

USE OF FORCE

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

SHORT VERSION

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Introduction

*“The means may be likened to a seed, the end to a tree;
and there is just the same inviolable connection between the means and the end
as there is between the seed and the tree. We reap exactly as we sow.”*
(M.K. Gandhi, Hind Swaraj)

I Background of these guidelines

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Article 3: “Everyone has the right to life, liberty and security of person.”

International Covenant on Civil and Political Rights Article 6: “1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

Article 9: “1) Everyone has the right to liberty and security of person.”

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



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

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

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

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

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

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

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

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

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

II The purpose of these Guidelines

The legal and operational framework to be established must ensure that due regard is given to the rule of law and human rights in the exercise of the police power to use force and firearms. These Guidelines were developed on the basis of the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (named: “Basic Principles” hereafter). The Basic Principles were prepared by a range of experts from the area of law enforcement, including police officials, and were discussed in a series of preparatory meetings and consultations between 1987 and 1990 before finally being adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba (27 August to 7 September 1990). The General Assembly of the United Nations welcomed the Basic Principles in its resolution 45/121 of 14 December 1990.

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

PREAMBLE

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

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

[...] Whereas it is appropriate that, with due regard to their personal safety, consideration be given to the role of law enforcement officials in relation to the administration of justice, to the protection of the right to life, liberty and security of the person, to their responsibility to maintain public safety and social peace and to the importance of their qualifications, training and conduct. The basic principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by Governments within the framework of their national legislation and practice, [...].”

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

These Guidelines aim to provide a comprehensive overview of the considerations national authorities should take into account when establishing a framework in accordance with the Basic Principles – covering both the indispensable legal base to be established domestically and the broad range of operational instructions and practical measures to be taken by law enforcement agencies to ensure that daily law enforcement practice is carried out in a lawful, human rights compliant and professional manner.

III **This document**

This document is the short version of the “Guidelines for Implementation of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials” published by Amnesty International in 2015. The present document – in guise of a summary of the full publication – contains:

- the presentation of the international human rights principles governing the use of force and firearms;
- the actual “Guidelines”, i.e. a summary of legislative, institutional and practical measures to be taken by governments and law enforcement agencies in order to comply with the international human rights standards set out in the Basic Principles;
- after each “Guideline”, reference is made to the related information provided in the Explanatory Text of the full version of 2015 with more in-depth information with the considerations and reflections that culminated in the formulation of the “Guidelines”. The full publication with the Explanatory Text can be consulted at: www.amnesty.nl/sites/default/files/public/ainl_guidelines_use_of_force_0.pdf.

The Guidelines themselves are divided into two categories: those relating to the minimum content to be regulated in domestic legislation (Guidelines 1-3), and those relating to the operational framework to be established by the command leadership of a law enforcement agencies, to ensure that the day-to-day policing is done in full compliance with the Basic Principles (Guidelines 4-10).

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

IV **Scope of these Guidelines**

- The Basic Principles apply to all law enforcement personnel. This includes – in accordance with commentary b) on Article 1 of the UN Code of Conduct for Law Enforcements Officials – any security forces, including military forces,² who exercise police powers, especially the power of arrest and detention (including staff members working inside detention facilities). In countries where the state engages private security companies to carry out law enforcement functions, these Guidelines also cover private security personnel acting on behalf of the state.³
- The Basic Principles do not contain an explicit definition of what is considered force in the context of law enforcement. However, the following elements clearly indicate what is to be considered “force” in the sense of the Basic Principles: the Basic Principles require law enforcement officials to apply non-violent means prior to resorting to force whenever possible (Basic Principle No. 4). Particular emphasis is also put on “*alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation*” (Basic Principle No. 20). From this clearly follows that any means or methods that go beyond these alternatives – which are basically various forms of communication – have to be considered as the use of force and analysed in the light of the Basic Principles.



Accordingly, “force” is to be understood as any physical means deployed against a person in order to achieve a law enforcement purpose, in particular to obtain compliance with an order. In this regard, force is to be understood broadly, starting from simply touching a person to the (potentially and even intentionally lethal) use of firearms and also including the use of means of restraints.^{4/5}

- 2) On the challenges related to the deployment of military forces for law enforcement tasks [see Chapter 7.4.4 of the full publication].
- 3) However, the Basic Principles and thus the present Guidelines do not apply to the personnel of private security companies, who do not have law enforcement powers, unless they have – exceptionally and explicitly – received such powers from the competent authorities of the country they are working in. In particular, they do not apply to private security personnel working for private companies since they are not carrying out state functions.
- 4) The applicability of the Basic Principles on means of restraint is also indirectly confirmed by the reference to the Rules No. 33, 34 and 54 of the Standard Minimum Rules for the Treatment of Prisoners (SMR) in Basic Principle No. 17 – a reference that would have been unnecessary if instruments of restraint were not considered to be covered by the Basic Principles. (These rules are now – slightly reformulated – Rules No. 43, 47, 48 and 82 in the Mandela Rules (i.e. the revised SMR), E/CN.15/2015/L.6/Rev.1).
- 5) When assessing the situation in specific contexts, one should bear in mind linguistic differences: In some countries, there is no equivalent to the term “force” in the sense of the Basic Principles; instead two different terms are used: “coercion” and “violence”, the latter being understood >

This does not mean that the verbal warning to use force if a person does not comply with the order of a law enforcement official falls outside the scope of international or domestic human rights regulation. Even the threat or warning by a law enforcement official to use force can be very intimidating and can generate serious feelings of stress and fear. Therefore, it will have to conform to the legal framework, particularly to the rules governing the exercise of police powers, including obligations to report and control. Thus, there should be domestic regulations for the exercise of police powers in general and these should also cover verbal warnings to exercise such powers. However, such a verbal warning is considered to be one step below the actual use of physical force and will therefore not be held up to the Basic Principles (except in the case of firearms [see Guideline 7h]). [For further definition of terms used see the full report, p. 21].

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

- > as a type of force that may cause injury, the former considering mainly instruments of restraint (as long as they are not causing any sort of injury). However, with what was explained above, the term “force” as used in the Basic Principles applies to both notions equally and there is no need to attempt any delimitation between the two.

International human rights principles governing the use of force and firearms

Law enforcement officials face a large variety of situations in their daily work, each requiring a different response, based on the overall situation and circumstances, the threat assessment, skills, equipment, etc. Thus, there is little room for ready-made answers in law enforcement and there is an inherent necessity for personal discretion on the part of the law enforcement official in deciding on the appropriate response in a given situation.⁶ However, it goes without saying that there needs to be a clear legal framework governing the work of law enforcement officials within which such discretion can be exercised – in particular when it comes to the use of force.

The use of force must only be resorted to with the utmost respect for the law and with due consideration for the serious impact it can have on a range of human rights: the right to life, to physical and mental integrity, to human dignity, to privacy, and to freedom of movement – to name just the ones most frequently affected. The general principles that must govern any use of force have been set out very clearly by the UN Special Rapporteur on extrajudicial executions,⁷ and can be summarized as set out below.

I **Legality (legal basis)**

BASIC PRINCIPLE 1

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

The police power to use force needs to be sufficiently based in domestic legislation.⁸ Particularly the use of force needs to serve a legitimate objective as established by law (i.e. the principle of legality in the strict sense; not to be understood in the sense of the overall qualification of an action as (il)legal or (un)lawful). In fact, a precon-

6) It is important to emphasize that the personal discretion of individual officers when carrying out law enforcement duties does not exempt the command leadership from ensuring and exercising proper command and control [see below Guidelines 3d) and 10].

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

8) Ibid. §§ 56-58.

dition for an act to be evaluated in the light of the Basic Principles is that force is used for a lawful law enforcement purpose. When the use of force is not aimed at achieving a legitimate objective as established in domestic legislation (e.g. punishment, use of physical means to obtain a confession), it is unlawful per se and does not fall within the scope of these Guidelines.

Obviously, the domestic legislation itself must be in line with international human rights law and standards. An important aspect in this regard is a state's duty not to discriminate. Domestic legislation must affirm that the use of law enforcement powers – including the use of force and firearms – must be carried out without any discriminatory bias, e.g. on the grounds of race, ethnicity, religion, gender identity or political affiliation. The legislation itself must also be formulated in such a way that it does not de facto negatively affect a specific group of people more than the rest of the population.⁹

II Necessity

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

BASIC PRINCIPLE 4

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

The principle of necessity has three components:¹⁰

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

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

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

III Proportionality

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

BASIC PRINCIPLE 5

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

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

To put it briefly, the principle of proportionality means that law enforcement officials are only allowed to put life at risk if it is for the purpose of saving/protecting another life.¹¹

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

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

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

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

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



It should be noted that terminology across legislative systems and operational frameworks varies a lot. In particular, the terms necessity and proportionality are often used in a different way compared to how they are presented here. Sometimes, the term “proportionality” is used to evaluate whether the amount of force used was justified (‘proportionate to the resistance met’, i.e. what is presented here under quantitative necessity). The term “necessity” as it is used in some contexts includes a balancing element (which corresponds to the principle of proportionality as it is presented here), in particular when there is a requirement of “absolute necessity”. In some legal systems the term “proportionality” has a broader meaning, covering all elements of necessity as well as the balancing element of proportionality as it is presented here. One can certainly not claim that one terminology is more appropriate than the other.

However, it is crucial that – irrespective of the terms used – all elements as presented here are covered in the legislative and operational framework in one way or the other: the question whether force is necessary at all (qualitative element), whether the objective can be achieved with a lower degree of force (quantitative element), whether the force was still needed to achieve the objective at the moment of its use (temporal element) and whether in absolute terms the “costs” in terms of harm caused by the use of force outweigh (or not) the legitimate objective (balancing element). For the purpose of these Guidelines, the definitions as provided for by the Special Rapporteur on extrajudicial executions will be used.

IV **Accountability**

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

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

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

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

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

V **Conclusion**

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

READ MORE?

- See the full Report 'Use of Force'
https://www.amnesty.nl/sites/default/files/public/ainl_guidelines_use_of_force_0.pdf



GUIDELINES FOR THE LEGISLATOR: THE REGULATION OF THE POWER TO USE FORCE AND FIREARMS IN DOMESTIC LEGISLATION

GUIDELINE 1

How to regulate the police power to use force in law

GUIDELINE 2

What the law must say about the use of lethal force

GUIDELINE 3

**How the law must ensure police accountability
in relation to the use of force and firearms**

Requirements of the Domestic Legal Framework

The Guidelines 1-3 cover the minimum aspects governing the use of force and firearms that must be regulated in domestic legislation:

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

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

Although it is not possible to deal with the great variety of challenges that law enforcement officials may face in their daily work in all details, domestic legislation must nevertheless provide a solid ground on which a law enforcement official must base his or her actions and ensure that they comply with the applicable international human rights law and standards. The Special Rapporteur on extrajudicial executions has already provided a detailed analysis of how domestic legislation should fulfil these requirements as well as the many shortcomings found in a large number of countries in this regard.¹² Within the framework of these Guidelines it suffices thus to highlight the minimum aspects that should be regulated by law in accordance with international human rights law..

Of course, even when domestic legislation is in line with international human rights standards, problems can arise due to the lack of respect for the legislation in practice and the failure to enforce these laws by the competent authorities. Nevertheless, human rights compliant domestic legislation is an indispensable precondition for human rights compliant law enforcement and the examples presented in this section are meant to point out important possible considerations and options that government authorities may take into account in this regard.

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

GUIDELINE 1

How to regulate the police power to use force in law

The power of the police to resort to the use of force and firearms must be regulated by law.

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

READ MORE IN THE FULL REPORT ABOUT:

- Legality – a key element to ensure accountability P. 46
- Prevention of excessive (use of) police powers P. 47
- The end does not justify all means P. 49

GUIDELINE 2

What the law must say about the use of lethal force.

The “protect-life”-principle must be enshrined in law, i.e. any force that involves a high likelihood of lethal consequences, in particular use of firearms, may only be used for protecting against a threat of death or serious injury.

- a) The use of firearms – i.e. of a weapon that is designed to kill – must be regulated by specific provisions of the law, establishing a distinctly higher threshold for the use of firearms than for other forms of use of force.
- b) Any use of a firearm against a person must be considered to be potentially lethal; therefore the law may only authorize the use of firearms when there is a serious threat of death or of serious injury.
- c) The mere fact a person flees from arrest or escapes from custody does not justify the use of a firearm, unless this person presents an ongoing grave threat to the life of another person that can be realized at any time.
- d) Despite the fact that a firearm is designed to kill, law enforcement officials must take all precautionary measures to prevent the loss of life when resorting to the use of firearms.
- e) The use of a firearm in such a way that does not give a person any chance of survival – i.e. the intentional lethal use of the firearm – may only be authorized in the most extreme situation of a threat to life, in which the death of the person is the only way to prevent the loss of an imminently threatened life of another person; in any case, the death of the person must always be only a means to an end (preventing the loss of another life) and must never be a goal in itself.
- f) Any (other) type of force that carries the likelihood or high risk of causing death must be subject to the same strict application of the principle of proportionality and therefore only be allowed for the purpose of preventing death or serious injury.

- g) The protection of third persons must be given absolute priority. In particular, no law enforcement operation may be planned or conducted in such a way that from the outset accepts the killing or causing serious injury to third persons by the intervening law enforcement officials.
- h) As a rule, law enforcement officials must be obliged to issue a warning before resorting to the use of a firearm – situations in which such a warning is not required must remain the exception, must be clearly defined as such and need to be assessed individually in each situation.

READ MORE IN THE FULL REPORT ABOUT:

- What is lethal force? P. 53
- What is a firearm? P. 54
- When to use a firearm? P. 54
- Shoot to kill? P. 59
- “Collateral damage” P. 61
- Warning P. 62

GUIDELINE 3

How the law must ensure police accountability in relation to the use of force and firearms

Domestic legislation must ensure full and transparent accountability of law enforcement officials for the use of force and firearms.

- a) Law enforcement officials must not be exempted from criminal liability for unlawful acts committed in the course of duty.
- b) Law enforcement officials must be entitled to refuse orders that are clearly unlawful and must be held responsible for knowingly executing unlawful orders. Such orders may not serve as an acceptable defence.
- c) Criminal investigations must seek to evaluate the responsibility under criminal law of the acting law enforcement officials for any unlawful behaviour, the responsibility of colleagues who witnessed an unlawful act but did not take steps to prevent it, and the responsibility of commanding and superior officers who may have given an unlawful order or have failed to prevent the unlawful use of force.
- d) Commanding and superior officers must be held accountable not only for unlawful orders they have given, but also for failings and other omissions in their superior and command responsibility which resulted in death or serious injury. In particular, they should be held liable when they knew or ought to have known that the law enforcement officials under their control and command committed unlawful acts and when they have failed to prevent them from doing so. They should also incur liability when they have failed to undertake measures of bringing those law enforcement officials before competent authorities for investigation.
- e) Safeguards must be established to ensure that criminal investigations are carried out in an effective, prompt, impartial and independent manner. In particular, the investigation must be carried out by a department or unit that has no link with the one of the law enforcement official under investigation. Clear rules must be established for the supervision of the investigation and proper evidence gathering.

- f) Disciplinary investigations may be required in cases where the conduct did not amount to a criminal offence, and also to determine additional disciplinary measures in case of a criminal offence. However, they should never preclude or replace criminal proceedings.
- g) Criminal and disciplinary penalties for use of force in breach of the law or of internal regulations must be commensurate with the committed offence or fault.
- h) An independent, impartial external oversight body should be mandated to investigate at least the most serious incidents in which force was used (i.e. which resulted in death or serious injury) and this irrespective of whether a criminal investigation has started or not. This body should have the mandate not only to carry out its own investigation, but also (e.g. in view of the correct gathering of evidence) to oversee the proper conduct of disciplinary investigations and to monitor the conduct of criminal investigations and the prosecutorial process. It should also intervene in case of undue delays.
- i) Adequate supervision, control and reporting measures need to be taken to enable effective investigations compliant with human rights standards. This requires the obligation to report to all relevant levels of supervision and oversight depending on the seriousness of the incident: to the superior, to the authorities competent to decide whether a criminal investigation needs to be opened, and/or to the independent oversight body.
- j) In all situations in which they interact with the public, law enforcement officials must be identifiable through name or number tags. Body-worn cameras can have serious human rights repercussions (e.g. privacy, dignity), but may also in certain circumstances serve to discourage unlawful use of force, including lethal force – provided their use is embedded in a functioning system of accountability. Any decision to introduce body-worn cameras must be taken by carefully balancing the relevant human rights issues in each specific context.
- k) The accountability system must give due attention to the rights and needs of victims of the use of force. These include: the right to medical assistance, to file a complaint, to be informed of the progress of the investigation, to name and interrogate witnesses, to receive legal and psychological support, to be informed of the outcome of the investigation, to protection of privacy, to protection against threats and intimidation, and the right to full reparation, including compensation, rehabilitation, restitution, satisfaction and guarantees of non-repetition, if the use of force was found to be unlawful.

READ MORE IN THE FULL REPORT ABOUT:

- Cornerstones of a comprehensive system of accountability P. 65
- Elements of criminal liability P. 66
- Duty and possibility to refuse the execution of an unlawful order P. 68
- Superior officers: duty to know and duty to act P. 69
- Who should investigate the police and how? The police? P. 71
- Effective accountability: not just a slap on the fingers P. 74
- Uphold professionalism within the police P. 75
- How to watch the police effectively P. 76
- Reporting and control: more than a bureaucratic exercise P. 79
- Silent witnesses: Body worn cameras P. 81
- Not just objects: Victims have rights P. 82

Concluding remarks on the Legal Framework

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

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

The more concrete operational and practical aspects of the use of force have to be addressed in internal regulations, standard orders or procedures, or manuals, and will be discussed in the next section.

GUIDELINES FOR LAW ENFORCEMENT AUTHORITIES: ESTABLISHING AN OPERATIONAL FRAMEWORK FOR THE USE OF FORCE AND FIREARMS

GUIDELINE 4

Operational instructions on the use of force in general:
when (not) and how to use force

GUIDELINE 5

Operational instructions on the use of firearms:
when (not) and how to use firearms

GUIDELINE 6

Development, testing, selection and evaluation of
less lethal weapons

GUIDELINE 7

When and how to use force in public assemblies,
incl. equipment and tactical options

GUIDELINE 8

When and how to use force in detention, incl. means of restraint
and addressing large scale violent disorder

GUIDELINE 9

Human resources management: How to ensure to have the right
and appropriately skilled law enforcement personnel

GUIDELINE 10

Command responsibility: chain of command, supervision,
control, reporting

Requirements of the Operational Framework

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

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

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

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

It is important to note that this task would also be incumbent on military armed forces [see Introduction IV]. should they be tasked with law enforcement duties (when this is lawful under domestic legislation). It is obvious that this cannot be achieved in a short period of time and involves a considerable risk of human rights violations committed by the military, if it is not done properly. Therefore, authorities should carefully consider whether they are able to effectively implement all necessary measures to prevent such violations [see also Guideline 7k].

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

GUIDELINE 4

Operational instructions on the use of force in general: when (not) and how to use force.

The command leadership of law enforcement agencies must create an operational framework that contains instructions for various kinds of situations that law enforcement officials may face during their work, including decision making criteria and the conditions for the use of force.

- a) The operational framework must not provide ready-made answers for specific type of situations. On the contrary, it must instruct the acting law enforcement officials to assess each individual situation on its own merits and thus allow for a certain personal discretion when deciding whether or not to resort to the use of force. However, the operational framework should present the possible options of response in a given situation, define the criteria that should guide the decision making process and the precautions to be taken, and set clear boundaries as to what is and what is not allowed (prohibitions).
- b) The operational concept on the use of force should be guided by the overarching principle that law enforcement officials should seek to avoid the need to resort to the use of force, and require them to proactively seek to resolve any situation through other means than the use of force, such as the means of persuasion, negotiation, and de-escalation. In particular, law enforcement officials must be required to issue – as far as possible – a warning before any use of force.
- c) The element of precaution must be given the utmost attention in both planned operations and suddenly occurring situations. This includes:
 - obtaining and analysing relevant information in advance as much as possible;
 - anticipating various scenarios, and making an assessment of the threats and risks in the given situation;
 - ensuring the availability of a range of tactical options, including: protective equipment and means of communication, equipment and weapons allowing for a differentiated response, as well as sufficient resources and backup;

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- deciding on the appropriate time and place for any law enforcement action with a view to minimizing risks and harm for the public as well as the law enforcement officials involved;
- ensuring the protection of persons or groups at risk;
- providing for the protection and/or evacuation of third persons;
- ensuring the availability of medical assistance

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

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

READ MORE IN THE FULL REPORT ABOUT:

- Good instructions on the use of force, not a straitjacket for police discretion P. 91
- Talk, talk, talk: De-escalation, negotiation, persuasion P. 93
- Plan and prepare, don't rush P. 95
- Police officer's tool box P. 97
- Time and place - allies or enemies? P. 98
- Duty to protect P. 100
- Duty to assist P. 101
- The use-of-force continuum – useful or useless? P. 102
- Proportionality – the end does not justify all means; tactical retreat P. 105

GUIDELINE 5

Operational instructions on the use of firearms: when (not) and how to use firearms.

Law enforcement agencies must provide an operational framework that provides clear instructions on when and how to use a firearm.¹³

- a) The operational framework must reiterate the “protect-life”-principle and order law enforcement officials to seek to avoid the use of a firearm unless strictly necessary. It should give instructions for a range of situations that law enforcement officials may face and how to respond to them:
- Even in case of a potentially lethal attack, consideration must be given to a response with less lethal force, if that is likely to be effective and does not increase the risk for the law enforcement official or any third person.
 - The mere fact of a person fleeing from arrest or escaping from custody does not justify the use of a firearm, unless this person presents an ongoing grave threat to the life of another person that can be realized at any time.
 - The “protect-life”-principle requires that in case of doubt, law enforcement officials should not make use of their firearm.
- b) The instructions should include the precise wording of the warning to be made before resorting to the use of a firearm, which should be a constant part of the firearms training so that it becomes ingrained and law enforcement officials can automatically repeat it in the stressful situations in which they may have to use a firearm. Firing warning shots is inherently risky and should either be prohibited or only considered as an exceptional means of warning with due precautions to be taken for the safety of others.

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13) A firearm being a weapon that is designed to kill.

- c) A distinction must be made between the potentially lethal use of a firearm and the intentional lethal use of a firearm. Intentional lethal use of a firearm is allowed only when a potentially lethal attack is already underway in such a manner that the death of the attacking person is the only possible means to save someone else's endangered life, which can include the life of the law enforcement official. For all other situations, instructions should be given on how to shoot and which part of the body to aim at depending on the situation faced and with a view to minimizing the risk to the life of the targeted person as much as possible.
- d) Operational instructions must make sure that priority is given to the protection of the lives of third persons. Operational procedures must impose particularly stringent conditions on the use of firearms in situations with uncontrollable risks for third persons (crowded public spaces, confrontation with heavily armed persons in densely populated areas, certain types of hot pursuits). Furthermore, no law enforcement operation may be planned in such a way that, from the outset, accepts the possibility of killing or causing serious injury to third persons by a law enforcement official in the course of action.
- e) The decision on the type of weapons and ammunition to be used by law enforcement officials must be based on an assessment of the operational policing needs:
- In view of their inaccuracy and the impossibility to be able to account for each and every shot, automatic weapons are not suitable for normal law enforcement situations. They may only be used in exceptional situations of extreme danger where multiple exchange of fire might occur and therefore may only be distributed in anticipation of such situations. In any case they should have a "single-shot"-mode with this being the standard and first mode to which they are switched.
 - In view of their inability to carry out the thorough assessment to be made on the spot of whether lethal force may be used or not, there is no room for Lethal Autonomous Weapons/Robotic Systems in law enforcement.
 - Any weapons and ammunition used must have been thoroughly tested by the law enforcement agency with regard to their accuracy, their effectiveness to achieve the law enforcement objective, the risk of being discharged involuntarily, the type of injuries they may cause, and the risks to third persons in case of ricochet or if they might pass through the body of the targeted individual. Their use must be constantly monitored and the decision to use them must be revised in view of their effectiveness and/or the emergence of unexpected/excessive risks. These considerations also apply to any other device that is designed to kill (e.g. guided armed drones or explosive devices), and their use in law enforcement can therefore only be considered in very rare and absolutely extreme situations.

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

- f) A law enforcement agency must take a carefully balanced decision about the situations in which law enforcement officials may carry a firearm. They should not carry a firearm inside places of detention. In the context of assemblies or other public order events, their presence may involve a number of additional risks (being perceived as a threat and contributing to creating/increasing tensions; a high risk in such crowded places of hitting others than the targeted person; creating panic and/or aggression etc.). In countries where law enforcement officials are usually armed, law enforcement agencies should therefore carefully assess whether in the particular circumstances it might be better that those in direct contact with participants of the event do not carry their weapon.
- g) The permission to carry a firearm must depend on a thorough authorization and certification process: this process must be based on realistic – scenario-based – training that allows assessing the physical and mental capabilities of the individual law enforcement official as well as the indispensable skills of de-escalation, negotiation, a variety of use-of-force-techniques and proficiency in handling the specific weapon assigned to the individual law enforcement official. This process must be repeated at regular intervals through refresher courses and retests that law enforcement officials have to pass to keep their certification.
- h) Law enforcement officials should only be issued with individually registered and forensically traceable weapons which are personally assigned to them, as well as a recorded amount of ammunition. Clear rules should govern how weapons should be stored when the law enforcement official is not on duty.
- i) Any drawing of a firearm as a means of warning and any pointing of a firearm against a person must be reported and evaluated by the competent superior irrespective of whether the firearm has been discharged or has caused any death or injury. When a firearm has been discharged an obligatory and thorough reporting process to the authorities must follow. Reporting must be comprehensive and allow for a full assessment of the justification of the use of the firearm in light of the "protect-life"-principle and of all actions that were taken or considered before the use of the firearm, such as de-escalation, differentiated response, warnings and other procedures, protection of third persons etc. The report must then be evaluated to determine the appropriate actions to be taken as a result of the incident.

READ MORE IN THE FULL REPORT ABOUT:

- What is a firearm P. 110
- The first duty of police: protect life P. 111
- How to give a warning? About the risks associated with warning shots P. 113
- How to shoot / shooting at the legs? P. 115
- Protecting others / shooting at check points P. 118
- Automatic weapons / Lethal autonomous weapon systems / full-metal and semi-jacketed bullets P. 120
- Firearms in detention / firearms in public assemblies P. 123
- Training: much more than shooting drills P. 124
- Every bullet must be accounted for P. 126

GUIDELINE 6

Development, testing, selection and evaluation of less lethal weapons.

Law enforcement agencies should have a range of less lethal equipment at their disposal that allows for a differentiated use of force in full respect of the principles of necessity and proportionality, and ensures that harm and injury are kept to the minimum.

- a) New law enforcement equipment should be developed and introduced based on clearly defined operational needs and technical requirements (and not just because of its availability on the market), with a view to reducing the amount of force used and the level of harm and injury caused.
- b) Any equipment must be subjected to thorough testing as to whether it meets the required operational needs, technical requirements in terms of accuracy and precision, reliability, life span, and the degree of possible harm and suffering it may cause as well as possible unwarranted/unintended effects. Testing should be carried out by an independent body.
- c) Each device should be subjected to an independent assessment as to its compliance with international human rights law and standards, in particular in meeting the requirements of the principle of proportionality, the prevention of risks for third persons and the prevention of misuse or abuse in practice.
- d) Any equipment should be excluded which:
 - is found to be inaccurate enough to carry a great risk of causing significant injury including to persons other than the targeted person (e.g. pellet firing shot guns, certain kinetic impact projectiles such as rubber balls);
 - causes harm which is disproportionate to the objective (e.g. carries a high risk of causing death, despite being considered to be less lethal, such as rubber coated metal bullets);
 - aims to achieve an objective that is equally achievable with a less harmful device (e.g. thumb-cuffs vs. ordinary handcuffs, spiked batons vs. ordinary batons);

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- is highly abusive (electric shock devices that do not have a cut-off point, electric stun guns that act as a direct contact weapon) or the use of which would violate the prohibition on torture and other cruel, inhuman or degrading treatment (e.g. body-worn electric shock belts).

- e) Given the potentially grave consequences of fully autonomous weapons systems (AWS) and their inability to replace indispensable human judgement in the decision to use force, the development, production, and use of such technology – even if only equipped with less lethal weapons – should be pre-emptively banned.
- f) Each device should be accompanied by clear instructions as to the situations in which, and how, it should be used, explaining the effects and risks of the device and the necessary precautions to be taken, as well as warnings on the circumstances or situations in which the device may not be used. Law enforcement officials must have received adequate training and certification on the device as a precondition for being allowed to use the device.
- g) Any new device should undergo and be subject to a legally constituted and publicly available piloting process that allows confirmation of whether the device meets the operational needs and technical requirements, the adequacy of instructions and training, as well as of the absence of any unexpected unwarranted risks.
- h) The use of any device must be subject to thorough and rigorous reporting, supervision and control mechanisms with a view to continually evaluating the device with regard to its effectiveness and effects, including unwarranted ones.

READ MORE IN THE FULL REPORT ABOUT:

- Nothing is non-lethal P. 133
- Operational needs must determine equipment, not availability on the market P. 134
- Testing of weapons must seek to minimize damage P. 135
- Kinetic impact projectiles P. 135
- Thumb cuffs / spiked batons P. 137
- Weapons' compliance with human rights P. 138
- Taser and other electric shock devices / rubber coated metal bullets / indiscriminate weapons (tear gas, water cannon) P. 138
- Autonomous weapons system P. 139
- How to use less lethal weapons P. 140
- Training on less lethal weapons P. 142
- Do your less lethal weapons work how they are supposed to do? P. 144

GUIDELINE 7

When and how to use force in public assemblies, incl. equipment and tactical options

The overall approach to policing of assemblies should be guided by the concept of facilitation of the assembly and should not from the outset be shaped by the anticipation of violence and use of force.

- a) The policing of assemblies should always seek to prevent the need to resort to force. As a rule, there is no room for the use of force in assemblies, except when dealing with individuals committing offences or seeking to prevent the assembly from taking place.
- b) Even if an assembly is considered unlawful under domestic law, police should not resort to the use of force just because of the fact of its unlawfulness. Only when there are other compelling reasons – e.g. regarding public safety and security or the prevention of crime – should police consider resorting to the use of force.
- c) When using force in response to violence, law enforcement officials must distinguish between the individuals who are engaged in violence and those who are not (e.g. peaceful demonstrators or bystanders) and carefully aim such force only at those engaged in violence. The violence of a few individuals must not lead to a response which treats the entire assembly as violent.
- d) Due consideration must also be given to the protection and well-being of the law enforcement officials deployed (availability of protective equipment, prevention of excessive length of duty, possibility for rest breaks, food, water etc.).
- e) In the decision whether or not to resort to the use of force, law enforcement agencies must carefully consider the risks of contributing to further escalation of an already tense situation.

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- g) The containment of groups of protestors by a police cordon to prevent them from leaving a certain area is a highly problematic tactic which carries a number of risks for those being contained and for the proper policing of the assembly. If at all, this tactic should only be used to contain the violence of a smaller group and to allow the peaceful protestors to proceed with the assembly. It should never be used as a preventive measure based on prior intelligence that some people might engage in violence. It may only be used for the shortest time possible. Persons in need of assistance, those who are not part of the assembly, and participants who are not involved in violence must be allowed to leave. The containment may not be used for the purpose of preventing people from peacefully participating in an assembly, even if the assembly is considered unlawful.
- h) Kinetic impact projectiles must not be fired randomly at the crowd but must be aimed exclusively at persons who are engaged in violence against persons, and only when other means have failed to stop the violence. They should be aimed at the lower part of the body so as to minimize the risk of serious injury. They should never be fired in skip fire (re-bouncing off the ground).
- i) Devices that have indiscriminate effects and a high potential of harm, such as tear gas or water cannon, may only be used in situations of more generalized violence for the purpose of dispersing a crowd, and only when all other means have failed to contain the violence. They may only be used when people have the opportunity to disperse and not when they are in a confined space or where roads or other routes of escape are blocked. People must be warned that these means will be used and they must be allowed to disperse. Cartridges with chemical irritants may never be fired directly at a person.
- j) Firearms must never be used as a tactical tool for the management of public assemblies: they may only be used for the purpose of saving another life in line with Basic Principle No.9. If firearms are discharged during public assemblies, there are additional risks, such as injuring or killing peaceful participants or bystanders or causing further escalation of the violence with even more casualties. These risks need to be taken into account and require particular consideration in the decision making process.

- k) Any public assembly during which police resorted to the use of force, in which there was violence or in which injury or loss of life occurred, must be subjected to a thorough investigation with a view to establishing responsibilities and accountability of the officers involved, and must be followed by a proper lessons learned process to improve the policing of future events.
- l) When military armed forces are tasked with the handling of public assemblies, they must be fully acquainted and able to comply with all the Guidelines and principles on the use of force mentioned above. This requires a complete shift in the operational approach, from a “fight-the-enemy” approach to a law enforcement approach. To achieve this, clear instructions must be given, appropriate law enforcement equipment must be available, and soldiers must be fully trained in operational public order management. When authorities are not in a position to ascertain the capability of the military to carry out such a law enforcement operation in compliance with international human rights rules and standards, they should not deploy military armed forces in public order situations.
- m) Full accountability must be ensured for any use of force during public assemblies, in particular when firearms were used or death or injury occurred. In particular the various levels of the command structure in charge during the assembly must be held accountable.

READ MORE IN THE FULL REPORT ABOUT:

- Preventing problems before they occur P. 150
- Disrespect of administrative rules does not justify the use of force P. 152
- Differentiation between violent and non-violent persons P. 153
- Care for police officers P. 154
- De-escalation, not escalation P. 154
- Containment P. 155
- Kinetic impact projectiles P. 157
- Chemical irritants P. 157
- Water cannon P. 158
- Firearms and reporting P. 159
- Military forces in public assemblies P. 160
- Lessons learned P. 161

GUIDELINE 8

When and how to use force in detention, incl. means of restraint and addressing large scale violent disorder.

The fact that a person is deprived of freedom does not give authorities any greater power to resort to the use of force: the use of force and firearms in detention facilities is subject to exactly the same rules, particularly the principles of necessity and proportionality, which apply in any other law enforcement context.

- a) The use of force, including the use of means of restraint, may never be employed as a means of punishment.
- b) Staff members need to have the personal competence and professional skills to reduce tensions that are likely to arise easily in the confined environment of detention facilities, rather than to resort too easily to the use of force. They also should be specifically trained to control aggressive or violent detainees.
- c) Means of restraint should not be used as a routine measure, but only if the concrete situation so requires and not for any longer than necessary. They may only be used in a way that does not cause injury. Prolonged use of means of restraint must be avoided. Means of restraint that are intrinsically abusive and degrading, or cause serious pain and injury, such as thumb-cuffs and body-worn electric shock belts, should be prohibited.
- d) Firearms may only be used in circumstances involving a threat to life as described in Basic Principle No. 9. Carrying firearms in the confined space of a detention facility carries additional risks and, as a rule, staff members working inside such facilities who are in direct contact with detained persons should not be equipped with firearms.

- e) Situations of large-scale violent disorder in detention facilities must be guided by the same overall considerations as violent public order incidents. De-escalation must be the preferred mode of action, a distinction must be made between those inmates who are engaged in violence and those who are not, interventions must seek to minimize damage and injury, and firearms may only be used to protect against a threat to life or of serious injury.

READ MORE IN THE FULL REPORT ABOUT:

- Deprived of freedom, but not deprived of rights P. 165
- Escalation and de-escalation of tension in prisons P. 165
- When to handcuff P. 167
- Firearms in detention P. 160
- Riots P. 170

GUIDELINE 9

Human resources management: how to ensure to have the right and appropriately skilled law enforcement personnel.

Law enforcement agencies must ensure that their personnel are able to meet the high professional standards established in the Basic Principles.

- a) The selection criteria for law enforcement officials should go beyond purely formal criteria (criminal record, level of education) and testing physical fitness. The criteria must also ascertain the moral integrity of the candidate and his or her psychological stability and ability to react appropriately to the highly stressful situations that law enforcement officials may face in their daily practice.
- b) Training of law enforcement officials should be based on realistic scenarios, acquainting them with the wide range of situations and challenges they may encounter in their daily practice. Training should be conducted in such a way that law enforcement officials acquire:
- the physical capability to use equipment and weapons, in terms of fitness and weapon skills;
 - the necessary professional skills in terms of communication, risk assessment and decision making;
 - the mental and psychological strength needed to respond appropriately to the challenging, stressful and often dangerous situations in which they may have to decide whether or not to resort to the use of force.

All law enforcement officials should undergo first aid training at least at the basic level.

- c) It should be acknowledged that situations in which law enforcement officials decide to use force and firearms (or not), may be highly stressful or even traumatizing and have a great impact on their mental well-being and health. Supervision, coaching and counselling mechanisms need to be in place to address such situations. Superior officers bear the responsibility for close supervision and for taking appropriate measures when their subordinates have experienced problematic situations (personal coaching, ordinary or medical leave, psychological evaluation and support etc.) – in particular when they were in a life threatening situation, had to resort to firearms, or were otherwise involved in situations in which serious injury or death occurred.

READ MORE IN THE FULL REPORT ABOUT:

- Who should be a police officer P. 172
- Empty hand techniques P. 174
- Learn how to talk P. 175
- Scenario based training P. 177
- Care for officers P. 178

GUIDELINE 10

Command responsibility: Chain of Command, supervision, Control, reporting.

The command leadership and all other senior officers or supervisors must be held accountable for ensuring that the agency and its members fulfil their law enforcement duties and responsibilities in compliance with the law, including human rights law, and in an effective and professional manner.

- a) There must be a functioning and transparent system of command responsibility and command accountability and a pre-established chain of command with clearly assigned responsibilities. All decisions taken should be traceable and those who have taken them must be held accountable for them.
- b) A pre-established supervision and reporting system within the law enforcement agency must allow for the assessment of the compliance of law enforcement officials with the law and internal regulations, as well as of their professional skills, competency and effectiveness. Superiors are responsible for correctly and appropriately supervising their subordinates.
- c) Internal supervision and investigation should serve to assess the need for corrective measures (revision of procedures, equipment, training), the situation of the acting law enforcement officials (need for coaching, training, psychological support etc.), any failures in command responsibility and the need for disciplinary actions in case of any use of force that was in disrespect of the operational framework.
- d) A detailed reporting system that allows for the evaluation of the lawfulness and appropriateness of the use of force needs to be in place, and should include reports by colleagues who may have witnessed the use of force. Obligatory reporting should be established not only for situations in which a firearm was discharged or in which death or serious injury occurred, but for all situations in which law enforcement officials have resorted to the use of force. Law enforcement officials who report on unlawful use of force by colleagues or on an unlawful order by their superiors must be protected against any retribution or other negative consequences.

READ MORE IN THE FULL REPORT ABOUT:

- The role of commanders P. 180
- Not to know is not an excuse P. 182
- Whistle blowing P. 185

Concluding remarks on the Operational Framework

It is a considerable task for the command leadership of a law enforcement agency to develop a comprehensive operational framework regarding the use of force and firearms in order to ensure the full implementation of the Basic Principles.

This task is not an easy one. It needs time, the devotion of adequate resources, and the willingness and determination of the leadership to ensure that the use of force and firearms by the law enforcement officials under their command is governed by respect for international human rights law in general, and the Basic Principles in particular. This task is an ongoing one: operational procedures and instructions, decisions on equipment, training, the hierarchical set up, supervision and control mechanisms – all this needs to be constantly reviewed in the light of lessons learned and new challenges that might emerge.

Furthermore, as already stressed several times, one should not look for ready-made answers. Any measures taken must take the specific situation of the country into account, and the illustrative country examples presented here serve only to stimulate the necessary reflection.

And finally, whatever the operational framework looks like, it is not worth the effort if the command leadership of the law enforcement agency fails to enforce its respect. Any disrespect for the law, regulations or procedures must be followed by appropriate corrective measures – be they penalties, training, mentoring, coaching or other. Only this will ensure that law enforcement officials will only resort to the use of force and firearms in a law abiding, human rights compliant and professional manner.

Amnesty International recommends

To the United Nations:

- To promote the Basic Principles as reflecting international human rights law.
- To strengthen and re-affirm the “protect-life”-principle in all law enforcement scenarios, including in counter-terrorism.
- To give due respect to the Basic Principles and to implement them in line with the present Guidelines in all operations involving UN law enforcement contingents.
- As an essential and urgent measure, to correct the obvious mistakes in the official Spanish translation of the Basic Principles No.5 and 9, in accordance with the English text.

To the OSCE and other international bodies and institutions as well as human rights NGOs and activists who carry out monitoring work relating to law enforcement issues:

- To evaluate the observed behaviour of law enforcement officials in light of the Basic Principles and the present Guidelines and recommend corrective measures where necessary.

To government authorities:

- To fully implement the Basic Principles in line with the present Guidelines.
In particular
 - to ensure that domestic legislation governing the use of force and firearms is in compliance with the international human rights law and standards as established in the Basic Principles and presented in these Guidelines;
 - to ban the use in law enforcement of equipment which has no practical use other than for the purpose of inflicting torture or other cruel, inhuman or degrading treatment or punishment (e.g. spiked batons);
 - to ban the use in law enforcement of equipment that cannot achieve a legitimate law enforcement objective (e.g. rubber coated metal bullets); or presents an unwar-anted risk (e.g. rubber balls);
 - to establish strict regulations to cover all aspects of law enforcement equipment, including its selection, testing and use, to ensure that this equipment is always deployed proportionately, lawfully and to the minimum extent necessary.

To law enforcement authorities:

- To fully implement the Basic Principles in line with the present Guidelines.
In particular
 - to make use of the present Guidelines in order to establish a comprehensive operational framework for the use of force and firearms in which the Basic Principles are duly implemented in all relevant areas: operational procedures and instructions, equipment, training (in particular professional skills development), as well as command and control;
 - to give particular attention to the responsibility of commanders for ensuring the Basic Principles are implemented and applied in practice and to hold them accountable for this;
 - to stop and prevent impunity for any unlawful use of force.

To international or bilateral law enforcement cooperation or development programmes:

- To use the present Guidelines to assess the human rights compliance of the legal and operational framework for law enforcement in the partner country and to provide recommendations for corrections where necessary.
- To focus on human rights compliant policing in practice rather than reliance on theoretical teaching exercises.
- To assist partner countries/agencies in developing human rights compliant operational instructions on the use of force and firearms that are tailored to the specific situation in the partner country (and to refrain from “copy-paste” exercises that do not give due consideration to the specific needs of the partner country).
- To assist partner countries/agencies in the development of comprehensive training curricula covering the acquisition of all relevant professional skills that are necessary for a lawful, human rights compliant, effective, and professional fulfilment of law enforcement duties, in particular in relation to the use of force.
- To assist partner countries/agencies in developing a professional and accountable command structure.

To anybody working in the field of law enforcement:

- To provide feedback to Amnesty International on the content of these Guidelines, including the country examples (in particular where corrections might be needed).
- To share any new documents (laws, operational procedures, training manuals etc.) with Amnesty International, so as to contribute to a lessons learned process and sharing of experiences.

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ANNEX

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

Whereas the work of law enforcement officials¹ is a social service of great importance and there is, therefore, a need to maintain and, whenever necessary, to improve the working conditions and status of these officials;

Whereas a threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole;

Whereas law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights;

Whereas the Standard Minimum Rules for the Treatment of Prisoners provide for the circumstances in which prison officials may use force in the course of their duties;

Whereas Article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty;

Whereas the preparatory meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Varenna, Italy, agreed on elements to be considered in the course of further work on restraints on the use of force and firearms by law enforcement officials;

1) In accordance with the commentary to Article 1 of the Code of Conduct for Law Enforcement Officials, the term "law enforcement officials" includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of 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.

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

Whereas the Economic and Social Council, in its resolution 1986/10, section IX, of 21 May 1986, invited Member States to pay particular attention in the implementation of the Code to the use of force and firearms by law enforcement officials, and the General Assembly, in its resolution 41/149 of 4 December 1986, inter alia, welcomed this recommendation made by the Council;

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

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

General provisions

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.
2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.

3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.
4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.
5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:
 - (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
 - (b) Minimize damage and injury, and respect and preserve human life;
 - (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
 - (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.
6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.
7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.
8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

Special provisions

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

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.
11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:
 - (a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;
 - (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
 - (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
 - (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
 - (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;
 - (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

Policing unlawful assemblies

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.
13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.
14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

Policing persons in custody or detention

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.
16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.
17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.

Qualifications, training and counselling

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.
19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.
20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

21. Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.

Reporting and review procedures

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.
23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.
24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.
25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.
26. Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.

The Police and Human Rights Programme of the Dutch section of Amnesty International

The area of policing and human rights presents a dynamic and constantly evolving field of study. The human rights discourse has in recent years broadened its attention to include not only the negative functions of the State and its agents as human rights violators but also the positive obligations of the State. This presents an opportunity for the police to be seen as human rights protectors. Both police and human rights advocates are (should be) striving for societies characterized by security and safety.

The Police and Human Rights Programme aims to enhance knowledge and understanding of the police & policing within the Amnesty International movement – and the wider human rights community – in order to become more effective when addressing the police or police related issues. At the same time, we seek to promote human rights in the policing work, based on the conviction that only human rights compliant policing is good and effective policing. It is a constant endeavour of the Police and Human Rights Programme to demonstrate in its work and publications – including the present Guidelines – that it is both possible and indispensable for human rights law and standards to be implemented in daily policing practice.

This is particular relevant for the use of force and firearms. The legitimacy of and public trust in the law enforcement authority and the state as a whole are at risk when force and firearms are used in an excessive, arbitrary, abusive or otherwise unlawful manner. Human rights must be upheld whenever law enforcement agents exercise their power to use force and firearms. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials were adopted in 1990 in the same spirit to ensure the respect and protection of human rights, while at the same time giving due consideration to the safety and security of law enforcement officials.

The present Guidelines are intended as a practical and authoritative guide to support authorities in the implementation of the UN Basic Principles in domestic legislation, in the operational set up of law enforcement agencies (i.e. in their regulations, procedures, training, equipment, as well as the command and control structure) and in the overall system of accountability.

www.amnesty.nl/policeandhumanrights



Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all. We reach almost every country in the world and have more than 2 million members and supporters who drive forward our fight for rights and more than 5 million activists who strengthen our calls for justice.