
Monitoring and Investigating Excessive Use of Force

Amnesty International and CODESRIA



Amnesty International



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I. Definition and examples of excessive use of force

1. When can law enforcement officials use force?

Under exceptional circumstances only

Law enforcement officials throughout the world may have to use force in the course of their duties. But unlike many of the activities for which law enforcement officials are responsible (e.g. traffic control, conducting an arrest, etc.), the use of force should always remain **exceptional**.

As a matter of fact, the use of force by law enforcement officials is strictly regulated and limited, or ought to be, by domestic laws. Such laws may differ from one country to the next, and you should make yourself familiar with them.

The international community has also sought to establish general principles that should be observed by law enforcement officials throughout the world and that may guide the regulations established by domestic law. These principles are embodied in two documents: the United Nations Code of Conduct for Law Enforcement Officials (1978) and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990).

According to these international standards, force of any kind should only be used **exceptionally**: in other words, the use of force should not be the norm but the exception.

Law enforcement officials may use force only:

- when strictly necessary
- to the extent required for the performance of their duty, including
 - to prevent crime
 - to effect or assist in the lawful arrest of suspected offenders
- after all non-violent methods available have been used but have remained ineffective

The use of force beyond these limits is characterised as “excessive”.

Let's look at the various elements composing this definition:

- **strictly necessary:** A possible way to interpret this expression is the following: it is reasonable to assume that, under the circumstances, law enforcement officials had no alternative but to use force. No force going beyond that may be used.
- **to the extent required for the performance of officers' duties:** These duties include: to prevent crimes, to effect a lawful arrest. Broadly speaking, a crime may be defined as all those activities prohibited by criminal law. It should be the responsibility of the law enforcement officials to demonstrate that the activities they were trying to prevent constituted a "crime" in accordance with the law in force in the country. Conducting an arrest will be lawful if the required procedure has been followed, such as, in many cases, obtaining an arrest warrant.
- **after all non-violent methods have been tried:** this is pretty straightforward. Non-violent methods may include: spending time trying to convince someone to surrender or to stop acting in an unlawful way, talking to individuals, etc. All such methods should be included in internal guidelines or regulations regarding policing or security operations.

Some national states and NGOs have sought to define the limits imposed on the use of force through the principle of proportionality. (See Annexe One for details.)

2. So what does “excessive” mean?

The use of force may be described as “excessive” when it will go beyond the limits identified by the above principles, that is:

When the law enforcement officials’ objectives were unlawful.

Example: In the course of the arrest of Mr Tambo, the three police officers involved broke his arm. The police officers had broken into Mr Tambo’s house. When he requested to see their warrant, he was thrown to the floor and kept there with his arms held behind his back. He suffered a broken arm as a result of the violence used. According to the human rights organisation that investigated the incident, the police officers had no basis for breaking into Mr Tambo’s house, arresting him and using force against him. Mr Tambo was later released without any charges. He filed a complaint against the police officers the same day, alleging unlawful arrest and excessive use of force. The case is currently pending in court.

When the offence committed was not serious enough to mandate such a strong reaction on the part of the authorities, or did not constitute an offence at all under national criminal law or international human rights principles.

For instance, the use of force will be characterised as excessive if a suspect is offering no or little resistance to the law enforcement officers, or if the force used by the police officers is “too much” in relation to the situation, the nature of the offence and the resistance encountered.

Example: On 8 July, Mr Flomo was arrested for a speeding offence. He was so badly beaten by the officers who arrested him that he had to spend several weeks at the hospital, suffering from concussion and a broken leg. The police maintained that Mr Flomo resisted arrest and

that they had no other ways available to proceed with the arrest. But Mr Flomo was unarmed, and he was alone. He also denied resisting arrest. His case was brought to court. The judge ruled that even if Mr Flomo had, indeed, resisted arrest, the extent and the nature of the beating was clearly unwarranted and disproportionate to the nature of the offence and the circumstances.

When law enforcement officials did not try to use all other non-violent or less-violent means available to them.

Example: On 6 September, Mr Omoni, heavily drunk, was behaving in an aggressive manner on the street. According to eyewitnesses, the two police officers called on the scene immediately wrestled Mr Omoni to the ground and held him by the neck for a long period of time. Mr Omoni died a couple of hours later, in the police station. According to the autopsy performed later, Mr Omoni's death resulted from the restraining technique used by the law enforcement officers.

When domestic laws, internal regulations, or superior's instructions have failed to identify the limits for the performance of law enforcement officials' duties.

Example: According to human rights organisations and medical doctors, the restraining technique used against Mr Omoni (see case above) should be outlawed because it causes unnecessary suffering and may result in the death of the offender. Following Mr Omoni's death and two previous ones in the last five years resulting from the use of this technique, several organisations have formally requested that the state intervene and impose strict limits on the use of this technique by law enforcement officers.

When law enforcement officials did not abide by the procedures established by domestic laws, internal regulations, or their superiors.

Example: Three police officers were suspended from duties yesterday, following allegations that they used pepper spray against Ms Odengu, whom they were trying to remove from a bar where she was causing a disturbance. The use of pepper spray has been outlawed by a court order because of the extent of the suffering it causes.

When domestic laws, internal regulations or instructions from superiors encourage or allow the use of force when it is reasonable to assume that it should not be used.

Example: By order of the Head of State, the police force has been instructed to use any means necessary to ensure that the mining workers, striking for safer work conditions, are removed from the road leading to their factory where they have been demonstrating for the last 24 hours.

Example: Many cases of excessive use of force are reported in circumstances involving security forces whose officers had not been trained, or had not received the appropriate training, or were not trained or meant to address certain situations: for instance, sending military forces to deal with civilians or crowd control.

3. When can law enforcement officials use firearms?

The use of firearms is among the most potentially deadly type of force. This is why, again, the international community has developed principles to regulate their use by law enforcement officials: the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990).

a. The principles

- The use of firearms is considered as an extreme measure and every effort should be made to exclude their use.

- Firearms should only be used after less extreme measures have been used but have not been successful
- Firearms should only be used for the following purposes
 - in *self-defence* or the *defence of others* against an imminent threat of death or serious injury
 - to *prevent particularly serious crime* involving grave threat to life
 - to *arrest a person* who poses a grave threat to life, who resists authority or attempts to escape
- The use of firearms should not be lethal: Law enforcement officers are required to use firearms in a manner which minimises injury and respects human life: *intentional lethal force* is only permitted «*when strictly unavoidable in order to protect life*».
- The use of firearms beyond these limits is characterised as “excessive”.

b. The investigation

Broadly speaking, investigation on the use of firearms may focus on two main issues: the methods used and the purposes.

The focus on **methods used** requires us to consider:

- what happened before the law enforcement officials used their firearms and whether they tried to use other (less lethal) methods
- the type of weapon used
- how it was used: i.e. did law enforcement officials appear to aim at the offenders’ vital organs?

The focus on the **purposes** requires us to consider whether anyone’s life was at risk, be they: the law enforcement

officials themselves, other individuals at the scene (e.g. passers-by), individuals who were not on the scene but whose life may have been at risk (for instance, if the suspects were to evade arrest).

Let's consider the case described below. While the use of firearms may have been legitimate from the perspective of the purpose (especially considering that many people had already died and more were likely to die because of the inter-communal conflict), the **methods** used by the law enforcement officials were clearly excessive and disproportionate as compared to the objectives of the security forces (maintaining peace and order). They do not appear to have attempted to use other methods or weapons, and they relied on weapons which are indiscriminate by their nature and effects.

Example: On 9 August 1996 violence resulting from an inter-communal conflict between the villages of Bambui and Fungie in Mezam division resulted in the deaths of several people and serious injuries to many others. The following day, gendarmes from Bamenda were reported to have intervened in Bambui, firing shots and grenades indiscriminately at a large crowd gathered at the palace of the Fon of Bambui, a traditional ruler. Three people were reported to have been killed: Juliana Munu, 60, who died instantly from a shot to the head; Anita Nyengweh, 25, who died later in hospital, and Ache Alah, 24, who died in hospital.

4. What about demonstrations?

a. The overall principle

You should first remember that everyone has the right of freedom of peaceful assembly and association. These are human rights guaranteed by international human rights law.

b. Lawful demonstration

Whether an assembly is lawful depends on the regulations in the country and on the steps undertaken by the organisers to abide by these regulations. If they have taken such steps and the authorisation has been given, then the assembly is lawful.

Under such circumstances, the limits imposed on the use of force are exactly the same as those identified above.

c. Unauthorised demonstration

A demonstration will be characterised as unlawful by state officials if the authorisation for assembly is required by law and has not been granted.

- The permission for an assembly may be denied by state officials on a number of grounds, such as that the assembly may constitute a threat to national security, or endanger the safety, or health, or freedoms of others.
- But, quite often, a permission to demonstrate may be rejected by state officials because of what the demonstrators are calling for. By rejecting the demand for assembly, the government may commit a human rights violation, i.e. it may violate the right to freedom of peaceful assembly and the right to freedom of expression.
- **In all cases**, whether the denial of the permission for assembly was legitimate or not, the use of force to disperse unlawful assemblies is limited. The international principle governing the use of force in such circumstances (Principle 13 of the Basic Principles on the Use of Force and Firearms) states:

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 strict minimum necessary.

d. What about violent demonstrations?

Again, the principles identified in the above three sections still hold: the use of force and the use of firearms must be exceptional and strictly limited.

- However, law enforcement officials are more likely to be placed in a situation where they have to conduct arrests and use force than if they were dispersing a peaceful assembly or arresting an unarmed individual.
- The international principle (Principle 14 of the Basic Principles on the Use of Force and Firearms) states:

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 case, except under the circumstances highlighted above.

Example: A policeman and a 12-year-old boy are reported to have been killed during a demonstration on 16 March 1991 and others are reported to have been injured. Members of the armed forces who dispersed the demonstrations are reported to have used unnecessary force against the demonstrators who were initially making calls for multi-party democracy without using violence. Rioting later broke out in various parts of Lomé. Two young men were killed by soldiers on 5 April when they tried to topple a statue of president Gnassingbé Eyadema, situated next to the headquarters of the Rassemblement du Peuple Togolais (RPF), the ruling party in Togo.

The case below highlights another common outcome of demonstrations, be they violent or not, but especially when they turn violent: people are arrested who were not personally involved in the violence.

Example: During February, there were two demonstrations against the government in Abidjan, Côte d'Ivoire. The demonstrations started peacefully, but later on, there were violent attacks by some marchers. In total, 26 people have been convicted under the procedure of flagrant délit, a procedure for those caught in the act. They were tried under the terms of Article 26 of the Penal Code which establishes the criminal responsibility of someone associated with a crime, even if they have not themselves carried out the criminal act. Yet, those convicted were not personally involved in using or calling for violence.

5. What should happen after an alleged case of excessive use of force?

According to international standards, governments should demonstrate that they will not tolerate the arbitrary or abusive use of force and firearms by law enforcement officers by making such abuse punishable as a criminal offence, and by ensuring that law enforcement officers responsible for such abuses are charged and tried.

States are obliged to

- carry out impartial and exhaustive investigations into all allegations of killings resulting from the use of firearms
- clarify the circumstances of the incident
- identify those responsible
- bring them to justice
- compensate the victims or their families
- make the results of the investigation public.

II. How to monitor excessive use of force

Monitoring is the long-term observation and analysis of the human rights situation in a country or region.

- It consists of collecting **systematically and consistently** information that may be related to human rights violations, from a variety of sources.
- This information, collected over a certain period of time, should allow you to **put the cases under investigation into a political and legal context**, as well as to **identify patterns** in terms of excessive use of force. They should also allow you to develop an in-depth knowledge of the security forces and opposition groups, their methods of operations, their chains of command, etc.
- Please refer to the handbook, *Monitoring and Documenting Human Rights Violations in Africa*.

Three main steps for monitoring excessive use of force

- Step 1: **Collect** information on the law, political climate, organisation of the security forces and armed groups.
- Step 2: **Record and follow-up** individual allegations of excessive use of force.
- Step 3: **Analyse** information and allegations and identify **patterns**

1. Collect legal information

The investigation of alleged cases of excessive use of force depends heavily on your knowledge and understanding of the legal texts or regulations defining the duties of the security forces and the limits imposed on their activities. It is therefore very important that you make yourself familiar with all the texts related to the issue of the use of force and the use of firearms. In particular, you need to find the answers to the following questions:

- What is the definition of the use of force under national laws?
- What are the limits imposed on the use of force and on the use of firearms?
- Are there laws or regulations that facilitate the carrying-out of excessive use of force with impunity, such as shoot-on-sight orders, curtailed post-mortem or inquest procedures, provisions for immunity from prosecution, or the use of presidential pardon?
- Are there any laws prohibiting the use of certain weapons by security forces?
- Are there any prescriptions or time limits for filing complaints against security forces?

2. Collect information on security forces

In addition to being knowledgeable about the domestic law and regulations, you should also seek to develop some understanding of the way security agencies operate and are organised. These include: the police force, special branches, military forces, internal security agencies, etc. Some of the information to be researched may include:

a. Organisation of the security forces

- Identify the different branches within the security forces and their respective chains of command;
- Are there any particular security forces that are

usually involved in repressive activities and controlling demonstrations?

- Find out whether the law provides for paramilitary militias, police reserves, civilian forces;
- Find out whether supposedly independent organisations who support the government are organised on a paramilitary basis, and whether they receive military training, transport or equipment.

b. Internal regulations

These are the codes of conduct or guidelines that govern the activities of the security forces in general, and the use of force in particular. They may be confidential documents and include:

- Codes of conduct governing the use of force and of lethal force by all security forces
- Lethal force regulations
- Regulations or internal guidelines regarding crowd control, arrest of criminals, etc.

You ought to find out how they regulate, limit or prohibit the use of force and of firearms.

c. Training

Knowledge about the training received by the various branches within the security forces will also be very important in assessing specific cases and especially in identifying recommendations. Some of the questions you may want to investigate include:

- What type of training is received by the security forces?
- How often?
- Who, within the security forces, is more likely to be trained (e.g. junior or senior officer)
- Who trains them?

d. Weapons

You also want to find out about the types of weapons that law enforcement officials are allowed to carry and use:

- Identify the various type of weapons carried by specific security branch or organisations

3. Record and follow up individual cases

In many circumstances, you will be able to reach some sort of conclusion regarding a particular case on the basis of what you know about previous cases of alleged excessive use of force. It is therefore very important that you follow up on all cases that come to your attention.

To facilitate monitoring, it is recommended that you develop a form to record individual cases of excessive use of force that are brought to your attention, either through the media, family members, witnesses, etc.

This form is meant to give you a quick look at a case and to identify possible common points among a number of cases. In all cases, you will need to refer to the broader file to get all the details regarding the case.

On the next page is an example of such a form. You need to adapt it to the specific circumstances of your country or region.

4. Identify patterns

Patterns constitute one or several typical features of human rights violations, in this case, excessive use of force.

You identify patterns on excessive use of force by:

- (i) reviewing and analysing a number of cases over a given period of time; and
- (ii) identifying the common elements among all cases, such as: location; date and time; cause of injuries; circumstances; etc.

Through monitoring the press and investigating individual cases, you should be able to identify patterns. These will allow you to draw an overall picture of the situation as far as

Sample form for recording information on excessive use of force

Date: Registration number: Information compiled by:

Visit to the scene: No Yes by on

Interviews of witnesses: No Yes by on

1. Victim identification information

Name (Last and first name, nickname):

Date of Birth or Age: Gender:

Profession/Occupation: Family Status:

Address:

Nationality: Religion: Ethnicity:

Physical description or picture:

2. Location

Date and time of the incident:

Exact location:

Province: District City/village (or nearest):

Street address:

3. Nature of the incident

Nature of the incident (i.e. arrest, demonstrations, etc.):

.....

Date, place, time:

.....

Description:

Steps taken by demonstration organisers to avoid problems:

.....

4. Nature of the injuries

How was the victim injured?:

If a bullet wound, what type of bullets?:

.....

5. Alleged perpetrators

Names:

Officers in charge:

Chain of command:

6. Evidence

Witnesses:

Forensic evidence:

Court record:

Other (videotapes, photographs, etc.):

7. Complaints

Was a complaint lodged? No Yes

If yes, when? where?

by whom?

8. Government responses

Was an investigation conducted? No Yes

If yes, by whom? when?

Did the case reach court? No Yes

If yes, which court? when?

Were any statements made by public officials; if so, what?

.....

.....

.....

.....

.....

excessive use of force is concerned and will assist you in future investigations.

Patterns in the identity of the victims

The victims themselves may present a number of common characteristics. There may be individuals or groups of individuals specifically targeted for arrest or violence. These individuals may present the following common characteristics:

- type of political activities
- professional activities or occupations
- ethnicity
- religion
- age-group
- gender
- sexual orientation
- residents of clearly defined areas
- street-children, prostitutes, beggars

Patterns in the location of the incidents

Alleged incidents of excessive use of force may take place overwhelmingly in certain specific locations. This may indicate that, while in parts of the country or at other police stations, law enforcement officials follow the principles regarding the exceptional nature of the use of force, in other places they don't. Incidents of excessive use of force may be overwhelmingly located in:

- regions
- cities or localities
- neighbourhoods
- police stations
- secret detention centres
- intelligence units
- military barracks

Patterns in the identity of alleged perpetrators

Through monitoring, you may also be able to identify a pattern in terms of the identity of the alleged perpetrators.

For instance, all cases of excessive use of force may be committed by one police force – or, indeed, by certain individuals – or by police forces under one particular chain of command. So you need to look for patterns in

- specific security forces;
- specific individuals;
- ranks

Patterns in the methods used

Quite often, the methods used by the law enforcement officials are consistent, i.e. the same or similar methods may be used. Such methods may include:

- use of firearms: police shooting to kill
- use of a specific forms of restraining techniques, beatings, etc.
- violence commonly used to arrest or control
- violence commonly used *after* individuals have been overpowered
- use of *agents provocateurs*

Patterns in the circumstances

The circumstances immediately preceding or following the incidents may also be quite similar and as such present a pattern. For instance, such incidents may take place particularly during or after:

- new legislation
- declaration of a state of emergency
- elections
- announcements of meetings or requests for authorisation
- meetings
- demonstrations, riots
- intimidation and/or death threats

Patterns in the causes of injuries and/or deaths

The causes of the injuries and/or death resulting from alleged excessive use of force may often be similar, indicating a pattern:

- deaths or injuries resulting from gunshots
- deaths or injuries resulting from certain restraining techniques
- deaths or injuries resulting from beatings

Patterns in government responses to alleged cases

A pattern may also emerge over time in terms of the responses of the government to the accusations. Such a pattern may be characterised by:

- public statements following the incidents
- overall attitude to the accusations (arrogance, denial, defensive reactions, etc.)
- the absence of or nature of the investigations
- intimidation of witnesses
- the nature of the procedures
- the absence of or nature of prosecutions (including a time limit for prosecution)
- the types of courts responsible for the proceedings
- the absence of or nature of the verdict
- out-of-court compensation

III. How to conduct fact-finding

Fact-finding consists of investigating a specific incident or allegation of human rights violations, collecting or finding a set of facts that proves or disproves that the incident occurred and how it occurred, and verifying allegations or rumours.

For this purpose, you need to:

- Step 1: Gather **material evidence** that will confirm (or not) the allegations

Material evidence may include medical records, photographs, physical signs or marks, official documents or acknowledgements.

- Step 2: Conduct **interviews**

Individuals to be interviewed may include the victim, family members, eye-witnesses or other witnesses, security officials, local officials, etc.

- Step 3: **Assess** the information and evidence

Having gathered material evidence and interviewed the victims or witnesses, you will need to **assess** the information and evidence provided in order to determine whether excessive use of force took place.

1. Preparing for the investigation: Get the facts

Be knowledgeable

- Be knowledgeable about the law related to the use of force and the use of firearms by law enforcement officials in your country: find out exactly what is prohibited.
- Be knowledgeable about the patterns related to incidents of excessive use of force.
- List everything you already know about the case
- Ask yourselves the following question: What information is missing? What kind of evidence is lacking?

Seek expert advice

- Get all necessary information or expert advice, e.g. consult with forensic pathologists, lawyers, etc.

2. Going to the scene and other locations

Identify the places you may need to go to in order to conduct your investigation, such as

- the scene of the incident, such as: the street, the house, the police station, etc.
- the hospital, if the victims, possibly including law enforcement officials, had been taken there;
- the mortuary;
- the police station(s) or security forces' locations;
- the courts, if complaints have been filed and if there is an investigation into the incident;

Carry out a thorough risk-assessment

If you decide to go to the scene of an incident involving

excessive use of force, or to any other places where you may find information about the incident (prisons, neighbourhoods, etc.), you must assess all the risks involved for you, your colleagues, and the people you will talk to.

- List all possible security concerns (e.g. your own physical security and security of your contacts) and develop contingency plans to deal with each one of them (e.g. evacuation: how?). If access to, and your presence at, the scene (or other locations) carries many dangers, identify alternative means of carrying out the research, e.g. rely on a confidential local contact to bring possible witnesses outside the area.
- Be ready: prepare responses regarding the reasons for your visit and what you are doing in case people ask you difficult questions or appear suspicious.
- If necessary, seek official written authorisation to go to these places.

Decide upon the composition of the delegation

- **Be strategic:** The investigative team should not be constituted of individuals who may be perceived as partial because of their ethnicity, religion, known political affiliation, etc. As far as it is possible, identify team members who will also be *perceived* as impartial by the informants.
- **Experts:** Identify which expertise will be most needed during the investigation: You may need forensic pathologists, a ballistic expert, a lawyer, etc. If possible, you should include such an expert in your delegation. If it is not possible, you should meet with experts before going on a fact-finding mission.

3. Preparing before monitoring a public demonstration or assembly

In addition to the above, if you decide to monitor a public demonstration or assembly, you will need to consider the following.

Find out whether it is an authorised or unauthorised assembly

- Contact the organisers of the demonstration; find out what steps they have taken to get authorisation; whether the authorisation was granted, and, if not, what reasons were given to them for the rejection of their application.

Determine how will it proceed

- Find out the following: Which route is the demonstration planning to take? How many people are expected? How long is it supposed to last? Are specific activities planned during the demonstration or the assembly? Will there be any speakers? Are any security measures being taken by the organisers? Are the organisers prepared for police intervention? What instructions were given to participants by the organisers?

Carry out your own thorough risk-assessment

- Demonstrations and assemblies may turn violent. Be ready for all eventualities.
- List all possible security concerns (e.g. your own physical security and the security of your contacts) and develop contingency plans to deal with each one of them (e.g. evacuation: how?).
- If time allows, familiarise yourself with the location of the assembly or the route of the demonstration; identify possible escape routes; identify places (e.g. balcony or windows of a nearby building) from which

you can observe the demonstration or the assembly in relative security.

- Conduct the monitoring with at least one colleague: one of you can check on the other, e.g. ensuring you are not hit by a bottle while taking pictures.

Get your equipment ready

- If you have a camera, video, tape recorder, make sure that they are all working. They all could be very useful later on to help assess what happened during the assembly or the demonstration.
- Carry more than one piece of equipment if possible.

4. Identify the main sources of information and evidence

Identify sources of information and prepare your interview format:

- List all the possible contacts and sources of information that you may need to interview and meet in order to investigate and corroborate the information

Possible sources of information

- The victims
- Journalists, including cameramen if they were filming a demonstration
- Organisers of the demonstration or assembly present at the scene
- Other organisers who may not have been present but may have had to deal with the police
- Law enforcement officials present during the incident and their superiors
- hospital workers
- Witnesses
- mortuary workers

- Identify who it may be more appropriate to meet first, provided, of course, that you have the luxury to set up and organise meetings. In any case, you should decide whether and at which point in the investigation you will meet with security officials.

Prepare your list of evidence

- Write down a check-list of the data and facts necessary to assess the allegations

The biggest challenge is to determine whether the use of force was, indeed, excessive. In many cases, the law enforcement officials will argue that they had no other option and that their lives or other lives were threatened.

It is often not possible to establish with certainty whether the use of force was excessive.

- Your knowledge of the methods of operation of law enforcement officials and of patterns as far as the use of force is concerned is crucial in terms of directing your investigation.
- As far as government responsibilities are concerned, if no regulations are in place to govern the use of force by law enforcement officials, if law or regulations allow for an unlimited use of force, or if no full and impartial

Possible material evidence

- Official statements
- Medical, hospital and/or post-mortem records
- Court records
- Documents left behind by the victim(s)
- Arms left behind, bullet shells
- Bullets, types of guns, or any other weapons used by the police
- Bullets, type of guns, or any other weapons used by other individuals and/or the victims themselves
- Report of the official investigation
- Videos or pictures of the incident
- Police reports

investigations have been conducted, and if impunity is allowed to prevail, any of these can be taken as a strong indicator that the government condones the excessive use of force by law enforcement officials.

- See below for possible material evidence and for some of the questions that may guide your investigation and assist in demonstrating excessive use of force.

IV. How to assess information

Please refer to Annexe One for a sample of questions guiding the investigation and your assessment

The following steps are meant to assist you in assessing the information and reaching conclusions regarding allegations of excessive use of force.

1 Reliability of initial sources

- Are your initial sources or contacts reliable?
In your experience, have these sources been reliable and accurate before?

2 Consistency with patterns

- Is the incident reported to you consistent with what you know about the patterns of incidents of excessive use of force in the country?
In many countries, the incidents of excessive use of force will present strong similarities from which patterns can be extracted.
- Compare the case under investigation with what you know about patterns in excessive use of force

3 Consistency of medical evidence

- Whenever possible, you should get the assistance of medical experts to assess whether medical evidence is consistent with the allegation.

4 Reliability of the testimonies

- Do the witnesses' testimonies appear reliable and consistent with each other?
- In assessing the testimony, keep in mind the points developed in the handbook *Monitoring and Documenting Human Rights Violations in Africa*.

Pay special attention to:

- * The survivor's description of the **symptoms following the alleged torture**: what type of physical pains and mental reactions has the victim experienced following the alleged excessive use of force?
- * The survivor's description of **current symptoms and illnesses**: what are her/his current health complaints, both physical and mental? What was his/her health before being submitted to excessive use of force?
- * The survivor's account of the **circumstances, location, procedures, individuals involved**, etc. Are they consistent with what others who witnessed similar events at the same time and place say; or with the patterns in the excessive use of force?
- * The survivor's account of the **sequence and timing of the events**
- * **Consistency of the testimony**: Does the testimony concur with others as well as with any previous pattern of excessive use of force in the country/region? Does the survivor contradict himself/herself when asked the same or similar questions?
- * **Inconsistencies of the testimonies**: Are they the result of the survivor's dishonesty or of faults in memory, exaggerations, unsubstantiated rumours, cultural differences and misunderstandings between the interviewer (or interpreter)s and the interviewee?

5 Assessing the responsibility of the government

- Did the government's response meet international and national standards as far as excessive use of force is concerned?

Official responses include: official acknowledgements or unofficial statements by representatives of the government; court testimony; conclusions of independent investigation bodies or lack of independent investigations; post-mortem report.

Annexe One: Key questions guiding the investigation and assessment

1. The context: does it indicate strong government disapproval, interference or threat?

1.1 **Demonstrations:** What was the political context and what were the circumstances before the demonstration(s)? Were any statements issued by government officials regarding particular political parties or individuals or demonstrations? Was the authorisation granted and, if not, on what grounds? Did government officials issue any warnings beforehand?

1.2 **Arrests:** What was the political context and what were the circumstances before the arrests(s)? Were any statements issued by government officials regarding particular types of crimes or criminals, political parties or individuals?

2. Nature of the offence resulting in the incident: was it very serious?

The main issues here relate to the nature of the offence under domestic law: you need to assess how serious such an offence was to warrant the use of force by the law enforcement officials. While answers to this question may be found in legal texts, you should remember that the behaviour of the offenders may dramatically alter the nature of the offence itself.

3. Behaviour of the offender(s)

The main questions here are the following: (i) whether the behaviour of the crowd or of the suspects constituted such a threat that the only reaction possible for the law enforcement officials was to use force, including lethal force; (ii) whether the police force could have relied on other non-lethal means to control the crowd and/or arrest; (iii) if a killing did occur, whether it was an accident?

3.1 **Demonstrators:** Was violence used by the demonstrators or agents provocateurs? Were armed, intoxicated, or aggressive individuals present? Were gunshots fired from within the crowd?

3.2 **Other offenders:** Were the alleged offenders armed? Did they use force and firearms? What was the nature of the alleged crime? Did they shoot at the police?

4. Number and nature of law enforcement agencies on the scene: does it appear excessive or disproportionate in comparison to the situation?

4.1 **Demonstrations:** How many police were at the location? Which branches? Who had overall responsibility for the demonstration? What type of weapons and other instruments were at the disposal of the police? Did they use *agents provocateurs*?

4.2 **Arrests:** Was the encounter between the police and the alleged criminals “accidental”? Were the police at the site following a tip-off? Were the arrests planned? How many police were involved? Which branch?

5. Nature of the law enforcement officials’ operations: do they indicate heavy-handed (disproportionate) reactions to the situation?

5.1 Use of force, excluding firearms:

What tactics were used by law enforcement officials? Were peaceful means used before resorting to force? Were demonstrators dispersed? How? Did the police pursue fleeing individuals? For how long? Was there a fight between the victim and the police force? Were the police seeking to arrest individuals? What type of restraining techniques (if any) were used?

5.2 Use of firearms

What kind of weapons were used? How were they used? Were there warning shots? Were other methods used before the reliance on firearms? Did the purpose behind the use of firearms fit the circumstances allowing for the use of firearms ?

Remember: Firearms are to be used only in exceptional circumstances:

- (i) firearms should be used after less extreme measures have been used and proved insufficient
- (ii) the use of firearms should not be lethal;
- (iii) they should only be used in self-defence or the defence of others, to prevent particularly serious crimes, to arrest a person who poses a grave threat to life.

6. Victims and witnesses: did the extent and nature of the casualties indicate a disproportionate response on the part of the law enforcement officials?

6.1 The victim(s): How many victims were there? Did the victims have characteristics in common with previous victims or groups who have been targeted in the past (e.g. young people, ethnic or religious groups, members of political organisations, etc.) Were the victims well-known opponents or leaders? Was the victim armed?

6.2 Law enforcement officials: Were members of the police force injured or killed? How many? What was the nature of the injuries? Where did they occur? (e.g. near where alleged killing occurred?)

6.3 Witnesses: Were there any witnesses to the alleged excessive use of force: Were a large number of individuals arrested following the incident? Were there cases of alleged ill treatment? Were any charges brought? Did the police harass witnesses to the killings or relatives of the victims? Did the police charge witnesses?

7. Casualties: nature of the injuries or causes of death

7.1 What was the nature of the injuries or the causes of death? Did the nature of the injuries indicate that force (e.g. beating) was used for a long period of time, that several officials were involved in using force? If firearms were used, what was the nature of the wounds? Did they indicate shooting at close range?

7.2 Was an autopsy performed? Did the autopsy follow national and international protocols? What were the results of the autopsy? What conclusions were drawn?

Whenever possible, you should refer all available medical evidence (medical certificate, photographs, testimonies) to medical experts

8. Response of the authorities: does it indicate impunity?

Remember: Governments should demonstrate that they will not tolerate the arbitrary or abusive use of force and firearms by law enforcement officers by making such abuse punishable as a criminal offence, and by ensuring that law enforcement officers responsible for such abuses are charged and tried. Following a killing by a law enforcement officer there should be a prompt investigation to determine the cause, manner and time of death; to establish responsibility for the death; and to uncover any pattern or practice which may have led to the death. The report should be made public. Victims' relatives should receive compensation.

- Did public officials in any way “justify” the killing immediately after the event?
- Are there any laws or regulations allowing for the excessive use of force by law enforcement officials?
- Was an inquiry initiated and by whom? Did the inquiry follow principles set down by domestic law and international standards? Was a criminal procedure initiated? Was a civil suit initiated? Was internal investigation initiated?

Annexe Two: The principle of proportionality

Some national states and NGOs have sought to define “excessive use of force” through the concept of proportionality. Under this principle:

The use of force is allowed only when it is proportional to:

- (i) legitimate objectives,
- (ii) the seriousness of the offence, and
- (iii) the extent required for the performance of the officers’ duty.

Both the principles of “proportionality” and the one of “reasonably necessary” leave a large margin of discretion to the law enforcement officials. But you may find the rule of proportionality a bit easier to apply in practice. Let’s first look at all three elements to which the rule of proportionality should be applied:

(i) **legitimate objectives:** these are those objectives that are lawful: conducting an arrest may be lawful if the required procedure has been followed, such as, in many cases, obtaining an arrest warrant. Ensuring the respect for law and order may be another lawful objective, although, here, the assessment of what is or is not legitimate may depend a great deal on the individuals involved, rather than on strict rules.

(ii) **the seriousness of the offence:** people may not always agree as to whether an offense is very serious, serious, or not serious at all.

In many cases, there are domestic laws or international human rights principles which can assist in assessing the seriousness of an offence, and in bringing some consensus among all parties involved.

In other cases, however, domestic regulations themselves may be unfair or discriminatory in their characterisation of offences (e.g. laws against freedom of expression or assembly, blasphemy laws, laws against homosexuals, laws discriminating against

women) or may be seen as unfair by many people (e.g. adultery). The individuals investigating alleged cases of excessive use of force may not be in a position to convince a national court that excessive force was used because of their assessment of the seriousness of the offence.

(iii) the extent required for the performance of the officers' duty: this is the most difficult element to investigate.

One has to first establish what the duties of the officers were in the particular case under investigation: it could be controlling a crowd, maintaining peace and order, arresting an individual, patrolling, traffic control, etc.

The second question relates to the officers' performance of their duties: what exactly is expected from them? The definition or list of the activities involved in the performance of particular functions or duties may be found in existing policing guidelines or regulations. But the duties may also have been defined by the officers' superiors, either orally in the course of a briefing or in writing.

The third issue relates to the word "extent": are there any limits imposed on the performance of a specific duty?

Answers to this question may be found in the regulations governing security forces or in the instructions that the officers' superiors may have given. For instance, many arrests, before they are conducted, will require an arrest warrant. If police officers violate this principle, that is, if they arrest an individual without the warrant required in this case, and use force in the course of the arrest, they may have committed two human rights violations: unlawful arrest and excessive use of force.

Failure to find an answer in existing regulations, or in the superiors' instructions—that is, if the

regulations or the instructions are not imposing any limits on the performance of the duties – may indicate a failure on the part of the state to protect citizens against possible abuse of power by security forces. If, despite repeated calls for new regulations, the state still does not come forward with any new regulations or instructions, what was originally described as a state failure to protect may actually constitute state complicity.

If the regulations themselves or the instructions violate international standards —that is, if the regulations or the instructions openly allow for the use of force or reliance on certain weapons that have been characterised as dangerous or have been shown to be dangerous — it will appear that the state “invites” abuse of power by security forces.

Annexe Three: Some international and regional standards

1978 UN Code of Conduct for Law Enforcement Officials, art. 3:

Force should be used “only when strictly necessary. The official Commentary included in the Code says that the use of force should be exceptional, that force should be used only “as is reasonably necessary under the circumstances” and that it should be used for only two purposes: “the prevention of crime” and “effecting or assisting in the lawful arrest of offenders or suspected offenders.”

The force used should be proportional to the objectives (it should be used only “to the extent required” for the performance of law enforcement officials’ duty.) The Commentary acknowledges the “principle of proportionality” laid down in national laws and says that the Code should not be taken to authorise the use of force which is “disproportionate to the legitimate objective to be achieved.”

1990 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials:

The use of firearms is restricted to a series of situations involving “the imminent threat of death or serious injury” or “grave threats to life”, and “only when less extreme means are insufficient” to achieve the objectives specified. Furthermore, the “intentional lethal use of firearms” is to be made only “when strictly unavoidable in order to protect life.” The phrase “strictly unavoidable” implies that lesser means should be used first and that firearms should not be used before lesser means have proved insufficient to protect life.¹

African Charter on Human and People’s Rights

Article 4: “Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.”

²
Amnesty
International,
*Disappearances and
Political Killings*,
Amsterdam, 1994,
p. 101.

Article 5: “Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.”

Article 7 (1): “Every individual shall have the right to have his cause heard. This comprises: a)-The right to an appeal to competent national organs against acts of violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force; b)-the right to be presumed innocent until proved guilty by a competent court or tribunal; c)-the right to defence, including the right to be defended by counsel of his choice; d)-the right to be tried within a reasonable time by an impartial court or tribunal.”

Article 7 (2): “No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender. “

Article 8: “Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.”

Article 10 (1): “Every individual shall have the right to free association provided that he abides by the law.”

Article 10 (2): “Subject to the obligation of solidarity provided for in Article 29 no one may be compelled to join an association.”

Article 11: “Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.”

Annexe Four: 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.

Excerpt:

“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 minimise 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) Minimise 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 authorised 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.

Annexe Five: Possible recommendations and action

- Review domestic legislation relating to the police to check whether it incorporates explicit reference to international human rights standards. Lobby for such an incorporation.
- Lobby against police carrying specific weapons, particularly lethal (e.g. AK47 rifles), or using certain bullets.
- Lobby for proper training of all members of the security forces. Send your reports and recommendations to police training schools and foreign governments involved in the training of security forces.
- Lobby for the implementation of an independent and impartial body responsible for dealing with complaints against the police.
- Organise workshops for senior and junior law enforcement officials regarding the use of force.
- Institute constructive dialogue with senior police officers; officers responsible for various prisons or jails; etc.
- Monitor demonstrations and public meetings and their policing.
- Ask the police commissioner to come with you to verify information; ask for him or his officers to check the information put forward by the human rights officer.
- Suggest to the organisers of demonstrations that they invite judicial officials (or notaries) to go along to a demonstration to witness what happens and how the demonstration was organised.
- Present the report of your investigation to the government.

- Raise the issue of excessive use of force and be persistent: one letter is not enough.
- Assist the victims in filing complaints against police officers on well-documented cases. (Beware that there may be time limits to do so, in accordance with the law).
- Hold meetings with the authorities at the Ministry of Interior, for instance, to raise the issue and sensitise the authorities.
- Use all possible tools to alert national public and international community about the gross patterns of excessive use of force in the country; such as: launching a massive wave of appeals, public campaigns, collaboration with other NGOs, open letter to the President or Prime Minister, etc.
- Organise marches against police brutality.

The Publishers

Amnesty International (AI) is a worldwide voluntary activist movement working towards the observance of all human rights as enshrined in the Universal Declaration of Human Rights and other international standards. It promotes respect for human rights, which it considers interdependent and indivisible, through campaigning and public awareness activities, as well as through human rights education and pushing for ratification and implementation of human rights treaties. Amnesty International takes action against violations by governments of people's civil and political rights. It is independent of any government, political persuasion or religious creed. It does not support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect. It is concerned solely with the impartial protection of human rights.

Amnesty International Dutch Section Special Programme on Africa (SPA) was established in 1994. Initially, SPA developed a programme to assist Amnesty Sections worldwide to improve the effectiveness of their campaigning against human rights violations in Africa. Since 1996 SPA has moved towards providing support to the broader Human Rights Movement in Africa. Rather than funding projects, SPA is developing and co-ordinating long term projects for and in cooperation with other human rights organisations and AI sections. In addition to copublishing *Ukweli*, SPA is also coordinating advocacy and training workshops in southern and West Africa, a project on policing and Human Rights, and a pilot project to raise human rights awareness in rural areas in Liberia.

CODESRIA is the Council for the Development of Social Science Research in Africa head-quartered in Dakar, Senegal. It is an independent organisation whose principal objectives are facilitating research, promoting research-based publishing and creating multiple forums geared towards the exchange of views and information among African researchers. It challenges the fragmentation of research through the creation of thematic research networks that cut across linguistic and regional boundaries.

CODESRIA publishes a quarterly journal, *Africa Development*, the longest standing Africa-based social science journal; *Afrika Zamani*, a journal of history; the *African Sociological Review*, and the *African Journal of International Affairs (AJIA)*. Research results and other activities of the institution are disseminated through 'Working Papers', 'Monograph Series', 'New Path Series', 'State-of-the-Literature Series', 'CODESRIA Book Series', the *CODESRIA Bulletin*, *KIBARU* and *CIVIC AGENDA*.