a Samuel Walker and Carol Ann Archbold, *The New World of Police Accountability*, Sage Publications, United States, 2014.

12.3. Oversight over detention facilities

The Body of Principles states that “places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.”⁴⁰⁵ Detainees should have the right to communicate freely and in full confidentiality with the persons visiting.

In addition, the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions state that the inspectors shall be “medical personnel or an equivalent independent authority” and be “empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.”⁴⁰⁶

For those who are remanded (and fall under the authority of the prison administration), the Nelson Mandela Rules (SMRs) provide more details. They require States to establish a twofold system for regular internal and external (that is, by a body independent of the administration of the custody facility) inspections of all detention facilities in order to ensure that facilities are “managed in accordance with existing laws, regulations, policies and procedures, with a view to bringing about the objectives of penal and corrections services, and that the rights of prisoners are protected.”⁴⁰⁷

The inspectors should have access to all information about numbers of detainees and their treatment, and should be able to interview anyone they want in private and full confidentiality. They should also be able to choose which facility to visit and do so unannounced. The outcome of inspections should be reported in writing, and authorities should indicate whether they will implement the recommendations from the external inspection. The detainee should have the opportunity to talk to the inspector or to any other inspecting officer without the presence of the director or other members of the staff.⁴⁰⁸

NATIONAL PREVENTION MECHANISMS

In 2006, the Optional Protocol to the United Nations Convention against Torture CAT (OPCAT) came into force. The purpose of the Optional Protocol is to “establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.” For this reason, parties to OPCAT commit to establish National Prevention Mechanisms (NPMs), i.e. independent bodies which shall be allowed to conduct visits to any place of detention, including unannounced visits, in order to strengthen the protection of persons deprived of their liberty against torture and other ill-treatment.³

Places of detention include all places where persons are or may be deprived of their liberty by public authorities, or with their consent or acquiescence, such as prisons, police stations, military facilities, immigration detentions centres, border stations and seaports, etc. In the case of police detention, from the moment of arrest to that of release or transfer, there is acknowledged risk of ill-treatment. Therefore, NPMs should not limit themselves to monitoring physical spaces but also collect

⁴⁰⁵ See Body of Principles, principle 29.

⁴⁰⁶ See Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, principle 7.

⁴⁰⁷ See Nelson Mandela Rules (SMRs), Rules 83-85.

⁴⁰⁸ See Nelson Mandela Rules (SMRs), Rule 56.

information on police conduct and procedures, including identity checks, apprehensions, transfers, searches and interrogations.^b At the time of writing this resource book a total of 62 States had established an NPM.^c

^a See OPCAT, articles 17-23.

^b See APT Monitoring Police Custody: a Practical Guide, 2013, p. 12.

^c For more information, visit: <http://www.apt.ch/en/opcat-database>.

In practice, most NPMs have the mandate to monitor police custody and have addressed risks of abuse in police custody. An example is provided by the NPM of Ukraine, Parliament Commissioner for Human Rights, which has reported a number of violations of the rights of persons held in police custody.⁴⁰⁹ Another example is provided by the United Kingdom NPM, Her Majesty's Inspectorate of Constabulary, assisted by Her Majesty's Inspectorate of Prisons, the Care Quality Commission and the Healthcare Inspectorate Wales, which conducted a series of unannounced inspections on police custody arrangements, considering the process of police custody since first contact to release or transfer to court or prison. It identified a number of issues, including the risk of discriminatory strip-searching practices towards people of African-Caribbean descent.⁴¹⁰

NPMs should have the power to regularly examine the treatment and the conditions of detainees and make recommendations with the aim of improving their treatment and preventing torture and other ill-treatment, and submitting proposals and observations concerning existing or draft legislation. For this reason, they should have access to all information concerning the number of persons deprived of their liberty in places of detention, the number of places and their location and to all information referring to the treatment of those persons as well as their conditions of detention. They should also have access to all places of detention and their installations and facilities, the opportunity to have private interviews with the persons deprived of their liberty without witnesses—either personally or with a translator if deemed necessary—and contact with any other person whom the NPM believes may supply relevant information and can choose preferred place of visit as well as the person for the interview.

Those who have provided information to the NPM, whether true or unsubstantiated, should be protected against any negative consequence of having done so. Confidential information collected by the NPM should be marked as classified. No personal data should be published without the express consent of the person concerned.

Recommendations made by the NPM should be examined by competent authorities, which shall “enter into a dialogue with it on possible implementation measures”. The NPM should release an annual report for publishing and circulation.

⁴⁰⁹ See Ukrainian Parliament Commissioner for Human Rights, *Monitoring of custodial settings in Ukraine: status of implementation of the national preventive mechanism*, 2014, pp. 33-50, at: http://www.ombudsman.gov.ua/en/images/stories/10102014/ukrainian_npm_annual%20report_2013.pdf.

⁴¹⁰ Her Majesty's Inspectorate of Constabulary (HMIC), *The welfare of vulnerable people in police custody*, March 2015.

12.4. Report findings

Based on the data received or collected and own reviews and investigations, the oversight body should analyse the detected trends and patterns, distil lessons learnt and make recommendations to adapt policies and procedures accordingly. It is good practice to make it compulsory for the law enforcement agency to publicly respond to the recommendations and explain which of them they choose to implement and why.

The independent body should make the outcomes of their investigations, reviews and inspections available to the public. This also enables civil society and other stakeholders to scrutinize whether the suggested changes are indeed considered and implemented.

CHAPTER KEY MESSAGES

- An independent mechanism to oversee human rights compliance by law enforcement bodies is a key prerequisite for effective law enforcement and can play a vital role in enhancing or restoring public confidence, if it acts with integrity, impartiality and professionalism.
- When setting up an independent external oversight body, it is important to ensure its complementarity with other accountability structures, and to ensure its independence. Criteria for independence include complete discretion in the exercise of functions or powers, statutory underpinning, reporting to parliament, independent funding, and a transparent process for the appointment of commissioners and staff.
- It is good practice to make it compulsory for the law enforcement agency to publicly respond to the recommendations of the independent body, and explain which of them they choose to implement and why. The independent body should make the outcomes of their investigations, reviews and inspections available to the public.

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