Chapter III
Use of Force by Law Enforcement Officials

A. Introduction

The use of force by police or other law enforcement officials forms a core part of the Special Rapporteurs' mandate: it was the subject of regular attention in a number of thematic reports and many communications, it was investigated in depth during most country fact-finding missions, and it prompted the development of a new normative instrument on less lethal weapons.

Unlawful police killings include those due to excessive police force against suspected criminals, during the policing of assemblies, following interrogation or torture, by police death squads or militias set up to murder suspects or minorities, and during attempts to extort from citizens or to profit through hired killings.

This chapter gives an overview of the work of the Special Rapporteurs on the proper understanding of the international legal framework and standards applicable to the use of force by law enforcement officials, provides detail on the forms of police killings commonly encountered by the mandate, examines causes of unlawful killings in various contexts investigated by the Special Rapporteurs, and discusses legal and policy reforms to address such killings.[1]

In his 2016 report to the General Assembly, Special Rapporteur Heyns set the issue of the police use of force in the context of broader principles concerning when it is legitimate to use force:

> ***Report to the General Assembly (A/71/372, 2 September 2016, ¶50)***
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> 50. Every individual may use force to protect themselves or another person from threat of death or injury, and the State, in addition, has the obligation through its law enforcement officials to protect individuals and the general public from unlawful acts of violence. Law enforcement officials, more than ordinary members of the public, are thus entitled and indeed sometimes required to use force, but they must always do so in strict compliance with the applicable international standards. In the context of law enforcement, the requirements of necessity, proportionality and precaution are of particular importance.

B. Legal Framework

1. Requirements for the use of force

International human rights law obliges states to respect, protect, and fulfil the right to life. In the context of police use of force, the right to life means both that police should protect civilians from killings by criminals, gangs, and other non-state actors, and also that police should themselves not unlawfully kill. The use of force by law enforcement is strictly circumscribed by international human rights law, and police may only intentionally use lethal force where it is necessary to protect life.

Article 6 of the International Covenant on Civil and Political Rights prohibits the "arbitrary" deprivation of life, and provides that every "human being has the inherent right to life." This foundational right is supplemented by soft law instruments which assist in applying the right in various circumstances. The two most significant soft law instruments dealing with the use of force by the police are the *Code of Conduct for Law Enforcement Officials* (1979)[2] and the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (1990).[3] Much of the work of the Rapporteurs has centred on the proper understanding and

1 Issues relating to accountability for killings by the police, such as the Special Rapporteurs' reporting on police investigations, forensics, the functioning of the criminal justice system, police internal affairs, and external oversight of the police, are covered in Chapter 9, "Accountability for Killings." Killings in the context of election-related violence are contained in Chapter 6 "Killings by Non-State Actors."

2 General Assembly, Resolution 34/169, A/RES/34/169, 17 December 1979 [*Code of Conduct*].

3 Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

application of the principles set out in these two documents, and other sources of international law. Following one of the long-standing recommendations of the mandate, a further document has recently been added, the *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement* (2020).[4]

The Code of Conduct and the Basic Principles contain fundamental elements that should be collated at the outset: firstly, an agreed international definition of a "law enforcement official" (found in the Commentary to Article 1 of the Code of Conduct):

> (a) 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.
>
> (b) 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.

Secondly, a general provision concerning the use of force by a law enforcement official (Article 3 of the Code of Conduct):

> Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

This is elaborated further in the Basic Principles (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.

Thirdly, in the Basic Principles, an agreed legal standard for circumstances in which law enforcement officials may use firearms (Basic Principle 9):

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

Both Special Rapporteurs were guided by these fundamental principles in the consideration of the use of force by law enforcement officials. Special Rapporteur Alston addressed the subject of the use of force by the police in a comprehensive fashion in a 2006 report to the General Assembly:

> ***Report to the General Assembly (A/61/311, 5 September 2006, ¶¶35-7, 41-45)***
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> 35. The principles of international human rights law applicable in such contexts draw significantly upon the Code of Conduct for Law Enforcement Officials[ ] and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.[ ] Each of these instruments has played a central role in defining the limits to the use of force by law enforcement officials.[ ] They are of special interest for two reasons. First, they were developed through intensive dialogue between law enforcement experts and human rights experts. Second, the process of their development and adoption involved a very large number of States and provides an indication of the near universal consensus on their content.[5] Of course, neither the consensus between law enforcement and human rights experts nor the consensus among States about the desirability of compliance with the Code of Conduct and the Basic Principles is definitive in terms of their formal legal status, and some of the provisions are clearly guidelines rather than legal dictates. However, some provisions

Havana, 27 August to 7 September 1990 [*Basic Principles*].

4 Published by the Office of the High Commissioner for Human Rights, HR/PUB/20/1, 2020.

5 Nigel S. Rodley, *The Treatment of Prisoners Under International Law* (2nd ed., 1999), pp. 355-368, provides an overview of the development of the *Code of Conduct and Basic Principles*.

of the Code of Conduct and the Basic Principles are rigorous applications of legal rules that States have otherwise assumed under customary or conventional international law. Among these are the instruments' core provisions on the use of force. Thus, the substance of article 3 of the Code of Conduct and principle 9 of the Basic Principles reflects binding international law.

36. Human rights standards on the use of force derive from the understanding that the irreversibility of death justifies stringent safeguards for the right to life, especially in relation to due process. A judicial procedure, respectful of due process and arriving at a final judgement, is generally the sine qua non without which a decision by the State and its agents to kill someone will constitute an "arbitrary deprivation of life" and, thus, violate the right to life.[6]

37. Arbitrariness is not, however, simply the opposite of due process. The human rights obligations of States include protecting the right to life of private individuals against the actions of other private individuals.[7] That is, States must not only refrain from killing but must also exercise due diligence in preventing murder. Clearly there are instances in which the decision not to kill someone suspected of, or engaged in, the commission of a violent crime would itself result in the deaths of others. The typical situation would be one in which a suspect is threatening someone with a gun, apparently with the intention of shooting him, and in which the officer could expect to be shot if he attempted to arrest the gunman and bring him before a court. No reasonable interpretation of the State's obligation to respect the right to life would definitively rule out a police officer's decision to use lethal force in such a situation. As a result, due process remains the ideal against which "second best" safeguards for such situations must be measured. Necessity and proportionality are among the most fundamental of these second best safeguards.

[...]

41. While the proportionality requirement imposes an absolute ceiling on the permissible level of force based on the threat posed by the suspect to others, the necessity requirement imposes an obligation to minimise the level of force applied regardless of the level of force that would be proportionate. With respect to the use of firearms, the applicable standard of necessity is that the resort to this potentially lethal measure must be made "only when less extreme means are insufficient to achieve these objectives". The question of a measure's sufficiency can hardly be determined in advance. It is, rather, determined by the nature of the resistance put up by the suspect. In general, the way in which law enforcement officials should determine the necessary level of force is by starting at a low level and, in so far as that proves insufficient in the particular case, graduating, or escalating, the use of force.[8] Indeed, force should not normally be the first resort: so far as the circumstances permit, law enforcement officials should attempt to resolve situations through non-violent means, such as persuasion and negotiation.[9] As expressed in the Basic Principles, "They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result".[10] If it should become necessary to use force, the level of that force should be escalated as gradually as possible. While the relevant provisions of the Basic Principles are not exhaustive, they are suggestive of the course such escalation might take. As a first step, officials should attempt to "restrain or apprehend the suspected offender" without using force that carries

6 See International Covenant on Civil and Political Rights 1966, 999 UNTS 171, Art. 6 (1) [ICCPR].

7 See Report of the Special Rapporteur, Philip Alston, E/CN.4/2005/7, 22 December 2004, paras. 65-76.

8 The issue of whether there are some situations in which an immediate recourse to lethal force may be strictly necessary in order to protect the lives of others arises in the context of so-called shoot-to-kill policies. See Report of the Special Rapporteur, Philip Alston, E/CN.4/2006/53, 8 March 2006, paras. 44-54; see also Center for Human Rights and Global Justice, *Irreversible Consequences: Racial Profiling and Lethal Force in the "War on Terror"* (2006) available at http://www.nyuhr.org/docs/CHRGJ%20Irreversible%20Consequences.pdf.

9 See *Basic Principles, supra* note 3, Principle 4; see also Principle 20.

10 Ibid., Principle 4.

a high risk of death – perhaps by physically seizing the suspect.[11] If the use of firearms does prove necessary, law enforcement officials should "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".[12] Like the escalation of force, one purpose of providing a warning is to avoid prejudging the level of resistance that will be shown. If the warning does not suffice, any use of firearms should be such as to "[m]inimise damage and injury".[13] The furthest extreme on this continuum of force is, of course, the intentional lethal use of force. This must be resorted to only when "strictly unavoidable".[14]

42. Proportionality deals with the question of how much force might be permissible. More precisely, the criterion of proportionality between the force used and the legitimate objective for which it is used requires that the escalation of force be broken off when the consequences for the suspect of applying a higher level of force would "outweigh" the value of the objective.[15] Proportionality could be said to set the point up to which the lives and well-being of others may justify inflicting force against the suspect – and past which force would be unjustifiable and, in so far as it should result in death, a violation of the right to life. The general standard for proportionality is that the use of force must be "in proportion to the seriousness of the offence and the legitimate objectives to be achieved".[16] From this general standard, other more precise standards may be derived for when particular levels of force may be used. The Basic Principles permit the intentional lethal use of force only "in order to protect life".

43. With respect to the proportionality of other (potentially lethal) uses of firearms, principle 9 states:

> "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. ..."[17]

44. This list of objectives proportionate to the use of firearms is distinguished from the objective "to protect life" only in that it includes the disruption of some conduct that is less certain, though still likely, to cost lives. The notion of proportionality at work here is fairly simple – taking someone's life is permitted only to protect the lives of others from him or her – but gains a measure of complexity inasmuch as use of force rules must be applicable *ex ante*. The fundamental question is of proportionality between the objectively anticipatable likelihood that the use of force will result in

11 *Code of Conduct, supra* note 2, Art. 3, commentary (c).

12 *Basic Principles, supra* note 3, Principle 10.

13 Ibid., Principle 5 (b); see also Principle 11 (b).

14 *Basic Principles, supra* note 3, Principle 9; see also *Code of Conduct, supra* note 2, Art. 31. The distinction drawn between the use of firearms and the intentionally lethal use of firearms stems from the recognition that any use of firearms is potentially lethal. Shots fired to warn rather than strike or to stop rather than kill cannot be relied upon not to cause death. Indeed, any use of force may result in death, whether by happenstance or due to the condition of the target. Principle 9 interprets the principle of proportionality as it applies to two points on a continuum, specifying the objectives that would be proportionate to that level of force.

15 Metaphors of weighing and balancing are difficult to avoid in this context, but they risk conjuring up the idea of cost-benefit analysis. The balancing to be applied in human rights law is more in keeping with the framework used for evaluating restrictions on rights under which the reconciliation of competing values must respect "the just requirements of morality, public order and the general welfare in a democratic society" (Universal Declaration of Human Rights, Art. 29 (2)).

16 *Basic Principles, supra* note 3, Principle 5 (a); see also *Code of Conduct, supra* note 2, Art. 3, commentary (b) (see para. 38).

17 See also *Code of Conduct, supra* note 2, Art. 3, commentary (c).

death and the comparable anticipatable likelihood that failing to incapacitate the individual would result in the deaths 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.

45. It is tempting to focus on the ethical probity of law enforcement officials rather than the domestic rules regulating the use of lethal force. However, as I indicated in my first report to the Commission, in relation to respect for the right to life by military personnel, "Remedial proposals to inculcate higher 'ethical' standards or to develop a greater 'moral' sensibility [are] inadequate. Respect for human rights and humanitarian law are legally required and the relevant standards of conduct are spelled out in considerable detail. Remedial measures must be based squarely on those standards".[18]

In his 2016 report to the General Assembly, Special Rapporteur Heyns focussed on the distinction between proportionality and necessity.

Report to the General Assembly (A/71/372, 2 September 2016, ¶¶51-54)

51. The intentional lethal use of force by law enforcement officials and others is permissible in very exceptional cases only, namely when its use against a perpetrator is strictly unavoidable in order to protect human life from unlawful attack (making it proportionate) and all other means are insufficient to achieve that objective (making it necessary).[19] The evaluation of necessity is a factual cause and effect assessment of whether the use of force is actually required to achieve the desired outcome (qualitative necessity) and, if so, how much force is unavoidable for that purpose (quantitative necessity). The requirement of necessity raises the question of whether the threat could not be averted by resort to less harmful means and thus requires a graduated approach to the use of force.

52. The proportionality requirement relates to the question of whether the benefit expected to result from the use of force, that is, neutralizing a threat, justifies the harm likely to be caused by it. While establishing necessity requires a factual cause-and-effect assessment, proportionality entails a value judgment that balances harm and benefit.

53. Given that they are cumulative requirements, proportionality can place a ceiling on the level of force that may be considered necessary and vice versa. For example, it may be "necessary" to shoot a fleeing thief if that is the only way to stop him or her from escaping (entailing an objective cause-and-effect assessment). However, thus injuring the thief would not be "proportionate," because it would amount to an excessively harmful means of stopping a comparatively minor crime (entailing a value judgment).

54. The State's use of potentially lethal force during peacetime must take place within a framework of appropriate planning and training, which must be directed at avoiding or minimizing the risk of loss of life during any law enforcement operation. It is not enough for a State or its agents to say that they had no choice but to use force if the escalation of that situation could reasonably have been avoided through precautionary measures. The Special Rapporteur has thus promoted the view that precaution should be seen as a separate requirement for the use of force, and in particular lethal force (see A/HRC/26/36, paras. 63-64).

18 See E/CN.4/2005/7, *supra* note 7, para. 54.

19 ***Editors' Note:*** This formulation was drawn from Special Rapporteur Alston's reporting on targeted killings, (see Report of the Special Rapporteur, Philip Alston, Study on Targeted Killings, A/HRC/14/24/Add.6, 28 May 2010, para.32). A variant can also be found in the African Commission on Human and Peoples' Rights' General Comment on the right to life.

At various points throughout the mandate, it became important to underline that the definition of a law enforcement official in the Code of Conduct is clearly function-based: an individual is a law enforcement official if they are undertaking law enforcement functions. In a 2016 report to the Human Rights Council, Special Rapporteur Heyns underlined this with respect to the practice of deputing state functions to private security providers:

Report to the Human Rights Council (A/HRC/32/39, 6 May 2016, ¶¶62-65)

62. The right to life has two components: the prevention of arbitrary deprivation of life, and accountability where life may have been arbitrarily deprived. The growth of the private security provider sector brings to the fore the question of whether private security providers adhere to the same standards as public security regarding the use of force, and whether the same level of accountability is in place should there be abuses of power. Concerns about private security providers centre on the level of training for the security guards, vetting procedures and practices in the selection process of employees, their mandates, whether they are issued with weapons and, if so, which ones, the risk of abuse of authority and excessive use of force, the level of professional standards, the adequacy of legal accountability mechanisms, and compliance with existing laws.[20]

63. All States that play a role in the deployment of private security providers, whether home State, host State or contracting State, must contribute to regulating the activities of the private security provider to ensure accountability.[21] The draft articles adopted by the International Law Commission in 2001 on the responsibility of States for internationally wrongful acts identify four instances when the acts of a private entity may be directly attributed to the State: (a) when the private entity is "empowered by the law of that State to exercise elements of the governmental authority … [provided that entity] is acting in that capacity in the particular instance" (art. 5); (b) when the private entity is "acting on the instruction of, or under the direction or control of, that State in carrying out the conduct" (art. 8); (c) when the private entity is "in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority" (art. 9); and (d) when a "State … acknowledges and adopts the conduct in question as its own" (art. 11).

64. When private security providers are tasked by the State to perform protective functions or other forms of law enforcement, and empowered to use force in that capacity, the State remains primarily responsible for their compliance with international human rights law.[22] However, in practice, the uncertainties that can arise in a transnational context concerning regulation of public-private partnerships often result in an accountability deficit.[23]

65. The State has a duty to respect and protect human rights, including the public's rights to bodily integrity: the rights to life, bodily security and the right to be free from cruel, inhuman or degrading treatment or punishment. In order to achieve that goal there is an obligation on the State to install regulative and legislative frameworks that protect the human rights of those under its jurisdiction or control. When it comes to the regulation of private security providers, the State has a duty to provide a regulative framework that ensures that private security providers act in a manner respectful of human rights, and are held accountable in instances in which they do not,

20 United Nations Office on Drugs and Crime, *State Regulation concerning Civilian Private Security Services and their Contribution to Crime Prevention and Community Safety* (2014), p. 21.

21 Olivier De Schutter, 'The Responsibility of States', in Simon Chesterman and Angelina Fisher (eds.), *Private Security, Public Order: The Outsourcing of Public Services and its Limits* (2009), p. 26.

22 The Special Rapporteur notes that this was the position taken by the two rapporteurs of the Human Rights Committee in preparing draft general comment No. 36 on the right to life in September 2015.

23 Michael Likosky, 'The Privatization of Violence', in Simon Chesterman and Angelina Fisher (eds.), *Private Security, Public Order: The Outsourcing of Public Services and its Limits* (2009), p. 16.

regardless of whether the contracting party is the State itself.[24] Given the context in which private security providers often work, it is important to underline that those responsibilities can also apply extraterritorially.[25]

Special Rapporteur Heyns further discussed the Basic Principles and Code of Conduct in his 2014 report to the Human Rights Council examining the extent to which they (or the international standards concerning use of force more generally) found expression in national legislation. In the report, he provided an overview of the domestic laws of a wide range of countries, based on a study of 146 domestic jurisdictions, research undertaken by the Rapporteur in the first instance for the report, but which has since been presented on a web-resource that is kept updated.[26] Heyns concluded that there is a serious discrepancy between the domestic laws of many countries and the international standards.

In his 2014 report to the Council and throughout his mandate he emphasised the requirement of precaution for the legal use of force, in addition to the more widely-recognised requirements of necessity and proportionality.

Report to the Human Rights Council (A/HRC/26/36, 1 April 2014, ¶¶55-77)

1. Requirements for the use of force

55. Everyone has a right not to be arbitrarily deprived of his or her life, with "arbitrary" being understood here to mean unlawful in terms of international standards. This implies that the right to life is not an absolute right – it may be legitimately deprived under certain circumstances, but the limitations to this right are exceptional and must meet certain standards. The onus is on those who claim they were justified in taking a life – here the State – to show that it was done within the confines of these limits. Any deprivation of life must meet each of the following requirements, which together form the comprehensive or holistic set of requirements that should be posed by the domestic legal system. If any of these requirements is not met the deprivation of life will be arbitrary.

(a) Sufficient legal basis

56. For the use of lethal force not to be arbitrary there must, in the first place, be a sufficient legal basis. This requirement is not met if lethal force is used without the authority being provided for in domestic law, or if it is based on a domestic law that does not comply with international standards.[27]

57. The laws in question must also be published and be accessible to the public.[28]

(b) Legitimate objective

58. Rights may be limited – and force may likewise be used – only in the pursuit of a legitimate objective. As will be discussed below, the only objective that can be legitimate when lethal force is used is to save the life of a person or to protect a person from serious injury.

24 See OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* (2011), Principle 2.

25 B. S. Buckland and A. M. Burdzy, *Progress and Opportunities: Challenges and Recommendations for Montreux Document Participants* (2nd ed., Geneva Centre for the Democratic Control of Armed Forces, 2015), pp. 23-25.

26 See The Law on Police Use of Force Worldwide, available at: www.policinglaw.info.

27 Human Rights Committee, General Comment No. 6: Article 6 (Right to Life), 1982.

28 *Nachova and Others v. Bulgaria*, European Court of Human Rights, Appl. Nos. 43577/98 and 43579/98 (6 July 2005), para. 102; see also Nils Melzer, *Targeted Killing in International Law* (2008), p. 114.

(c) Necessity

59. The use of force can be necessary only when a legitimate objective is pursued. The question is whether force should be used at all, and if so how much. This means that force should be the last resort (if possible, measures such as persuasion and warning should be used), and if it is needed, graduated force (the minimum required) should be applied. Any such force may also only be used in response to an imminent or immediate threat – a matter of seconds, not hours.[29]

60. Necessity in the context of lethal force has been said to have three components.[30] Qualitative necessity means that the use of potentially lethal force (such as through a firearm) is not avoidable to achieve the objective. Quantitative necessity means the amount of force used does not exceed that which is required to achieve the objective. Temporal necessity means the use of force must be used against a person who presents an immediate threat. In the context of the use of lethal (or potentially lethal) force, absolute necessity is required.

61. Principle 4 mandates that law enforcement officials must, as far as possible, apply non-violent means before resorting to the use of force and firearms. Where non-violent means prove ineffective or without promise of achieving the intended result, necessity requires that the level of force used should be escalated as gradually as possible.

62. Governments and law enforcement agencies must "develop a range of means, as broad as possible, and … equip officials with various types of weapons and ammunition, thus allowing for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations."[31]

(d) Prevention/precaution

63. To this should be added the – often-overlooked – requirement of prevention or precaution.[32] Once a situation arises where the use of force is considered, it is often too late to rescue the situation. Instead, in order to save lives, all possible measures should be taken "upstream" to avoid situations where the decision on whether to pull the trigger arises, or to ensure that all the possible steps have been taken to ensure that if that happens, the damage is contained as much as is possible.

64. A failure to take proper precautions in such a context constitutes a violation of the right to life. In *McCann and Others v the United Kingdom*, for example, the European Court of Human Rights (application No. 18984/91, 27 September 1995) held that the use of lethal force by soldiers who erroneously but in good faith believed that a group of terrorists were about to trigger an explosion did not violate the right to life, but that the lack of control and organization of the operation as a whole did violate the right.

(e) Proportionality

65. The use of lethal force must also meet the requirement of proportionality. In general terms, when any right is limited, proportionality requires that the good that is done must be compared with the threat posed.[33] 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

29 Report of the Special Rapporteur, Christof Heyns, A/68/382, 13 September 2013, paras. 33-37 and Report of the Special Rapporteur, Philip Alston, A/HRC/14/24, 20 May 2010.

30 Melzer, *supra* note 28, p. 101.

31 *Basic Principles, supra* note 3, Principle 2.

32 International Committee of the Red Cross (ICRC), *Violence and the Use of Force* (2011) available at https://shop.icrc.org/violence-et-usage-de-la-force-859.html, p. 17; and Melzer, *supra* note 28, pp. 101 and 199.

33 See *Nachova v. Bulgaria, supra* note 28.

shall… exercise restraint and act in proportion to the seriousness of the offence and legitimate objective to be achieved."[34]

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.[35] If necessity can be visualised 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.

67. Special considerations apply when (potentially) lethal force is used. In the context of such use of force, the requirement of proportionality can be met only if such force is applied in order to save life or limb. What is required in respect of lethal force is thus not ordinary proportionality but strict proportionality.

68. According to article 3 of the Code, law enforcement officials may "use force only when strictly necessary and to the extent required for the performance of their duty." The Commentary further explains: "[e]very effort shall be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardises the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender."[36]

69. The pivotal Principle 9 does not use the term "force and firearms," as do the preceding provisions, but merely refers to the use of firearms. It poses a higher threshold for the use of firearms than for force in general and provides that "Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against an imminent threat of death or serious injury … and only when less extreme measures 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."

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

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

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.

34 *Basic Principles, supra* note 3, Principle 5.
35 Report by the Special Rapporteur, Philip Alston, A/61/311, 5 September 2006, para. 42.
36 *Code of Conduct, supra* note 2, commentary to Art. 3.

73. This is where fundamental differences between the general orientation of international law and many domestic human rights systems lie. While international law is aimed primarily at the preservation of life and limb, some domestic legal systems have as their first priority the protection of law and order. Drawing the line for the use of lethal force at violations of law and order, and not asking in addition whether there is a real danger, carries grave risks for lives and for a society based on human rights. The challenge is to bring the blunt generalizations of some domestic systems in compliance with the more principled requirements set by the international standards.

(f) Non-discrimination

74. At times, the police exercise higher levels of violence against certain groups of people, based on institutionalised racism or ethnic discrimination.[37] Discrimination on these, and other, grounds also impacts on patterns of accountability. States must instead adopt both a reactive and a proactive stance, encompassing all available means, to combat racially motivated and other similar violence within law enforcement operations.[38]

(g) Special provisions on demonstrations

75. It is widely accepted that it is the task of the police to facilitate and, if necessary, manage peaceful protest. In addition to the general provisions outlined above, three principles deal with the specialised case of policing of assemblies in the Basic Principles.[39] In the case of lawful and peaceful assembly, no force may be used.[40] If there is good reason to disperse an unlawful assembly that is peaceful, only the minimum force necessary may be used.[41] Lethal force clearly has no role to play. The mere fact that some protesters in the crowd are violent does not turn the demonstration as a whole into a non-peaceful assembly.[42] In violent assemblies (that are both unlawful and not peaceful) minimum force should also be used, and firearms may be used only in accordance with Principle 9. Indiscriminate fire into a crowd is never allowed.[43]

(h) Special provisions on people in custody or detention

76. Law enforcement officials, in their relations with persons in custody or detention, are required not to use firearms except in self-defence or 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."[44]

(i) Requirements after the use of force

77. In addition to the need for accountability, medical assistance must be provided to injured persons after the use of force or firearms by law enforcement,[45] and relatives or close friends of injured or affected persons must be notified at the earliest possible moment.[46] The Code and Basic

37 Report of the Special Rapporteur, Philip Alston, Police Oversight Mechanisms, A/HRC/14/24/Add.8, 28 May 2010.
38 See *Nachova v. Bulgaria, supra* note 28, paras. 145 and 161.
39 The heading "policing of unlawful assemblies" is not appropriate since lawful assemblies are also covered.
40 *Basic Principles, supra* note 3, Principle 12.
41 Ibid., Principle 13.
42 Report of the Special Rapporteur, Christof Heyns, A/HRC/17/28, 28 May 2011.
43 Geneva Academy, *Facilitating Peaceful Protests* (2014), p. 21, available at https://www.geneva-academy.ch/our-projects/our-projects/human-rights-protection/detail/22-police-use-of-force.
44 *Basic Principles, supra* note 3, Principle 16.
45 Ibid., Principle 5 (c) and *Code of Conduct, supra* note 2, Art. 6, with commentary.
46 *Basic Principles, supra* note 3, Principle 5 (d).

Principles provide that effective reporting and review procedures must be established to address any incident in which a potentially unlawful use of force occurs.[47]

2. Particular considerations for policing assemblies

The exercise in 2014 of reviewing national legal regimes concerning the use of force was built upon an earlier exercise involving a more limited review of national legislation concerning the management of public assemblies, conducted by Special Rapporteur Heyns for a 2011 report, submitted to the Human Rights Council during the midst of the "Arab Spring":

Report to the Human Rights Council (A/HRC/17/28, 23 May 2011, ¶¶28-74)

C. Applicable international legal standards

28. The norms regarding the rights and duties in policing protests are to be found in international law (on both the global and regional level), and also in domestic law.[48]

29. While international law primarily makes a distinction in terms of the level of protection provided in peaceful and violent demonstrations, domestic law often draws the line between lawful and unlawful gatherings. This suggests that the pre-occupation of international law is to ensure peace, while national law has a stronger focus on law enforcement.

30. International standards are often stated in general and aspirational terms, and are not necessarily applicable word-for-word at the domestic level, where greater detail and precision are required.

Freedom of assembly

31. Assembly plays a facilitating role in respect of other rights. In many instances, public protest has been the vehicle through which a wide range of human rights have gained entry into the global human rights project. Protest is a tool primarily used by opposition and minority groups.

32. If freedom of assembly is to play its role as a mechanism that provides a platform to those who would otherwise not be able to make their point, it follows that it should not be regulated in a way that is biased in favour of those who happen to be in power. The regulation of freedom of assembly should be content-neutral (except where human rights objectives are undermined, for example, through the promotion of violence or racial hatred). If either the legal provisions in respect of assembly or the way in which these laws are administered are skewed against those who are supposed to be its direct beneficiaries, then they will be in a worse position than if the right was not recognized at all.

33. Supporting freedom of assembly implies a realization that, as expressed so eloquently by the Spanish Constitutional Court, "in a democratic society, the urban space is not only an area for circulation, but also for participation".[49]

34. Freedom of assembly is widely recognized and protected in international instruments. Article 20(1) of the Universal Declaration of Human Rights (UDHR) states that "everyone has the right to freedom of peaceful assembly…." According to article 21 of the International Covenant on Civil and Political Rights (ICCPR), the "right of peaceful assembly shall be recognized." It further states that "no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of

47 Ibid., Principle 22 and *Code of Conduct, supra* note 2, Art. 8, with commentary.
48 See Ralph Crawshaw et al., *Human rights and policing*, 2nd ed. (Leiden: Martinus Nijhoff, 2007).
49 Judgment 66/1995, leaf 3.

national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others." As such, limitations to this right – prohibition or restriction of assembly by local authorities and the police – may be imposed only if the above provisions are met.[50]

35. At the regional level, the African Charter on Human and Peoples' Rights (African Charter) recognizes that "every individual shall have the right to assemble freely with others" (art. 11), without explicitly requiring that the assembly be "peaceful". The American Convention on Human Rights (American Convention) recognizes the right of "peaceful assembly, without arms" (art. 15) while article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention), and the article 24.6 of the Arab Charter on Human Rights (Arab Charter) recognize the right to "peaceful assembly".

36. In phrasing similar to that of the International Covenant on Civil and Political Rights, the regional instruments stipulate that any restrictions on this right must be in conformity with the law and necessary "in a democratic society" (European and African instruments) or in a society that "respects freedom and human rights" (Arab Charter) in the interest of national security, public safety, public order, protection of health and morals, or "ethics" (African Charter), or protection of the rights of others. Legal provisions that circumscribe the terms under which limitations may be imposed should not be so open-ended as to give the State carte blanche.[51]

37. Limitations placed on those wishing to exercise their assembly rights should be proportionate and necessary, and be subject to appeal in an independent court of law. The positive obligation on the State to facilitate peaceful protest has been recognized in several international cases.[52]

38. According to a number of international instruments, human rights may not be used in a way that is aimed at the destruction of other rights.[53] These provisions form a legal basis for the small number of non-content-neutral restrictions on demonstrations that are permissible, such as the promotion of violence.

39. According to the Human Rights Committee, a notification requirement in respect of planned demonstrations is not necessarily an infringement of the right to freedom of peaceful assembly,[54] and the same probably applies to a permit requirement system, provided there is the assumption such a permit will be issued.

40. Spontaneous demonstrations occur where there is no opportunity for prior notice or to apply for a permit. If there is indeed no such opportunity, the assembly should be regarded as legal and should therefore be protected.[55]

41. Derogation from the right to freedom of assembly is possible under article 4 of the International Covenant on Civil and Political Rights during a state of emergency.[56]

50 For discussion, see Manfred Nowak, *UN Covenant on Civil and Political Rights. CCPR Commentary*, 2nd rev. ed. (Kehl am Rhein, Engel, 2005), p. 491; also Siracusa Principles (E/CN.4/1984/4), annex. Very few reservations have been entered against article 21.

51 See *Amnesty International and Others v Sudan* (2000) AHRLR 297 (ACHPR 1999).

52 See, for example, *Plattform Ärtze für das Leben v. Austria*, ECHR 10126/82 (21 June 1988).

53 See, for example, UDHR, art. 30; ICCPR, art. 5; European Convention, art. 17; African Charter, art. 27.2 which states that everyone has the duty to exercise their rights with due regard to the rights of others.

54 See *Auli Kivenmaa v. Finland*, No. 412/1990 (CCPR/C/50/D/412/1990).

55 See *Bukta and Others v. Hungary*, ECHR 25691/04 (17 July 2007), para. 32.

56 American Convention, art. 27 and European Convention, art. 15 also provide for derogation from freedom of peaceful assembly.

42. Only "peaceful assembly" is protected by this provision. However, the individual does not lose the protection of the right when sporadic or isolated violence occurs in the crowd.[57]

Right to life

43. During demonstrations, the right to life of protesters, the police and the public may be at stake. The right to life, sometimes described as the "supreme human right," constitutes a rule of customary international law and is one of the central rights recognized in international human rights treaties. The primary purpose of the recognition of the right to life is to protect people from being killed by the State, the entity that claims and, to a large extent, exercises monopoly on the use of force.[58]

44. Article 3 of the Universal Declaration of Human Rights states that "everyone has the right to life, liberty and security of person," while article 6.1 of the International Covenant on Civil and Political Rights states that "every human being has the inherent right to life, [which] shall be protected by law, and [that] no one shall be arbitrarily deprived of his life."[59] The word "inherent" underscores the fundamental importance of this right, while "protected by law" implies not only protection by the State from infringement by other members of society, but also respect by agents of the State. It should be noted that "arbitrary" deprivation of life is covered by the right; non-arbitrary deprivation of life falls outside its protection.

45. According to general comment No. 6 of the Human Rights Committee on the right to life (para. 3), States parties should take measures to, *inter alia*, "prevent arbitrary killings by their own security forces. The deprivation of life by the authorities of the State is a matter of utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."

46. At the regional level, the African, Inter-American and Arab instruments, recognize protection against "arbitrary" deprivation of life,[60] while the European Convention is based on "intention." Article 2.1 of the European Convention states that "everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."

47. With regard to deprivation of life, article 2.2 of the European Convention states as follows:

> Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
> a. in defence of any person from unlawful violence;
> b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
> c. in action lawfully taken for the purpose of quelling a riot or insurrection.

48. The test for the use of force in the European system, including when dispersing a riot, is whether it is "absolutely necessary."[61] The use of force must be both proportionate and necessary.

57 See *Zilberberg v. Moldova*, ECHR 61821/00 (4 May 2004), and *Ezelin v. France*, ECHR 11800/85 (26 April 1991).
58 See Ralph Crawshaw and Leif Holmström, *Essential cases on human rights for the police* (Leiden: Martinus Nijhoff, 2006), p. 39.
59 See also UDHR, art. 3.
60 African Charter, art. 4; American Convention, art. 4; Arab Charter, art. 5.
61 See *McCann and Others v. United Kingdom*, European Court of Human Rights, Appl. No. 18984/91, 27 September 1995.

49. While "proportionality" requires that the benefits attached to the objective pursued should outweigh the damage that would be caused through the violence, "necessity" demands that the lowest possible level of force necessary to achieve a legitimate objective should be used.[62]

50. Article 2.2 of the European Convention therefore provides for three contexts in which deprivation of life caused by use of force does not engage State responsibility: self-defence, arrest or riots. These contexts probably constitute the sum total of instances in which killing would be considered non-arbitrary under the International Covenant on Civil and Political Rights.[63]

51. The right to life, as defined in the International Covenant on Civil and Political Rights, is not subject to the internal limitation clauses that can be evoked in respect of many other rights. However, it is not an absolute right because non-arbitrary deprivation of life is regarded as acceptable.

52. No derogation from the right to life is permissible under the International Covenant.[64]

Provisions regulating the use of force

53. An elaboration of the norms applicable to the use of force by law enforcement officials – in any kind of situation – can be found in a number of soft law instruments, which also define contexts in which deprivation of life during demonstrations would be regarded as "arbitrary" in terms of article 6 of the International Covenant on Civil and Political Rights.[65]

54. The Code of Conduct for Law Enforcement Officials[66] (Code) sets the standards, supplemented by commentaries, by which law enforcement officials should execute their duties. Article 2 of the Code requires law enforcement officials to respect and protect the human rights of all persons, including the right to freedom of peaceful assembly. The Code provides for the use of force "only when strictly necessary and to the extent required for the performance of their duty" (art. 3).

55. Commentary (c) on article 3 states that:

> the use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender.

56. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials[67] (Basic Principles) state in principle 9 that:

> 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.

62 See A/61/311, *supra* note 35, paras. 40-45; also *Suárez de Guerrero v. Colombia*, No. R.11/45 (A/37/40); *Jiménez Vaca v. Colombia*, No. 859/1999 (CCPR/C/74/D/859/1999); *Güll v. Turkey*, ECHR 2267/931 (4 December 2000); *Zambrano-Vélez and others v. Ecuador* I/A Court H.R. Series C No.166 (2007); *Neira Alegria v. Peru* I/A Court H.R. Series C No. 20 (1995); contrast *Kelly v. United Kingdom* [1993] ECHR 17579/90 (13 January 1993).

63 See Nowak, *supra* note 50, p. 128.

64 ICCPR, art. 4; see also American Convention, art. 27; European Convention, art. 15; Arab Charter, art. 4(2).

65 For a discussion, see Crawshaw et al., *supra* note 48; also Rodley, *supra* note 5, p. 495.

66 Adopted by the General Assembly in its resolution 34/169 (1979).

67 Adopted by the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Cuba, 1990.

57. Principle 12 under the heading Policing unlawful assemblies, recognizes the right to participate in lawful, peaceful assemblies, and cautions States that force and firearms may be used only under certain circumstances.[68]

58. Principle 13 provides for the dispersal of assemblies that are "unlawful but non-violent," and states that "law enforcement officials shall avoid the use of force or, where that is not practicable, restrict such force to the minimum extent necessary."

59. With regard to "violent assemblies," principle 14 provides for the use of firearms "only when less dangerous means are not practicable and only to the minimum extent necessary" and under the conditions stipulated in principle 9 (see para. 56 above).

60. The guiding principle in respect of the lethal use of force or firearms is defence of one's own life or that of others. The only circumstances warranting the use of firearms, including during demonstrations, is the imminent threat of death or serious injury, and such use shall be subject to the requirements of necessity and proportionality.

61. In principle shooting indiscriminately into a crowd is not allowed and may only be targeted at the person or persons constituting the threat of death or serious injury.[69] The use of firearms cannot be justified merely because a particular gathering is illegal and has to be dispersed, or to protect property. This is often not reflected in domestic laws.

62. In terms of the Code and the Basic Principles, the norm in respect of the intentional use of lethal force is the same under all circumstances, whether in self-defence, arrest, quelling a riot or any other circumstances, namely, protection of life.

63. Prevention of arbitrary killings is one component of securing the right to life; another is accountability, where killing has occurred.[70] The Code requires that a report be made promptly to the competent authorities, in every instance in which a firearm is discharged.[71] Disciplinary action should be taken where applicable.

64. While these soft law instruments have brought a considerable measure of coherence in respect of the international norms, the Basic Principles have been criticised for lacking clarity as to whether firearms may be used against people other than those presenting the threat of danger. Some of the principles are also redundant.[72] It has been pointed out that the Basic Principles do not define concepts such as "force" or "firearms", and pose general standards, as opposed to concrete action guidelines.[73]

65. Under the European Code of Police Ethics,[74] the use of force must meet the requirements of necessity and proportionality (para. 37).

68 See also Standard 5 of Amnesty International, *Basic human rights standards for law enforcement officials*, AI Index POL 30/04/98 of 1998; see *Giuliani Gaggio v. Italy* App. No. 23458/02, decision of 24 March 2011.

69 See discussion in Crawshaw et al., *supra* note 48, p. 150, on the difficult question as to whether lethal force may be used in protection of life against an individual who does not necessarily pose an imminent threat, but who is part of a group that does.

70 See *Solomou and Others v. Turkey*, ECHR 368327/97 (24 September 2008).

71 Commentary on article 3.

72 See Crawshaw et al., *supra* note 48, p. 154.

73 Anneke Osse, *Understanding policing* (Netherlands, Amnesty International, 2006), p. 129.

74 Rec (2001) 10 adopted by the Committee of Ministers of the Council of Europe, 19 September 2001.

States of emergency and demonstrations

66. While the foregoing concern "ordinary" limitations to the right to peaceful assembly, there are also circumstances in which "extraordinary" limitations may be imposed on this and other rights, for example, through the declaration of a state of emergency, in accordance with article 4 of the International Covenant on Civil and Political Rights. The right to freedom of peaceful assembly is often included in the list of rights that are suspended during states of emergency.

67. As is the case with all limitations, there is the risk that states of emergency could be misused by States seeking to suppress human rights. A number of the States in which recent demonstrations served to change the public order had already had states of emergency in place for decades.

68. While human rights law recognises that there are conditions under which states of emergencies may be declared, and certain rights can legitimately be suspended while emergency powers are in place, a specific regime of safeguards aimed at curtailing abuse must be met by States wishing to invoke emergency powers.[75]

69. There is a presumption against allowing derogation from freedom of assembly in response to mass demonstrations, even where there are instances of violence. States have to submit strong evidence to rebut this presumption.

70. However, while freedom of peaceful assembly may legitimately be curtailed during states of emergency, the other non-derogable rights of the demonstrators, such as the right to life, remain in place and have to be respected.[76]

International humanitarian law

71. During armed conflict, international human rights law, to the extent that specific rights have not been suspended, and subject to the dictates of international humanitarian law, remains applicable as *lex generalis*.[77] Unlawful killing is prohibited under international humanitarian law, including in the case of non-international armed conflict, according to common article 3 of the Geneva Conventions of 1949.[78]

International criminal law

72. Unlawful killing during peace and war times may constitute an international crime under the Rome Statute of the International Criminal Court, and would also apply to those participating in demonstrations, as is evidenced by the recent referral to the International Criminal Court of the situation in the Libyan Arab Jamahiriya, where peaceful protesters were killed by Government troops.[79]

75 For example, a state of emergency can only be declared, and remain in force in terms of article 4 of the ICCPR, where the emergency "threatens the life ofthe nation;" it cannot be used to save a specific Government.

76 This is contrary to Nowak, *supra* note 50, p. 487, who states that during violent protests, participants lose their human rights protection.

77 See *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226, para. 25.

78 See discussion in Rodley, *supra* note 5, p. 260.

79 Security Council resolution 1970 (2011) referred the situation in the Libyan Arab Jamahiriya to the International Criminal Court because of the "gross and systematic violation of human rights, including the repression of peaceful demonstrators"; on 23 February 2011, the Peace and Security Council of the African Union, in a communiqué issued at the 261st meeting, "express[ed] deep concern with the situation in [Libya] and strongly condemn[ed] the indiscriminate use of force and lethal weapons against peaceful protesters"; the African Court on Human and Peoples' Rights ordered provisional measures against Libya on the same grounds, see *African Commission on Human and Peoples' Rights v. Great Socialist People's Libyan Arab Jamahiriya*, App. No. 004/2011, dated 25 March 2011.

> 73. More than a thousand people lost their lives during election-related violence in Kenya, in respect of which prosecution is now under way in the International Criminal Court. The situations in Honduras, Guinea and Côte d'Ivoire are also being investigated.
>
> ***The role of United Nations peacekeepers in handling protest***
>
> 74. United Nations peacekeeping troops sometimes encounter situations where they are faced with protesters. It is important that the peacekeeping troops comply with international standards in managing such situations.

Following up on the 2011 report, alongside other developments, the Human Rights Council in 2014 requested that Special Rapporteur Heyns, along with the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, produce an *ad hoc* report providing 'a compilation of practical recommendations for the proper management of assemblies based on best practices and lessons learned'.[80]

In the preparation of this report, the two Special Rapporteurs convened a series of regional consultations, with both states and civil society, before presenting their summary of applicable legal standards in a report structured around a number of key principles. As requested by the Council, the Special Rapporteurs also made a number of practical recommendations, which are extracted below in Section D.4. These principles were widely used and popularised by the Special Rapporteur on the rights of freedom of peaceful assembly and of association, including through social media.[81]

> ***Joint Report (with the Special Rapporteur on the rights to freedom of peaceful assembly and of association) on the proper management of assemblies (A/HRC/31/66, 4 February 2016, ¶¶5-6, 8-11, 40-48, 50-66, 90, 92)***
>
> 5. The ability to assemble and act collectively is vital to democratic, economic, social and personal development, to the expression of ideas and to fostering engaged citizenry. Assemblies can make a positive contribution to the development of democratic systems and, alongside elections, play a fundamental role in public participation, holding governments accountable and expressing the will of the people as part of the democratic processes.
>
> 6. Assemblies are also an instrument through which other social, economic, political, civil and cultural rights can be expressed, meaning they play a critical role in protecting and promoting a broad range of human rights. They can be instrumental in amplifying the voices of people who are marginalised or who present an alternative narrative to established political and economic interests. Assemblies present ways to engage not only with the State, but also with others who wield power in society, including corporations, religious, educational and cultural institutions, and with public opinion in general.
>
> [...]
>
> 8. The proper management of assemblies requires the protection and enjoyment of a broad range of rights by all the parties involved. Those who take part in assemblies have a number of protected rights, including the rights to: freedom of peaceful assembly, expression, association and belief; participation in the conduct of public affairs; bodily integrity, which includes the rights to security, to be free from cruel, inhuman or degrading treatment or punishment, and to life; dignity; privacy; and an effective remedy for all human rights violations.

80 Resolution 25/38 (A/HRC/RES/25/38, 28 March 2014), ¶20.

81 See e.g. https://www.ohchr.org/Documents/Issues/FAssociation/10PrinciplesProperManagementAssemblies.pdf

9. Even if participants in an assembly are not peaceful and as a result forfeit their right to peaceful assembly, they retain all the other rights, subject to the normal limitations. No assembly should thus be considered unprotected.

10. An "assembly", generally understood, is an intentional and temporary gathering in a private or public space for a specific purpose, and can take the form of demonstrations, meetings, strikes, processions, rallies or sit-ins with the purpose of voicing grievances and aspirations or facilitating celebrations (see A/HRC/20/27, para. 24). Even sporting events, music concerts and other such gatherings can potentially be included. While an assembly is defined as a temporary gathering, this may include long-term demonstrations, including extended sit-ins and "occupy"-style manifestations. Although an assembly has generally been understood as a physical gathering of people, it has been recognised that human rights protections, including for freedom of assembly, may apply to analogous interactions taking place online.

11. The focus of the recommendations is on assemblies that express a common position, grievance, aspiration or identity and that diverge from mainstream positions or challenge established political, social, cultural or economic interests. In adopting this approach, the special rapporteurs have been guided by the language used in Human Rights Council resolution 25/38, in which the Council refers specifically to the promotion and protection of human rights in the context of peaceful protests. It should be noted, however, that none of the rights enjoyed by the participants of an assembly are in any way contingent upon the political, or other, content of that assembly's expression.

[...]

D. States shall facilitate the exercise of the right of peaceful assembly

[...]

40. The State's obligation to facilitate includes the responsibility to provide basic services, including traffic management, medical assistance[82] and clean-up services.[83] Organisers should not be held responsible for the provision of such services, nor should they be required to contribute to the cost of their provision.

41. A primary function of law enforcement, in addition to the obligation to facilitate, is protecting the safety and rights of those who participate in assemblies, as well as monitors and bystanders.

42. Law enforcement officials must be adequately trained in facilitating assemblies. This training should include proper knowledge of the legal framework governing assemblies, techniques of crowd facilitation and management, human rights in the context of assemblies and the important role assemblies play in a democratic order. Training must include soft skills such as effective communication, negotiation and mediation allowing law enforcement officials to avoid escalation of violence and minimise conflict.[84]

43. Use of the tactic of stop-and-search by law enforcement against individuals organizing or participating in an assembly may affect the rights to liberty and bodily security, as well as privacy. Stop-and-search must not be arbitrary and must not violate the principle of non-discrimination. It must be authorised by law, necessary and proportionate.[85] The mere fact that an individual is

82 See *Basic Principles, supra* note 3, Principle 5.

83 Organisation for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights, *Guidelines on Freedom of Association* (2nd edition, 2015), para. 32 [*OSCE/ODIHR Guidelines*].

84 *Basic Principles, supra* note 3, Principle 20 and *OSCE/ODIHR Guidelines, supra* note 83, para. 147.

85 UN CTITF Working Group on Protecting Human Rights while Countering Terrorism, *Basic Human Rights Reference Guide: The Stopping and Searching of Persons* (1st ed., September 2010).

participating in a peaceful assembly does not constitute reasonable grounds for conducting a search.

44. The authority to arrest can play an important protective function in assemblies, by allowing law enforcement to remove from an assembly individuals who are acting violently. The term "arrest" refers to any deprivation of liberty, and is not limited to formal arrest under domestic law. It is critical that arrest powers are exercised consistently with international human rights standards, including those relating to the rights to privacy, liberty, and due-process rights.

45. No one may be subject to arbitrary arrest or detention. In the context of assemblies this has particular import for the criminalization of assemblies and dissent. Arrest of protestors to prevent or punish the exercise of their right to freedom of peaceful assembly, for example on charges that are spurious, unreasonable or lack proportionality, may violate these protections. Similarly, intrusive pre-emptive measures should not be used unless a clear and present danger of imminent violence actually exists. "Mass arrest" of assembly participants often amounts to indiscriminate and arbitrary arrests.

46. Where an arrest takes place detention conditions must meet minimum standards. This applies to any location or situation in which an individual has been deprived of his or her liberty, including jails, holding cells, public spaces and vehicles used to transfer detainees, and any other location in which detainees are held. Detainees must be treated in a humane manner and with respect for their dignity,[86] and shall not be subjected to torture or cruel, inhuman or degrading treatment or punishment.

47. The imposition of administrative detention is especially troubling. The Human Rights Committee has emphasised that such detention, not in contemplation of prosecution on a criminal charge, presents severe risks of arbitrary deprivation of liberty.[87]

48. The issue of proportionality is particularly relevant to administrative sanctions imposed in the context of assemblies. Any penalty must not be excessive – for example, a disproportionately large fine. Such penalties raise due-process concerns, and may have a chilling effect more broadly on the exercise of the right to freedom of peaceful assembly.

[...]

E. Force shall not be used unless it is strictly unavoidable, and if applied it must be done in accordance with international human rights law

50. States and their law enforcement agencies and officials are obligated under international law to respect and protect, without discrimination, the rights of all those who participate in assemblies, as well as monitors and bystanders.[88] The normative framework governing the use of force includes the principles of legality, precaution, necessity, proportionality and accountability.

51. The principle of legality requires that States develop a domestic legal framework for the use of force, especially potentially lethal force, that complies with international standards (see A/HRC/26/36, para. 56). The normative framework should specifically restrict the use of weapons

86 General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 9 December 1988, Principle 1.

87 See Human Rights Committee, General Comment No. 35: Article 9 (Liberty and Security of Person), CCPR/C/GC/35, 16 December 2014, para. 15.

88 The conduct of law enforcement officials is governed, *inter alia*, by human rights law, the *Code of Conduct, supra* note 2 and the *Basic Principles, supra* note 3. See also the *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, recommended by Economic and Social Council Resolution 1989/65 of 24 May 1989.

and tactics during assemblies, including protests, and include a formal approval and deployment process for weaponry and equipment.[89]

52. The principle of precaution requires that all feasible steps be taken in planning, preparing, and conducting an operation related to an assembly to avoid the use of force or, where force is unavoidable, to minimise its harmful consequences. Even if the use of force in a particular situation complies with the requirements of necessity and proportionality, but the need to use force could reasonably have been prevented from arising in the first place, a State may be held accountable for a failure to take due precautionary measures.[90] Training should include techniques of crowd facilitation and management consonant with the legal framework governing assemblies.[91] States must ensure that their law enforcement officials are periodically trained in and tested on the lawful use of force, and on the use of the weapons with which they are equipped.[92]

53. On the basis of a risk assessment, equipment for law enforcement officials deployed during assemblies should include both appropriate personal protective equipment and appropriate less-lethal weapons.[93] Weapons and tactics should allow for a graduated response and de-escalation of tensions. Accordingly, the provision of a firearm to law enforcement officials with no less-lethal alternative other than a baton is unacceptable.

54. Where necessary, officials must be appropriately protected with equipment, such as shields, helmets and stab- and/or bulletproof jackets, with a view to decreasing the need for any use of weapons by law enforcement. Equipment and weapons that cannot achieve a legitimate law enforcement objective or which present unwarranted risks, particularly in the circumstances of an assembly, should not be authorised for use.[94]

55. States are required to procure less lethal weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury.[95] Less-lethal weapons must be subject to independent scientific testing and approval, and used responsibly by well-trained law enforcement officials, as such weapons may have lethal or injurious effects if not used correctly or in compliance with international law and human rights standards. States should work to establish and implement international protocols for the training on and use of less-lethal weapons.

56. A growing range of weapons that are remote controlled are becoming available, particularly in the context of the policing of assemblies. Great caution should be exercised in this regard. Where advanced technology is employed, law enforcement officials must, at all times, remain personally in control of the actual delivery or release of force (see A/69/265, paras. 77-87).[96]

57. The use of force by law enforcement officials should be exceptional,[97] and assemblies should ordinarily be managed with no resort to force. Any use of force must comply with the principles of necessity and proportionality. The necessity requirement restricts the kind and degree of force used to the minimum necessary in the circumstances (the least harmful means available), which

89 See, for e.g., Amnesty International, *Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (2015), p. 46.
90 *McCann and Others v. United Kingdom, supra* note 61.
91 *Basic Principles, supra* note 3, Principle 20 and *OSCE/ODIHR Guidelines, supra* note 83, para. 147.
92 *Basic Principles, supra* note 3, Principle 19.
93 Ibid., Principle 2. Less-lethal weapons may still have lethal consequences or affect bystanders (see Principle 3).
94 See Amnesty International, *supra* note 89, Ch. 6.
95 Ibid.
96 See also African Commission on Human and Peoples' Rights, *General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)* (2015), para. 31.
97 See *Code of Conduct, supra* note 2, commentary to Art. 3.

is a factual cause and effect assessment. Any force used should be targeted at individuals using violence or to avert an imminent threat.

58. The proportionality requirement sets a ceiling on the use of force based on the threat posed by the person targeted. This is a value judgement that balances harm and benefit, demanding that the harm that might result from the use of force is proportionate and justifiable in relation to the expected benefit.

59. The principles of necessity and proportionality apply to the use of all force, including potentially lethal force. Specific rules apply to the use of firearms for law enforcement, also during assemblies.[98] Firearms may be used only against an imminent threat either to protect life or to prevent life-threatening injuries (making the use of force proportionate). In addition, there must be no other feasible option, such as capture or the use of non-lethal force to address the threat to life (making the force necessary).

60. Firearms should never be used simply to disperse an assembly; indiscriminate firing into a crowd is always unlawful (see A/HRC/26/36, para. 75). Intentional lethal use of force is only lawful where it is strictly unavoidable to protect another life from an imminent threat; this is sometimes referred to as the protect life principle (ibid., para. 70).

61. Dispersing an assembly carries the risk of violating the rights to freedom of expression and to peaceful assembly as well as the right to bodily integrity. Dispersing an assembly also risks escalating tensions between participants and law enforcement. For these reasons, it must be resorted to only when strictly unavoidable. For example, dispersal may be considered where violence is serious and widespread and represents an imminent threat to bodily safety or property, and where law enforcement officials have taken all reasonable measures to facilitate the assembly and protect participants from harm. Before countenancing dispersal, law enforcement agencies should seek to identify and isolate any violent individuals separately from the main assembly and differentiate between violent individuals in an assembly and others. This may allow the assembly to continue.

62. International law allows for dispersal of a peaceful assembly only in rare cases. For example, a peaceful assembly that incites discrimination, hostility or violence, in contravention of article 20 of the International Covenant on Civil and Political Rights, may warrant dispersal if less intrusive and discriminatory means of managing the situation have failed. Similarly, while mere inconvenience to others,[99] or temporary disruption of vehicular or pedestrian traffic, are to be tolerated, where an assembly prevents access to essential services, such as blocking the emergency entrance to a hospital, or where interference with traffic or the economy is serious and sustained, for example, where a major highway is blocked for days, dispersal may be justified. Failure to notify authorities of an assembly is not a basis for dispersal.

63. Only governmental authorities or high-ranking officers with sufficient and accurate information of the situation unfolding on the ground should have the authority to order dispersal. If dispersal is deemed necessary, the assembly and participants should be clearly and audibly informed, and should also be given reasonable time to disperse voluntarily.[100] Only if participants then fail to disperse may law enforcement officials intervene further.

98 *Basic Principles, supra* note 3, Principle 9.

99 See Inter-American Commission on Human Rights, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II.Doc. 57, 31 December 2009, para. 198.

100 See *OSCE/ODIHR Guidelines, supra* note 83, para. 168.

64. As part of their responsibility to ensure accountability, States must establish effective reporting and review procedures to address any incident in relation to an assembly during which a potentially unlawful use of force occurs.[101]

65. A clear and transparent command structure must be established to minimise the risk of violence or the use of force, and to ensure responsibility for unlawful acts or omissions by officers.[102] Proper record keeping of decisions made by command officers at all levels is also required. Law enforcement officials must be clearly and individually identifiable, for example by displaying a nameplate or number. In addition, there should be a clear system of record keeping or register of the equipment provided to individual officers in an operation, including vehicles, firearms and ammunition.

66. As a general rule, the military should not be used to police assemblies. In exceptional circumstances where this becomes necessary, the military must be subordinate to civilian authorities.[103] The military must also be fully trained in, adopt and be bound by international human rights law and principles, as well as any law enforcement policy, guidelines and ethics, and be provided with any other training and equipment necessary. In order to comply with these requirements, the State must put measures in place far in advance, should such a situation arise later.

[...]

J. The State and its organs shall be held accountable for their actions in relation to assemblies

[...]

90. States must investigate any allegations of violations in the context of assemblies promptly and effectively through bodies that are independent and impartial. In addition, the procedural component of the right to life requires States to investigate any alleged unlawful or arbitrary killing. The failure of a State to properly investigate suspected unlawful or arbitrary killing is a violation of the right to life itself (A/70/304). Likewise, lack of accountability for violations of the rights to bodily integrity may itself constitute a violation of those rights.[104] Effective investigation includes the following factors: an official investigation initiated by the State; independence from those implicated; capability of determining whether the act was justified in the circumstances; a level of promptness and reasonable expedition; and a level of public scrutiny.[105]

[...]

92. The appropriate use of body-worn cameras by law enforcement personnel in the context of assemblies could assist the work of internal investigations or civilian oversight mechanisms. Such technology is in its infancy, and delicate balancing of potential intrusions into privacy should be considered, but at this stage there seems to be potential to promote accountability, where adequate safeguards are in place.

C. Forms of police killings

In his 2010 report on police killings and oversight of police forces, Special Rapporteur Alston summarised the forms of police killings commonly encountered in the mandate.

101 *Basic Principles, supra* note 3, Principle 22 and *Code of Conduct, supra* note 2, art. 8, with commentary.
102 *Basic Principles, supra* note 3, Principles 24-26.
103 *Code of Conduct, supra* note 2, commentary to Art. 1.
104 *McCann v. United Kingdom, supra* note 61.
105 *Isayeva v. Russia,* European Court of Human Rights, Appl. No. 57950/00, 24 February 2005. See also Report of the Special Rapporteur, Christof Heyns, A/HRC/26/36, 1 April 2014, para. 80.

Study on Police Oversight Mechanisms (A/HRC/14/24/Add.8, 28 May 2010, ¶9)[106]

> 9. … The most common forms of police killings occur due to excessive use of force in law enforcement operations, including during attempts to arrest suspected criminals,[107] crowd or riot control,[108] and purported "shoot-outs" with alleged armed criminals (sometimes called "encounter killings").[109] Some killings are motivated by personal monetary gain: the Special Rapporteur has reported on police killings occurring at police checkpoints, where attempts at extortion can escalate into extrajudicial executions.[110] Others occur in the context of poorly planned and unlawful policing policies and operations, for example, where police engage in heavily militarised operations without adequate safeguards or community support.[111] In some countries, police engage in "social cleansing," intentionally killing suspected criminals or members of poor or marginalised communities.[112] In extreme cases, the police operate as part of a formal death squad or militia.[113] Killings also occur as a result of torture, or the denial of life-saving treatment while the victim is in police custody.[114] Other killings by police occur outside the context of any purported official police activity, and result from off-duty police officers acting as vigilantes or hired killers.[115]

However, this is not to say that there are no circumstances in which a human rights compliant police force may be permitted—even required—to use force. The approach of particularly Special Rapporteur Heyns to the question of use of force in law enforcement and the mandate was to underline the extent to which, though deliberate malign action on the part of individual police officers or particular units clearly occurred, often it was a lack of awareness of the standards, poor regulation or poor training of police officers that further contributed to arbitrary killings taking place. He discussed this approach in a report to the Human Rights Council in 2014 addressing national legislation regulating the use of force:

Report to the Human Rights Council (A/HRC/26/36, 1 April 2014, ¶¶25-27)

> 25. Some cases of unlawful killings by law enforcement officials involve the use of force that no one would argue is lawful under either international or domestic law, as with politically motivated hit squads and extrajudicial executions. This report does not deal with such situations: instead, it focuses on those cases where it is widely accepted that the police may use some force but where the domestic law poses lower standards for the use of force than those set by international law and/or where domestic law does not make provision for proper accountability mechanisms.
>
> 26. There are a number of reasons why this topic is important. One of the State's central duties is to protect life. It is a particularly serious breach of this duty when its own agents violate this right – leaving little hope that they will be effective in preventing violations by others. The first step of securing the right to life is thus the establishment of an appropriate legal framework for the use of force by the police, which sets out the conditions under which force may be used in the name of the State and ensuring a system of responsibility where these limits are transgressed.

106 See also, for a summary of forms of police killings, A/HRC/14/24, *supra* note 29, para. 33.
107 E/CN.4/2006/53/Add.4, *supra* note 8, paras. 42-44.
108 Report of the Special Rapporteur, Philip Alston, Mission to Kenya, A/HRC/11/2/Add.6, 26 May 2009, para. 72.
109 Report of the Special Rapporteur, Philip Alston, Summary of Cases Transmitted to Governments and Replies Received, A/HRC/11/2/Add.1, 29 May 2009.
110 Report of the Special Rapporteur, Philip Alston, Mission to the Central African Republic, A/HRC/11/2/Add.3, 27 May 2009.
111 Report of the Special Rapporteur, Philip Alston, Mission to Brazil, A/HRC/11/2/Add.2, 23 March 2009.
112 Report of the Special Rapporteur, Philip Alston, Mission to Guatemala, A/HRC/4/20/Add.2, 19 February 2007.
113 A/HRC/11/2/Add.6, *supra* note 108.
114 Amnesty International, *Killing at Will: Extrajudicial Executions and Other Unlawful Killings in Nigeria* (December 2009), p. 12.
115 A/HRC/4/20/Add.2, *supra* note 112.

27. However, it is not only violations of the right to life that are at stake when the police use force. Open-ended and unchecked powers of the police intimidate and preclude those who wish to exercise other rights and freedoms. Latitude for the police to use force at will is often an integral part of authoritarian rule, where "might is right." It is widely accepted today that, as part of democratic policing, law enforcement officials should be accountable to the population. They are citizens in uniform, performing a function on behalf of other citizens and their powers thus need to be constrained.

1. Excessive force during law enforcement operations

Police in all countries are called upon to address violent criminality. The police may need to confront armed robbers, violent gangs who exert control over geographic areas and civilian populations, hired killers, paramilitaries, or sophisticated and politically powerful criminal organizations. Police should investigate and arrest suspected criminals who are then tried in accordance with the law. Where criminals are powerful and violent, the police may need to use force to arrest them, or to prevent continuing criminal behaviour or harm to others. In particular and limited cases, the use of lethal force by police may be appropriate, necessary, and lawful. However, in numerous countries visited by the Special Rapporteurs, the police frequently resort to excessive and unlawful force.

i. Arrests and "encounters"

The Special Rapporteurs have frequently reported on the unlawful and excessive use of force by law enforcement officials during arrests or other legitimate law enforcement functions, as well as during staged or faked encounters. The police power of arrest is important in halting ongoing criminal activity and preventing harm to others. However, in many countries visited by the Special Rapporteurs, it is often the case that force is used readily, regularly and indiscriminately against suspected offenders.

In his 2011 report to the General Assembly, Special Rapporteur Heyns discussed this issue and the challenges faced by states in regulating police use of force during arrest.

Report to the General Assembly (A/66/330, 30 August 2011, ¶¶7, 9, 12-18, 46-64)

7. The question that underlies the report is not whether the police have the power to defend themselves. It is generally accepted that they have at least the same powers as other members of the public to do so in terms of the rules of private defence. The more pertinent question is whether they have additional powers to use lethal force, also in the context of arrest, because of their role as law enforcers.

[...]

9. There are several reasons why the use of lethal force by the police, also in the context of arrest, should be viewed as a matter of the utmost gravity, and be based on a solid ethical and legal framework, the application of which should be constantly reviewed. These include the fundamental nature of the right to life; the irreversible nature of death, and in some cases, disability; the potential of errors of fact and judgement; the possibility that innocent bystanders may be killed or wounded; the effect on the legitimacy of the police and the State; and the trauma suffered by everyone involved – which could include the police officers concerned – when a life is ended through violence.

[...]

12. Accountability in this context could be hard to establish. Most arrests are made by street-level police officers, who often possess a high level of discretion and operate in a low-visibility environment.[116]

116 Joseph Goldstein, 'Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the

13. The rule of law requires that State power will be exercised through the legal system, and that individuals who are suspected of having committed crimes should as far as possible be brought before a court of law, where their guilt has to be proven to determine how they are to be dealt with, in accordance with their right to a fair trial. However, in some cases the urgency of the situation does not allow such a process to take place, and law enforcement officials are given the power by law to use coercive measures and even in exceptional cases to take life-and-death decisions on the spot.

14. Where police officers are granted the right to take instant decisions on whether to use force against those suspected of a crime, the safeguards of legal processes, such as a right to a fair trial, are bypassed. This should be regarded as highly exceptional. Most States today do not allow executions even after an extensive judicial process. There consequently have to be very good reasons and safeguards if the power to use deadly force is placed in the hands of (sometimes young and inexperienced) police officers. One author has said that this entails making "godlike decisions without godlike wisdom."[117] However one wishes to express it, the potential for abuse is clear.

15. Yet it is difficult to conceive of a State whose police do not have the power to use lethal force under any circumstances. A too restrictive approach – where an accused has the proverbial "right to flee" – can entail a dereliction of the State's duty to protect those within its jurisdiction. It should be kept in mind that law enforcement officials have a legal duty to perform their functions. By virtue of their profession, they have a role to play that differs from that of ordinary members of the public. Not giving the police the proper scope to protect the public and themselves could compromise the safety of the public as well as of the police. A system that is seen as too protective of the rights of suspects is unlikely to be effective in practice and could lead to the circumvention of the law by police officers who may tamper with evidence (for example, by planting weapons on those whom they have shot).

16. The challenge clearly is to find the right balance between being overly permissive and overly restrictive. The starting point is that life should not be taken by the State, and any action that seeks to fall in the narrow confines of exceptions to this rule requires strong motivation. The applicable rules should be defined in a way that can readily be used by police officers to take principled decisions under great pressure.

17. In the recent past, questions about whether the international standards in respect of policing can deal with the security challenges posed by threats such as terrorism have been debated with renewed intensity.

18. A major study conducted in 2009 by the International Commission of Jurists investigated the effect of terrorism and counter-terrorism on human rights. According to the study: "Counter-terrorism laws have frequently in the past (and still today as will be seen) reduced legal safeguards relating to arrest, detention, treatment, and trial in order to provide a supposedly more effective framework to combat terrorism."[118] They emphasised the fact that appropriate measures can be taken within the established international frameworks.

[...]

Administration of Justice', *Yale Law Journal* 69(4) (1960) p. 543.

117 Quoted in Elizabeth Wicks, *The Right to Life and Conflicting Interests* (2010), p. 130.

118 International Commission of Jurists, *Assessing Damage, Urging Action: Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights* (2009), p. 55; see p. 78, "International law does not preclude powers of arrest, detention and interrogation being assigned to intelligence services, subject to the services complying fully with relevant human rights standards. Unfortunately, the Hearings provided ample evidence that such standards are not being met."; and p. 68, "Post 9/11, this study confirms that intelligence agencies around the world have acquired new resources and new powers allowing for increased surveillance, and law enforcement measures (e.g. powers of arrest, detention and interrogation)."

46. It was said above that under international law standards the reason why lethal force may be used during arrest relates not so much to the fact that a crime has been committed, but rather to the danger posed by the suspect, which ties in with the weighing process that lies at the heart of the proportionality requirement. It was argued that the exception to the rule of law and fair trial requirements (in terms of which the fate of a suspect has to be determined by a court), which allows the use of lethal force by the police in the case of arrest, is triggered by the suspicion that a crime has been committed, or the threat of serious violence. The accused has, forcibly – that is, through his own use of force – caused a situation where the ordinary rules of the legal process cannot be followed.

47. On the domestic level, the key consideration has traditionally been the seriousness of the crime committed by the suspect and this consideration remains important, but as will be made clear, this serves largely as an indication (and not necessarily a good one at that) of the danger posed by the suspect.[119] Domestic law increasingly also focuses on objective indicators of the danger posed by suspects, which fit in better with the "protection of life" principle.

48. The terms "proportionality" and "necessity" are typically used on the international level, while both these terms as well as the term "reasonable" (in some, but not all, instances to encompass both proportionality and necessity) are often used on the domestic level. One of the challenges is to make sure that the concept of reasonableness is not used in ways that pose lower standards than those posed by proportionality and necessity.

49. Arrest literally means "to stop, come to a stand, halt" and is one tool at the disposal of the police to bring a suspect to trial. It can also serve the purpose of preventing crimes or permitting investigations.[120] Punishment falls outside the remit of the police and cannot be the motivation for arrest or the use of force.

50. Where a suspect tries to avoid arrest, most of the legal systems studied recognise that if the suspect places lives in immediate danger, lethal force may at some point be used by the police. However, the police in most systems also have powers which exceed that which private defence affords ordinary members of the public, based on their duty to protect the public. It has been held in a number of seminal cases that the mere fact that a criminal suspect will otherwise get away is not a sufficient justification to shoot.[121]

51. A review of the legislation of some 101 legal systems was done for the present report. It was found that several alternatives of how legal systems deal with the use of such lethal force during arrest by the police present themselves on a continuum, ranging from the overly permissive to the restrictive.

52. At least five models may be distinguished, in terms of the kind of defence or justification that they offer, in the legislation studied (and in some cases in the case law or common law, although a comprehensive investigation of those sources of law fall outside the scope of the report). The dominant features of each of the five models will now be set out, and the extent to which they comply with the international norms will then be discussed.

119 "Serious violent crime" clearly includes crimes such as murder, but the question could be asked whether rape necessarily threatens life, and consequently whether it could be a basis for the use of deadly force. It has been argued that rape dehumanizes people, which is akin to their losing their lives, and as such, should qualify in some cases. See Wicks, *supra* note 117, p. 129.

120 There is some disagreement on this point. However, prosecution does not always follow from arrest.

121 The leading case in this regard is United States Supreme Court, *Tennessee v. Garner*, 471 U.S. 1 (1985) No. 83-1035. See also the South African case *Ex Parte Minister of Safety and Security and Others: In Re: S v. Walters and Another*, Butterworths Constitutional Law Reports, vol. 7 (2002), p. 663 (Constitutional Court).

53. In some countries (mostly those influenced by the Common Law system), "fleeing felons" may be shot in the context of arrest (model 1). Felonies used to be violent crimes for which the death penalty could be imposed, but over time other less serious crimes were also classified as felonies, resulting in a situation where non-violent crimes could also justify the shooting of a fleeing suspect.[122] A similar approach is followed in countries where a number of crimes, whether they involve violence or not, are listed in a schedule to an act that allows the police to shoot those suspected of having committed these crimes, if they are unable to arrest them by other means. Since the protection of life is not required under this model, such systems are clearly not in conformity with international standards.

54. The legislative provisions of another group of countries provide that lethal force may be used only where the crime concerned has involved serious violence, or at least the threat of serious violence, which is a sufficient condition for the use of lethal force (model 2). In a bow to the "protection of life" principle, a presumption is in effect created. The fact of the earlier violence serves as a proxy to support the conclusion that the suspect poses a future danger. By committing such a serious crime, so the argument goes, the suspect has crossed a certain threshold and has shown an absence of restraint from engaging in serious violence.

55. This approach, although an improvement on its predecessors, still circumvents the proportionality test in an unsatisfactory way. It may be true that most fleeing suspects who have committed serious crimes in the past constitute a future danger to other people, but this clearly does not apply in respect of everyone in that position. The presumption cannot be irrefutable. There is, for example, little reason to believe that someone who has committed an isolated crime of passion against a particular individual and is on the run necessarily constitutes a danger to society as a whole. A first-time robber who throws his gun away as he is fleeing will probably be in the same position. This model also falls outside the realm of the international standards.

56. Another approach followed by some countries, which is closer to the international norms, is to require the arrestor to have a reasonable belief that the suspect poses harm before lethal force may be used, but not to pose any requirements in respect of the seriousness of the original offence (this will be listed as model 4; model 3 combines models 2 and 4, and will be described immediately hereafter). Such an approach poses a high threshold in the sense that the arrestor, who often has to take a split-second decision, may be required in a subsequent court case to bring evidence that he or she has made a fairly complicated risk assessment, and if the decision is wrong, he or she could face serious consequences. However, this model places a police officer in a position where he or she has to take life-or-death decisions, where the threshold requirement that a crime involving (the threat of) serious violence must have been committed, has not been met. Such an approach runs the danger of undermining the notions of the rule of law and fair trial, discussed earlier.

57. A less demanding category (ranking with, or arguably even below, the "violent crime" approach of model 2) may now be introduced, in terms of which a violent crime or danger is required – either will do (this will be ranked as model 3).

58. The most stringent approach is to require the commission of a crime involving (the threat of) serious violence as well as proof that the suspect constitutes a threat (model 5). Under this model, the commission of a crime involving (the threat of) serious violence is a necessary, but not a sufficient, condition for the use of lethal force. The fact that the person who flees is suspected of having been involved in a crime of serious violence or a threat thereof is only the first hurdle – then the second (and, as we have seen, not insignificant) hurdle, that of posing a threat, also has to be cleared. This model – depending on how the question whether the suspect poses a threat of

122 See '*Tennessee v. Garner*: The Fleeing Felon Rule', *Saint Louis University Law Journal* 30 (1985-1986) pp. 1259-1277, at p. 1264.

violence is interpreted, which will be discussed below – comes closest to being in conformity with the requirements of the rule of law and meeting the "protection of life" principle that underlies the international standards.

59. Based on the above exposition, the following models of the kind of justification or defence that may be provided for the use of lethal force may be identified, in order of increasing restriction:

1. Any felony (no other requirement posed)
2. Violent crime (only)
3. Violent crime or danger (meeting either requirement will do)
4. Danger (only)
5. Violent crime and danger (both are required)

60. This necessitates a consideration of the question of how the danger or harm that the fleeing suspect poses in model 5 (or models 3 and 4) has to be assessed. How close or immediate does the threat have to be to fall within the scope of the "protection of life" principle? Different approaches are followed, but a useful distinction can be made between a suspect who poses a "future danger" and one who presents an "ongoing" threat.[123] An ongoing threat is posed by suspects in respect of whom there is a high probability of immediate harm to specified or unspecified individuals. They are obviously highly dangerous and the danger could be realised at any moment. This may be the case with serial killers, someone on an unfocused revenge spree, some members of violent gangs or those who are fleeing from acts of terrorism.[124]

61. A future danger does not have such a continuous character – it may or may not recur in the near future, as is the case with most robberies. Clearly, allowing the use of lethal force only against an ongoing threat in the context of arrest is easier to reconcile with the ideal of a clear and imminent threat as posed by the "protection of life" principle, than would be the case with a future danger, and the former constitutes the preferred option.

62. The discussion so far has largely centred on proportionality, as supplemented by necessity. In the legislation of a number of countries, however, proportionality is not required or plays a minimal role. Instead, the focus is purely on necessity. The only question asked is whether the least harmful means available to stop the suspect are used. For example, did the police try to shoot at the legs, were warnings given and what kinds of weapons were used? These are valid considerations, but incomplete because proportionality is not addressed. The question is not asked whether the level of force used is justified in the first place.

63. There are legal systems where the use of lethal force (or for that matter, force in general) is not formally regulated by law, or very minimally so. In some cases the requirement of "reasonableness" is merely posed, without a clear definition of the term, whether in legislation or in the jurisprudence of the courts. A more widespread and equally worrying situation, alluded to earlier, is where there are formal legal provisions in place, which in some cases purport to be highly protective of the right to life, but, for a variety of reasons, they are not enforced or only partially enforced, or even used as a ruse to hide plainly illegal activity.

64. A question mentioned at the outset is whether citizens should have the same powers as the police to use lethal force. Citizens are entitled to protect their lives through private defence, which can be used if they are attacked while affecting a citizen's arrest. However, they do not have the same law enforcement duties as the police, and they do not have the same training and

123 See M. Kremnitzer, D. Menashe and K. Ghanayim, 'The Use of Lethal Force by Police', *Criminal Law Quarterly* 53(1) (2007) pp. 67-97, at p. 92.

124 See Gabriella Blum and Philip Heyman, 'Law and Policy of Targeted Killing', *Harvard National Security Journal* 1 (2010) pp. 145-171, at p. 161.

organizational accountability. In short, they do not play the same role as the police. As a result the same considerations do not apply that justify granting them the power to use lethal force beyond what is offered by private defence.[125]

A lack of accountability for police failures to abide by legal standards presents a serious challenge: police officers operate in low-visibility environments with a high level of discretion. Police officers sometimes attempt to cover-up excessive force killings and present them as legal killings of armed criminals or escapees. In such cases, there will often be manipulation of crime scenes and evidence, and falsification of police reports. Special Rapporteur Alston discussed this problem with reference to two specific cases in Nigeria:

Report on Mission to Nigeria (E.CN.4/2006/53/Add.4, 7 January 2006, ¶¶8-18)

A. Case study 1: the "Apo 6": the framing and killing of innocent civilians

8. The Abuja Police reported that on 8 June 2005 in the Apo district of Abuja five young male traders and a female student were arrested on suspicion of armed robbery, taken to the Garki police station, and subsequently killed while trying to escape. The dead robbers were photographed with their weapons, a post-mortem was conducted as required, death certificates were issued after examination by a doctor, and the bodies were buried. When challenges to this story first emerged the Federal Capital Territory Police Commissioner, Emmanuel Adebayo, publicly affirmed these details. The case looked very typical of many reported by the police in Nigeria.

9. Unfortunately for the police, however, one of the "robbers" had managed to phone a relative from the police station and reported that the six had been involved in an altercation in a pub with a police officer. Their car had subsequently been ambushed by other police who were called in, they had all been badly beaten, and they were taken to the police station. Family members immediately sought their release but were unable to pay the bribe of 5000 Nairas ($40) demanded by the police. Several of them were executed a few hours later. Another managed to escape but was recaptured and brutally killed by the police. In fact, no post-mortems were carried out, death certificates were not completed by a medical officer, and the bodies were hastily buried in a common grave.

10. The news of the killings spread rapidly. Rioters ransacked the Apo police station and demanded an investigation. The relatively new Acting Inspector-General of Police convened an internal investigation. But he also took the unprecedented and commendable step of making its proceedings public. Two further elements compounded the horror story that was to emerge. One police officer who took part in the killings allegedly provided the victims' relatives with information on what really happened. He died of "tonsillitis" the day before he was supposed to give evidence to the inquiry. He was subsequently deemed to have been poisoned by two of his colleagues. Meanwhile, the Divisional Police Office in charge of the Garki police station on the fateful night "escaped" from detention.[126]

11. In the course of the inquiry one police officer and the photographer on duty that night confirmed that the youths had been killed in cold blood. It was subsequently revealed that the "robbers" alleged weapons had been in police storage until they were removed by a police officer shortly before the incident. As a result of the inquiry ten police officers were arrested.

125 The legislation of the 13 countries studied allows for civil arrest, although in most cases civilians are only allowed to assist the police with arrest.

126 'Blood Chilling Tales', *Newswatch,* 11 July 2005.

12. On 27 June 2005, one day after the Special Rapporteur arrived in Abuja, the President unprecedentedly appointed a Federal judicial commission of enquiry.[127] In December 2005 the Government paid compensation of 3 million Naira to the relatives of each of the six.

13. If the Apo 6 were an isolated incident it would be a tragedy and a case of a few bad apples within the police force. Unfortunately, many of the ingredients – the false labelling of people as armed robbers, the shooting, the fraudulent placement of weapons, the attempted extortion of the victims' families, the contempt for post mortem procedures, the falsified death certificates, and the flight of an accused senior police officer – are all too familiar occurrences.

14. Thus the Apo 6 killings were not an aberration. The Government response, however, was noteworthy in four important respects: the Inspector-General of Police was responsive to protests; the internal police inquiry was public; a judicial inquiry was established; and compensation was paid. These elements need to become routine in the future.

B. Case study 2: the "Enugu 6": the extrajudicial execution of alleged armed robbers

15. A bank was robbed in Enugu on January 27, 2005. Six accused, mostly university students, were arrested from various locations during March and April and were transferred to the Ogui Area Command in Enugu. On April 27, 2005 they were paraded before journalists at the Enugu State CID (Criminal Investigation Division) to publicise police success in fighting crime. Photographs of the six in handcuffs were widely published in the press.

16. Local human rights groups feared that this public parade signified the prelude to a "traditional" execution by the police. Accordingly, the Nigerian Civil Liberties Organisation called upon all the relevant authorities to ensure that the accused were taken before a judge and protected from "imminent execution." Just a few days later, and after some had been in police custody for more than a month rather than being arraigned before a judge, all six accused were killed while allegedly attempting to escape. Not one of the "escapees" was merely wounded, and not one received medical attention. No autopsy was carried out, the bodies were never seen by the families, and it is unknown where they were buried. No serious inquiry appears to have been undertaken, no police officers have been investigated, and none charged. Nor have the police responded to any inquiries from human rights groups or the victims' families.

17. A later press report quoted "an insider at the police headquarters" who indicated that all of the accused had asked to go to the toilet at virtually the same time. According to the source, "soon afterward they began to make funny movements which suggested that the boys were ready to escape from jail. For a sensible policeman under such predicament and who had his rifle loaded, the next option available would be to gun the suspect down and that was exactly what may have happened."

18. This scenario is utterly implausible. Even if it were true, it would represent an entirely disproportionate use of force to subdue individuals who were unarmed, still within police custody, and had not escaped. Once again, this case study represents a common practice within the Nigeria Police and it is unsurprising that their own figures list 2,402 armed robbers killed since 2000. In 2004, for example, 3,184 armed robberies were reported which led to the killing of 569 robbers and 111 police. Moreover, according to civil society groups, these figures do not capture the real magnitude of the phenomenon of extrajudicial killings of alleged robbers.

127 A leading NGO, Access to Justice, implied that the inquiry had been set up partly because of the Special Rapporteur's visit in order to show the Government in a good light ("to launder the … Government's very disappointing record" in response to executions). *Apo Police Killings: Federal Government's Indulgent Attitude to Extrajudicial Killings Produced the Apo Killings*, available at: http://www.humanrightsnigeria.org/sitenews/news/news_item.asp?NewsID=22.

In his country report on India, Special Rapporteur Heyns highlighted the problem of "fake encounter" killings, and went into some detail about the practice.

> ***Report on Mission to India (A/HRC/23/47/Add.1, 26 April 2013, ¶¶12-19)***
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> 12. [T]he Special Rapporteur's attention was drawn to a practice known as "fake encounters" in parts of the country, which was widespread in the 1990s. While the extent thereof has dissipated, evidence shows that it still occurs. According to the NHRC, 2,560 deaths during encounters with police were reported between 1993 and 2008. Of this number, 1,224 cases were regarded by the NHRC as "fake encounters." The police, the central armed police forces, and the armed forces have been accused of "fake encounters". Complaints have been lodged, particularly against the Central Reserve Police Force, the Border Security Forces, and the armed forces acting under the Armed Forces (Special Powers) Act (AFSPA). The existence of this practice was recently acknowledged in the courts.[128]
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> 13. Where they occur, "fake encounters" entail that suspected criminals or persons alleged to be terrorists or insurgents, and in some cases individuals for whose apprehension an award is granted, are fatally shot by the security officers. A "shootout scene" is staged afterwards. The scene portrays those killed as the aggressors who had first opened fire. The security officers allege in this regard that they returned fire in self-defence.
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> 14. After the incident, the security officers register a First Information Report (FIR) which often reflects their account of events. The Special Rapporteur heard concerns that the content of these reports is frequently undisputed, which eventually leads to the swift closure of the case. Along the same line, it appears that few, if any, encounter cases have been brought to the point of conducting investigations and, where applicable, prosecuting alleged perpetrators. Where inquiries are undertaken, the results are frequently not disclosed. Another difficulty in the investigation of encounters lies in the lack of witnesses, often due to the fact that encounters take place mostly during the early hours of the morning. Alternatively, witnesses fear coming forward with testimonies. In some cases, such a situation is further complicated by a reported practice of offering gallantry awards and promotions to security officers after the encounters,[129] as well as of pressuring law enforcement officers, who face already heavy workloads due to understaffing, to demonstrate results.
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> 15. The Special Rapporteur heard *inter alia* of the encounter case that occurred on 30 April 2010, in the Machil Sector, Kupwara District of Jammu and Kashmir, where three young individuals were killed by the armed forces. Alleged to be terrorists, the individuals were later identified as civilians who went missing from their village Nadihal in Baramullah and had allegedly been exchanged for money to some members of the Army so they could be killed in a fake encounter for which awards were offered. The outcomes of the criminal case launched against the security officers involved are still pending.
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> 16. According to information received, encounters have been used *inter alia* as a means to target specific groups. In Gujarat, a series of encounters specifically targeting Muslims were carried out. It is noteworthy that in 2012 a Special Task Force was consequently appointed to investigate them.
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> 17. Several victims who made presentations to the Special Rapporteur on this issue emphasised the need to know the truth, and to "clear the names" of loved ones who had been labelled "terrorists" and killed in "fake encounters." The NHRC also acknowledged the problem of encounters in India,

128 'Indian Security Forces Killing Indians: SC', *Times of India*, 10 April 2013.

129 See, e.g., Human Rights Law Network, *State Terrorism: Torture, Extra-judicial Killings and Forced Disappearances in India (Report of the Independent People's Tribunal 9-10 February 2008)* (2009), p. 200.

and expressed its agreement with the view that encounter killings "have become virtually a part of unofficial State policy."[130] The Special Rapporteur reiterates therefore the importance of shedding light on the acts committed during encounters and of bringing the perpetrators to justice in all cases.

18. The Special Rapporteur takes note of a number of positive measures undertaken by the Indian authorities to address the problem of fake encounters, and stresses the need for their implementation. He commends the NHRC for the adoption on 2 December 2003 of Guidelines on Encounter Deaths. These Guidelines require that (a) police officers record information about an encounter and a FIR must be registered; (b) encounter cases should be investigated by an independent investigating agency; (c) a magisterial inquiry must be undertaken in instances where deaths have occurred and compensation is awarded to the dependents of the deceased; and (d) disciplinary action should be taken against delinquent police officers and no out-of-turn promotions should be made. The Special Rapporteur is concerned that, in the majority of incidents of encounter killings, the NHRC Guidelines appear not to be complied with.

19. At the time of drafting this report, a seminal case from the State of Andhra Pradesh is pending before the Supreme Court. The Andhra Pradesh High Court, on 13 July 2007 in the case *Andhra Pradesh Civil Liberties vs. State of Andhra Pradesh*, held that, in situations where deaths occur in cases of alleged returning of fire by the police, a FIR must be registered, the case investigated and the claim of self-defence by the police proven in a trial before the court.[131]

The difficulties in addressing violent crime, especially where it is long-standing and the police lack resources, cannot be underestimated. Nevertheless, as explained below, in some countries, police themselves contribute to the problem and increase insecurity through mass, military-style arrest operations. In his discussion of his country visit to Brazil, Special Rapporteur Alston described the impact of the policy decisions and policy presentation of policing as a "war" against gangs or against drugs:

Report on Mission to Brazil (A/HRC/11/2/Add.2, 23 March 2009, ¶¶5, 7, 9, 16-26)

5. Members of the police forces too often contribute to the problem of extrajudicial executions rather than to its solution. In part, there is a significant problem with on-duty police using excessive force and committing extrajudicial executions in illegal and counterproductive efforts to combat crime. [...]

[...]

7. Policing in Brazil takes place within a context of significant organised crime, gang control of entire communities, drug and weapons trafficking, and high levels of violent street crime. Gangs and traffickers have become so powerful that in large cities such as Rio de Janeiro, São Paulo and Recife, they exercise control over *favelas* [slums], threatening and extorting residents and businesses, imposing their own "laws," and requiring residents to protect them from police. Gangs engage in lethal violence against enemy factions, making everyday security for *favela* residents volatile. In some areas of Rio de Janeiro, gang control is so absolute, and legitimate state presence so absent, that police can only enter under threat of armed confrontation with traffickers [...]

130 National Human Rights Commission, *Report on Prevention of Atrocities Against Scheduled Castes & Scheduled Tribes* (2004), p.106.

131 ***Editors' Note:*** The Supreme Court issued an indefinite stay of proceedings in the 2009 appeal against the Andhra Pradesh High Court ruling. In 2014, the Supreme Court issued another ruling, in *People's Union for Civil Liberties & Anr vs State of Maharashtra & Ors*, which set out a 'procedure for investigating police encounters', however, the effectiveness of these guidelines in regulating police conduct (in contrast to the stringent requirement in the stayed ruling from the Andhra Pradesh High Court), has been questioned by Indian civil society and journalists.

[...]

9. On-duty police are responsible for a significant proportion of all killings in Brazil.[132] While São Paulo's official homicide rate has reduced in recent years, the number of killings by police has actually increased over the last three years, with on-duty police in 2007 killing one person a day.[133] In Rio de Janeiro, on-duty police are responsible for nearly 18% of the total killings,[134] and kill three people every day. Extrajudicial executions are committed by police who murder rather than arrest criminal suspects, and also during large-scale confrontational "war" style policing, in which excessive use of force results in the deaths of suspected criminals and bystanders.

[...]

16. Senior state Government officials and law enforcement authorities in Rio de Janeiro discuss policing as a "war" against gangs and drug traffickers. During 2007 and early 2008, police mounted a number of large-scale operations involving hundreds of men supported by armoured vehicles and attack helicopters, to "invade" and take back favelas controlled by gangs.[135] One of these operations, the police invasion of the *Complexo do Alemão* area of Rio de Janeiro on 27 June 2007, illustrates why such an approach might be tempting in theory but in practice is murderous and self-defeating.

17. The absence of the state in favelas like the *Complexo*[136] has allowed gangs to take over neighborhoods, acting as what some refer to as a "parallel state power" – controlling or providing basic services such as transport, gas and cable, hosting festivals and parties, taxing residents, and punishing rule-breakers. Gang violence is often motivated by economic interests. If a monopoly on criminal activity and a near monopoly on violence can be established within a particular area, an organization can: (a) effectively demand protection fees from businesses and "taxes" from residents; (b) prevent residents from informing the police of their activities, and thereby safely hide themselves, drugs, and ammunition; and (c) impose on the residents any other rules that will facilitate their criminal activities. The Red Command (Comando Vermelho) gang has controlled the Complexo for many years, and is an unusually extreme case of the substitution of gang control for legitimate government authority. The rules set by the gang are repressive, and their enforcement brutal – punishment for residents can involve being incinerated in what is known as the "microwave".

18. In an attempt to take back the *Complexo* from gang control, on 27 June 2007, the state Government mounted a large-scale invasion of the area, involving 1,280 Civil and Military Police

132 In fact, the real homicide rate for many states in Brazil, including Rio de Janeiro and São Paulo, is significantly higher than official statistics suggest because on-duty killings by police are excluded from the homicide statistics.

133 In 2005, there were 278 cases of "resistance followed by death". In 2006, there were 495 (the increase is largely accounted for by the large numbers of resistance cases recorded in May). In 2007, up to October, 311 cases were recorded. See: Government of São Paulo, "Resposta à ONU – resistência seguida de morta", p. 1.

134 According to official statistics, there were 6,133 murders (not including killings by police) in Rio de Janeiro in 2007. There were 1,330 citizens killed by police. The total number of killings was 7,463. In 2006, the percentage of killings by police was 14% (there were 6,323 murders, and 1,063 citizens killed by police (7,386 total)). See: Rio de Janeiro, Public Security Institute (Instituto de Segurança Pública), 19 March 2008.

135 The state of Rio de Janeiro reported to me that 4 large-scale operations were mounted in 2007 (numbers of police involved in each operation were: 120; 230; 460; 1,280). In total, 6 police were wounded in the 4 operations, and 2 killed. A total of 36 residents were killed, 78 wounded, and 36 traffickers arrested.

136 Like many favelas, the Complexo has largely been left without state services, a fact frankly acknowledged to me by representatives from the state Government. For a population of 180,000, the Complexo has only three city schools, 60 teachers, and three health centres. Just 13 public officials work there. There are no government-run cultural institutions, no police stations and no community policing programs. The absence of the state is brought into sharp relief when one compares these numbers with those of other Rio de Janeiro areas. In the municipality of Japeri for example, although it has just 96,200 residents, there are 10 health centres, 27 city schools, 1,918 public officials, and 1,092 teachers. (Governo do Rio de Janeiro, "Programa de Urbanização de Favelas" (November, 2007).)

and 170 National Public Security Force (FNSP)[137] members. The invasion began in the morning, led by members of the Special Police Operations Battalion[138] in armoured vehicles. Other Civil and Military Police followed, while police attempted to remove barriers – concrete pipes, abandoned cars, etc. – that had been placed at key entrances to the neighbourhood. The area is composed of 17 favelas spread across steep hills, and police attempted to take the higher ground, eventually occupying approximately 60% of the area. But police moved slowly through the area over the course of the day – the Secretary for Public Security told me that in the first four hours they were only able to move forward 400 metres due to barriers and confrontation. Residents with whom I spoke described hearing gun shots and observing the gradual approach of police to their own streets. Many told me that they were unable to leave their homes all day for fear of being caught in the shooting. Meanwhile, the FNSP forces had assumed positions on the edges of the favela to act as a "suffocation" force, responsible for preventing gang members from escaping the favela and for preventing gangs from neighboring areas entering and joining the fight. At the time of my visit, the FNSP continued to maintain checkpoints on the perimeter, but the only law enforcement presence within the community consisted of a few small outposts of members of the Military Police.

19. I questioned the Rio de Janeiro Secretary of Public Security and senior members of the Civil and Military Police as to the purpose of this huge confrontation. I was informed that the *Complexo* was one of 19 centres of criminality in Rio de Janeiro, a place from which drugs and guns were distributed to gang members operating in other neighborhoods. The primary motivation was said to be to seize those arms and drugs, and to arrest key gang members. A secondary motivation was to open the way for the establishment of government services to the community. Other sources suggested that a possible motivation may have been to capture key gang members who were reportedly meeting in the *Complexo* that morning; or that the operation was designed to ensure safety ahead of the Pan-American Games, which opened two weeks later. I asked numerous state Government officials and police why the neighborhood was invaded at that particular time, but I was simply told that "intelligence" dictated the timing and manner of the operation.

20. In evaluating the operation in *Complexo do Alemão*, two questions stand out. First, what were the crime prevention benefits of the operation – did the operation in fact seize weapons and drugs, arrest gang leaders, and open the community to state services? Second, did the operation harm the community's residents? These questions are especially important because most state Government officials with whom I spoke in Rio de Janeiro considered the operation a success, and a model for future police action.[139]

137 The *Força Nacional de Segurança Pública* (FNSP) was created by presidential decree 5.289 on 29 November 2004. The National Secretariat for Public Security, which is part of the federal Ministry of Justice, is responsible for coordinating the force, which is composed of police from around the country, and which can only be deployed in a state at the express request of that state's governor.

138 The *Batalhão de Operações Policiais Especiais* (BOPE) are an elite battalion of the Military Police.

139 In fact, after my visit, I was informed of a number of other large-scale police operations involving deaths. On 30 January 2008, an operation was mounted in Jacarezinho and Mangueira neighborhoods, and involved approximately 200 police, two helicopters and two armoured cars. Six people were killed, six arrested, and a small amount of drugs and weapons were seized. On April 3 2008, an operation took place in the Coréia and Vila Aliança favelas. Two hundred police were used, supported by armored vehicles and one helicopter. Eleven civilians were killed, including three killed from shots fired from the helicopter. Seven suspected criminals were arrested. Another large scale operation took place on 15 April 2008, by 180 police in the Vila Cruzeiro and other favelas in the Complexo da Penha area. Nine civilians were killed, and 7 bystanders wounded by stray bullets. Fourteen men were arrested. After this operation, military police commander Colonel Marcus Jardim was reported in the press as comparing the dead men to insects: "The [police are] the best remedy against dengue. Not a single fly resists ... it's the best social bug spray" ("Ação do Bope deixa 9 mortos e 7 feridos", *O Estado do S. Paulo*, 16 April 2008). Security Secretary of Rio de Janeiro, Mr José Beltrame was reported as stating that the two April operations were a success ("Operação na Vila Cruzeiro termina com nove mortos, seis feridos e 14 presos", *O Globo*, 15 April 2008).

21. In fact, from a crime control perspective, the operation was a failure. Police confiscated 2 machine guns, 6 handguns, 3 rifles, 1 sub-machine gun, 2,000 cartridges, 300 kilograms of drugs, and unspecified amount of explosives. Thus there were more people killed than guns confiscated. And the day after the operation, there was only a *de minimis* police presence inside the favela. The gang was still there and still in control. It is not surprising that a one-day long, large, slow sweep through a neighborhood long neglected by the state failed to result in significant arrests or seizures, much less in the end of gang control. Large operations over large areas are difficult to keep secret in advance and are immediately exposed as they enter a community. This gives criminals great opportunity to escape, along with their weapons and drugs. The combined effects of poor intelligence – which was inevitable given the absence of a police presence in the area – and enormous advance warning to the members of criminal organizations are obvious in the paucity of arrests and the failure to seize large quantities of firearms or drugs.[140]

22. Nineteen were killed and at least 9 wounded during the 8 hour operation. All 19 deaths were recorded as "resistance" deaths.[141] But there is compelling evidence that at least some of those killed were extrajudicially executed. I received credible accounts from residents and family members of victims that victims were shot in the back whilst walking away from police, or dragged out of homes unarmed and executed, or disarmed and then shot in the head. Residents and families also testified that police invaded their homes, threatened them, damaged and stole property, and were physically abusive. Some of those subsequently independently investigating allegations of police abuse – including members of the Brazilian Bar Association[ ] as well as victims' families – reported receiving death threats and warnings to cease their investigations.[142]

23. Two independent studies strongly support the witness and victims' families accounts of executions. One was by the Human Rights Commission of the Brazilian Bar Association (Rio de Janeiro division)[ ] and the other by experts appointed by the Human Rights Special Secretary of the Federal Government.[ ] Both found that the original autopsy reports contained serious deficiencies and had not been carried out in accordance with international standards.[143]

24. The expert reports found strong evidence of extrajudicial executions. Of 19 killed, 14 showed signs of 25 gunshot entry wounds in the back of their bodies. Six victims showed signs of 8 entry wounds in the head and face. Five victims showed signs of point-blank shots.[144] This information,

140 The state of Rio de Janeiro reported that the total drug and weapons confiscated for all 4 large-scale operations in 2007 were: 107 weapons (including antiaircraft machine guns, pistols); 43 explosive devices; 20,016 ammunition cartridges; 2,730 kg of cannabis; 441 kg of cocaine. And more broadly, despite the aggressive state-wide policies and a dramatic rise in the numbers of people killed in 2007 by police in Rio de Janeiro (25.1% more than in 2006), there was a 5.7% reduction in drug seizures, a 16.9% reduction in arms confiscations by police, and a 13.2% reduction in arrests from 2006 to 2007. (Rio de Janeiro, Public Security Institute (*Instituto de Segurança Pública*), 19 March 2008. The numbers reported by the State of Rio de Janeiro are: drug seizures (10,793 in 2006; 10,176 in 2007); arms confiscations (13,312 in 2006; 11,062 in 2007); arrests (16,543 in 2006; 14,355 in 2007).)

141 The numbers of killings by police registered as "autos de resistência" in Rio de Janeiro has risen sharply since 1997: 1997 (300), 1998 (397), 1999 (289), 2000 (427), 2001 (592), 2002 (900), 2003 (1195), 2004 (983), 2005 (1098), 2006 (1063), 2007 (1,330).

142 Since my visit, I have also learned that prominent human rights activist and lawyer João Tancredo (who has been working on behalf of some of the families of Complexo do Alemão victims) survived an assassination attempt on 19 January 2008. The bullet-proof car he was traveling in was shot at four times when he returning home from a meeting with the parents of victims of alleged police violence in the Furquim Mendes favela.

143 Especially the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989). The original reports were poorly prepared, and failed to describe injuries adequately. The victims had arrived at the forensics institute naked. Thus their clothing could not be examined nor gun powder analysis carried out. X-rays had not been taken to locate the bullets still in victims' bodies, and the crime scenes were not preserved.

144 A "tattooing" or "stippling" effect on the skin around a bullet entry wound is caused by gunpowder residue on the skin, and can be used to analyse the muzzle to target distance.

together with the high number of shots per victim (over 3), the fact that different guns were used to shoot the same victim, and analysis of the sequence and trajectory of shots, led the experts to infer that a number of the victims had been executed. But, given the many deficiencies in the original forensic analysis, both reports stated that it was impossible to conclude definitively whether the victims were executed.

25. I asked Rio de Janeiro officials to respond to these findings. They attacked the experts' credentials, and told me that the experts lacked the constitutional authority to carry out such investigations. I requested, but did not receive, a scientifically based state response to the experts' report. I also asked the responsible Civil Police what investigations had been carried out to ascertain whether each killing was in fact the result of justifiable and necessary use of force. But they were unable to provide me with any evidence that they had conducted serious investigations into any of the killings. In fact, I was told that they assume that Military Police officers registering a resistance case are telling the truth. The principal response I was given was that each of the 19 deceased had criminal records. It is difficult to understand how this could have been known by the police when they killed the individuals. Moreover, the claims were firmly denied by families of several victims, including that of a 14 year old boy, David Souza de Lima, who was shot 4 times in the back. The assertion by police of victims' criminality is an extremely telling and worrying "justification" for killings. A victim's criminal record says absolutely nothing about whether they were killed in self-defence, or whether the police used justifiable force. The appropriate response to a criminal act is arrest, not execution.

26. The degree to which the killing of "criminals" is tolerated and even publicly encouraged by high level Government officials goes a long way to explaining why the numbers of killings by police are so high, and why they are so inadequately investigated. Current Secretary for Public Security José Mariano Beltrame commented that, while police did their best to avoid casualties, one could not "make an omelet without breaking some eggs".[145] Such public statements, and the military-style methods used in mega-operations, have led favela residents to become increasingly cynical about the police. The view that police operations are planned for the very purpose of killing poor, black, young men is surprisingly mainstream. The official rhetoric of "war", the acquisition of military hardware, and violent police symbols only make these views more broadly acceptable.[146]

145 Bia Barbosa, "OEA recebe denúncia contra megaoperação no Complexo do Alemão", Carta Mayor, 25 July 2007. These views have considerable public support, because many people have little faith in the normal work of the police and other components of the criminal justice system. Fifty percent of Brazilians state that they do not even report crimes to the police because it would be a "waste of time". (See William C Prillaman, "Crime, Democracy, and Development in Latin America", Centre for Strategic and International Studies, Policy Papers on the Americas, Volume XIV, Study 6 (June 2003), p. 9. A Brazilian Judges' Association surveys show that citizens lack faith in the judiciary and consider it corrupt, slow, and mysterious. (AMB, Pesquisa qualitativa "Imagem do Poder Judiciário", Brasília, 2004, p. 61.) In a context of soaring crime rates, widespread citizen fear and insecurity, lack of faith in the police, and lack of trust in the judicial system, it is perhaps not surprising that many Brazilians support 'tough" law and order approaches and the extrajudicial execution of suspected criminals: a 2002 Rio de Janeiro survey found that 47% supported the killing of murderers and thieves by police. See William C. Prillaman, "Crime, Democracy, and Development in Latin America", Centre for Strategic and International Studies, Policy Papers on the Americas, Volume XIV, Study 6 (June 2003), p. 14.

146 In 2002, police acquired a military-style armoured vehicle, known colloquially as the *caveirão*, or "big skull", so named because the BOPE's emblem – a skull impaled on a sword, backed by two pistols – is displayed on the side of the vehicle. It can carry 12 armed officers, and has a modified turret and rows of firing positions along each side of the vehicle. By 2006, Rio had 10 of the vehicles. The vehicle is equipped with loudspeakers, and I received testimony from favela residents and civil society that police used the loudspeakers to threaten residents. The *caveirão* causes significant fear in the community. Given the intensity of criminal violence in Rio de Janeiro, armoured vehicles may be useful policing tools in the short-term since police should not be required to work at undue risk to their own lives. Armoured vehicles – when used properly – can improve police safety. However, their use should be restricted to circumstances in which it is indispensable in order to protect the lives of police. To reduce abuse their use should

The problems of a "war" oriented framework for the use of force are also exemplified in cases where the armed forces or other security agencies routinely conduct law enforcement work. In his 2013 mission report on India, Special Rapporteur Heyns highlighted the Armed Forces (Special Powers) Act (AFSPA) and the dangerously broad authority it granted to the security forces to use lethal force.

> ***Report on Mission to India (A/HRC/23/47/Add.1, 26 April 2013, ¶¶22-28)***
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> 22. AFSPA provides wide-ranging powers to the Indian armed forces in respect of using lethal force in various instances, and fails to provide safeguards in case of excessive use of such powers, which eventually leads to numerous accounts of violations committed in areas where AFSPA is applied. The Special Rapporteur wishes to draw attention to two main concerns to which he was constantly alerted. Firstly, concerns were raised regarding AFSPA provisions regulating the use of lethal force. Section 4 of AFSPA provides: "Any commissioned officer, warrant officer, non-commissioned officer ... may, in a disturbed area, (a) if he is of opinion that it is necessary to do so for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area ..." Such provisions clearly violate the international standards on use of force, including lethal force, and the related principles of proportionality and necessity.
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> 23. Secondly, Section 6 of AFSPA and 7 of the Jammu and Kashmir AFSPA, grant protection to the officers acting under these Acts and stipulate that prosecution of members of the armed forces is prohibited unless sanction to prosecute is granted by the central Government. Sanction is rarely granted in practice. In this context, the Special Rapporteur was informed of an application submitted in India under the Right to Information (RTI) Act in November 2011, requesting information on the number of sanctions for prosecution granted from 1989 to 2011 in the State of Jammu and Kashmir. The response received from the authorities revealed that in none of the 44 applications brought was sanction not granted. In addition to AFSPA, the CPC also protects members of the armed forces from being prosecuted without prior sanction being granted, which will be examined in chapter V.
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> 24. The Special Rapporteur notes that the Supreme Court of India held that the declaration of a "disturbed area" under AFSPA must be "for a limited duration and there should be periodic review of the declaration before the expiry of six months."[147] He found, however, that this procedure is not followed in practice, and AFSPA remains effective for prolonged periods without a review of the context in the respective area.
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> 25. The Special Rapporteur wishes to underline that several international bodies have called for the repeal or reform of AFSPA,[148] including the former United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions.[149] Furthermore, Indian authorities at various levels

be monitored, and each deployment carefully recorded with audio and visual equipment installed on the inside and outside of the vehicle.

147 *Naga People's Movement of Human Rights v. Union of India And Others*, Supreme Court of India, 27 November 1997, para. 79 (8).

148 See, *inter alia*, Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Concluding Observations: India, CCPR/C/79/Add.81, 4 August 1997; Committee on the Elimination of Discrimination against Women, Concluding Comments: India, CEDAW/C/IND/CO/3, 2 February 2007; Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties under Article 9 of the Convention, Concluding Observations: India, CERD/C/IND/CO/19, 5 May 2007; and Committee on Economic, Social and Cultural Rights, Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant, Concluding Observations: India, E/C.12/IND/CO/5, 5 August 2008.

149 Report of the Special Rapporteur, Philip Alston, Summary of Cases Transmitted to Government and Replies Received, A/HRC/8/3/Add.1, 30 May 2008, p. 176 (allegation letter dated 14 August 2007 transmitted to

have also expressed their support for the repeal of AFSPA. In this context, the Indian Government set up a special committee in 2004, tasked with examining the provisions of AFSPA and advising the Government on whether to amend or repeal the Act. The special committee found that AFSPA should be repealed – that it was "quite inadequate in several particulars" and had "become a symbol of oppression, an object of hate and an instrument of discrimination."[150] The need to repeal AFSPA was reiterated by the Second Administrative Reforms Commission in its fifth report, published in June 2007.[151] Finally, the NHRC shared with the Special Rapporteur its views in support of AFSPA's repeal during a meeting held in New Delhi.

26. The Supreme Court of India ruled, however, in 1997 that AFSPA did not violate the Constitution. The Special Rapporteur is unclear about how the Supreme Court reached such a conclusion. The Special Rapporteur, however, notes that in the same case the Supreme Court declared as binding the list of "Dos and Don'ts" elaborated by the Armed Forces, and containing a series of specifications on the manner of applying AFSPA in practice. Although the list contains more precise guidelines on the use of lethal force under AFSPA, the Special Rapporteur believes that they still fail to bring AFSPA in compliance with the international standards in this regard.

27. In the Special Rapporteur's view, the powers granted under AFSPA are in reality broader than that allowable under a state of emergency as the right to life may effectively be suspended under the Act and the safeguards applicable in a state of emergency are absent. Moreover, the widespread deployment of the military creates an environment in which the exception becomes the rule, and the use of lethal force is seen as the primary response to conflict. This situation is also difficult to reconcile in the long term with India's insistence that it is not engaged in an internal armed conflict. The Special Rapporteur is therefore of the opinion that retaining a law such as AFSPA runs counter to the principles of democracy and human rights. Its repeal will bring domestic law more in line with international standards, and send a strong message that the Government is committed to respect the right to life of all people in the country.

28. The Special Rapporteur was encouraged to hear from several Government officials that AFSPA is in the process of being amended, which will lead to reduced powers provided to the armed forces acting under this Act. This is a welcomed first step.

ii. Assemblies and protests

In the context of the Arab Spring, which saw a number of popular protests violently put down by government security forces, Special Rapporteur Heyns dedicated his first report to the issue of the right to life in the context of mass demonstrations.[152] He discussed both the impact and the underlying causes of these demonstrations, noting that the solution cannot be found only with the police on the day in question, or with regulations concerning the use of force, or with equipment provided, but also emphasising the extent to which national legislation often does not accord with international standards:

Government of India regarding AFSPA).

150 Report of the Committee to Review the Armed Forces (Special Powers) Act, 1958, Part IV , 2005, para. 5, p.74 and 75.

151 Fifth Report of the Second Administrative Reforms Commission, June 2007, para. 8.5.16.

152 ***Editors' Note:*** The terms "demonstration," "assembly," "gathering," and "protest" are used interchangeably in the various reports to refer to the temporary presence of a number of people in a public or other space, sometimes with the objective of making a collective, often political, statement. The conduct of law enforcement officials in the context of assemblies is sometimes referred to as "public order policing" or the "policing of assemblies", and sometimes (problematically) conflated with "riot control". During the process requested under Resolution 25/38 (discussed above) it was agreed that the term "management of assemblies" was the least problematic.

Report to the Human Rights Council (A/HRC/17/28, 23 May 2011, ¶¶12-15, 17-19, 75-87, 91-103)

12. Recent events in the Arab world, and in other countries, have again illustrated how easily protests and demonstrations could end in large-scale bloodshed and tragedy. In many instances this occurs where the police do not apply human rights standards. However, this should not be seen, first and foremost, as a problem regarding out-dated policies about the use of lethal force. The broader issue is how to deal with dissent. This illusive problem has plagued humanity throughout history: how should those in power handle contestation? The standards applicable to the use of force cannot be dealt with in isolation. An equally important question is how demonstrations and peaceful assemblies should be managed.

13. If peaceful public protests are managed in such a way that they are less likely to escalate into violent confrontation, the need to decide whether or not to react forcefully will arise less frequently. Ensuring better compliance, at the domestic level, with international standards regarding assembly rights will go a long way towards securing the right to life.

14. Some of the key historical changes during the last century, and earlier, have been brought about by the masses taking to the streets. The human rights movement, itself, owes much of its development to such protests. Most recently, unprecedented and, at least, initially peaceful mass demonstrations changed the political landscape in Tunisia and Egypt, then spread to Bahrain, Libya, the Syrian Arabic Republic, Yemen and other countries.

15. Some of these public demonstrations have dominated the headlines, while many less visible ones have taken, and are taking, place. In some instances, the demonstrations remain peaceful and non-violent, in others, the conflict escalates; in some cases those who are injured or killed are counted in the hundreds. Reports from NGOs and other watchdogs worldwide indicate that worrying numbers of people are killed or maimed in demonstrations; some commentators claim that aggressive policing is on the increase. There are multiple instances where public protest is not considered an option due to fear of the consequences.

[...]

17. Public protest has a potential spill-over effect and can compromise legitimate State and social interests. Protest can result in social disruption, damage to property, injury and loss of life.

18. A relatively clear and coherent set of international human rights law standards has been developed in respect of the use of lethal force by law enforcement officials in general, including during demonstrations. However, as will be shown later in this report, vastly diverging standards are applied in respect of the use of lethal force domestically, and many do not meet international standards.

19. The need to take stock of the law of protest gains additional urgency from the cumulative effect of a number of contemporary developments that point to a probable increase in the incidence and intensity of public demonstrations in the future. This includes: (a) more pressure on scarce resources, leading to increased competition, especially in societies where large parts of the population are already at risk due to poverty; (b) the expanding role of information and communication technology, often beyond direct State or community control, with far-reaching effects on the quick mobilization of crowds, including in societies where communication has traditionally been restricted; (c) rapid urbanization, primarily in the developing world, with political protest taking place mostly in cities and towns; (d) strong global population growth, at least over the next few decades, causing, in particular, an increase in the number of young people in developing countries, the most energetic participants in political protest; and (e) the global expansion of ideas of democracy and human rights, which have in their own right become a

catalyst for activism, including in countries where there would have been hesitance in the past, and where the path to reform is the longest.

[...]

D. Domestic application of international norms in protecting the right to life when policing assemblies

75. There is no quick, single answer to the question of how to handle public protest. Differences in the type and size of crowds, causes and social settings pose a diverse range of challenges. Societies vary in terms of their propensity to violence, and approach to solving disputes. The need to strike a balance between the legitimate interests of protesters and the broader society in the unique context of each situation makes a one-size-fits-all approach to protest impossible and undesirable.

76. Nevertheless, much is to be gained from studying the way in which different national legal regimes regulate protest, and looking at good and bad practices around the world.

77. As to whether assembly and protest rights are adequately secured in practice depends on how much political room there is for dissent in the country in question. Are the laws applied in an even-handed manner, if at all?[153] While noting the often overriding prominence of political and practical considerations, this report focuses primarily on protection by law.

78. In some legal systems, the applicable laws predate the establishment of the United Nations and have remained unchanged for decades. The laws on demonstrations in Egypt, for example, date from 1914 and 1923, and in two other countries studied for this report, from 1857 and 1897 respectively.

79. The legislation of some 76 countries (to the extent that it was publicly available) was considered for the purpose of this report. Difficulties were experienced in obtaining a comprehensive picture in respect of some countries; for example, in the case of federal States, in situations where a number of different laws deal with the use of force, and where not all laws are written. Nevertheless, an indication of the kind of provisions that are in place at the domestic level were be garnered from this sample.

80. The constitutions of most countries recognise the right to life and peaceful assembly. However, the constitutions of Bahrain, Brunei, China, Comoros, Cuba, Egypt, Democratic Peoples' Republic of Korea, Kuwait, Laos, Lebanon, Mexico, Morocco, Oman, Panama, Saudi Arabia, Syrian Arab Republic, United Arab Emirates and Yemen do not expressly recognise the right to life, and the constitutions of Brunei, Djibouti, Gabon, Qatar and Yemen do not recognise the right to freedom of peaceful assembly.

81. Certain rights may be suspended during states of emergency under national constitutions. While the right to life may not be suspended under international law, the right to freedom of peaceful assembly may be suspended, and most, but not all, constitutions also provide for derogation from this right.

82. Around one third of the 76 countries considered have specialised legislation in place on demonstrations. In other countries, demonstrations are regulated together with other public order issues or in the countries' penal codes. Some countries recognise a positive duty to facilitate demonstrations. In two countries studied, it is a criminal offence for a police officer not to disperse an illegal gathering.

153 One issues of relevance here is police oversight mechanisms; see, in this regard, A/HRC/14/24/Add. 8, *supra* note 37, paras. 8-14.

83. Domestic legal systems can be used in many ways to suppress political freedom and dissidents, and at the same time, minimise the room available for assembly, often not explicitly. This can be done through security laws (including anti-terrorism laws), but also by means of vague and open-ended crimes such *peligrosidad* (dangerousness) and *moharebeh* (enmity against God). In some instances, organisations engaged in protest are banned in violation of the right to freedom of association.

84. Many countries follow international standards in respect of limitations on demonstrations, through laws targeting legitimate objectives such as national security, public order, and protection of the rights of others. In a number of countries, assemblies promoting hate speech and the use of violence are prohibited.

85. However, in a troubling number of instances, the police are given explicit, unfettered discretion to prohibit demonstrations. The relevant laws define reasons why this could be done, but the terms used are vague and open-ended, allowing for almost any restriction. For example, in one country, demonstrators are not allowed to "publish rumours and baseless propaganda that would create shock and horror in society," while in another country, citizens cannot hold gatherings that "further the economic, political and social objectives of other countries or their citizens."

86. Procedures for recourse to an independent court exist in a number of countries for those who feel aggrieved by limitations on planned protest actions, but not in the majority. Courts, including a significant number in Africa, have found open-ended or overly broad powers of functionaries to prohibit demonstrations to be unconstitutional.

87. In some countries, non-citizens are prohibited from participating in demonstrations.

[...]

Use of lethal force by police

91. The majority of countries studied have one set of rules regarding the use of force by police in the given country that are applicable across board – for defence, arrest and demonstration dispersal.

92. In a smaller, but still significant number of countries, there is a special regime applicable specifically to use of force during protest gatherings. In most of these countries, the police have greater powers to use lethal force during demonstrations than otherwise. The legal regimes applicable in these countries will be considered first.

93. The test in countries with a special regime applicable during protest action is mostly whether the use of force is "reasonable" or "necessary," without further limitations. It is a matter of concern that such provisions could be interpreted to constitute a subjective test, leaving it to the discretion of individual police officers to decide whether to shoot to kill. This can be taken as a licence to kill.

94. In some cases, the police are authorised to erect barriers and "may use such force as deemed necessary, including the use of lethal weapons, to prevent someone from crossing the barrier."

95. Where such special use-of-force regimes apply, the police are in effect given the power to declare their own "mini states of emergency" in respect of the demonstration in question, without any of the safeguards that normally apply to such a declaration. Moreover, in such cases, the non-derogable right to life is, for all practical purposes, suspended.

96. In the majority of countries surveyed, the rules that regulate the use of force during demonstrations are the same as those that apply to any use of force by the police. While this is generally a healthier approach to follow, it does not necessarily mean compliance with international standards in all cases. There are three sub-categories among these countries.

97. In the first instance, in a large number of countries the standards applicable to the general use of force by the police are vague and loosely defined, and do not provide clear guidance. The following is a typical provision: "Any police officer may use such force as, in the circumstances of the case, may be reasonably necessary."

98. The problem with such a provision when it sets a general standard for the use of force is the same as where it is encountered in specific regimes for demonstrations, as discussed above. While the standards often sound laudable in the abstract (and may, in practice, copy the wording of part of the international standards), because there is no further circumscription, they are imprecise enough as to be stretched to justify excessive use of force.

99. Where the term "necessary force" is used in such a context, the meaning is often more aligned with the permissive implications of the international law term "all necessary means," than with the restrictive interpretation appropriate in cases where rights are limited to ensure that only the minimum force required is used. Where this is the case, law enforcement officers can, in effect, also create their own "mini states of emergency" in respect of demonstrations.

100. In the second instance, there are countries where the norms regarding the general use of force are clearly in violation of international standards. In one country, firearms may be used for a variety of reasons by the Internal Security Forces, including "at the behest of the administrative authority" and "to defend their positions."

101. In the third instance, there are countries that comply, or substantially comply, with the international standards.

102. In some, but not all, countries, there is an automatic system of enquiry as to whether firearms should be used during demonstrations.

103. It may be concluded from the foregoing overview that domestic legal dispensations in respect of the deadly use of force during demonstrations in a significant percentage of countries do not comply with international standards.

While this was the first thematic report by the mandate focussing specifically on assemblies, the Special Rapporteurs have frequently responded to cases of excessive police force at protests and other public assemblies in different ways. Often, police lack the necessary skills, training, planning, or policies to effectively police assemblies, resulting in violations of the rights to expression and peaceful assembly as well as to the right to be free from cruel and inhuman degrading treatment, bodily integrity, and even the right to life. Police protection at public demonstrations, or police control of large crowds, or violent riots and other widespread public disturbances are often some of the most difficult forms of policing. Law enforcement officials need focused training, experience, and specific tools and weapons so as appropriately to deal with crowds, ensure that the freedoms of expression and assembly of protestors are respected, de-escalate any violence, and protect themselves and others from any violence that may occur.

Urgent appeal sent to the Government of China (20 March 2008) A/HRC/11/2/Add.1 p.39ff

According to the allegations received:

> On 10 March 2008, demonstrations led by monks were organised demanding greater freedom of religion and the release of monks detained since October 2007. It is reported that 300 monks from Drepung Monastery, near Lhasa, proceeded with a peaceful march towards the Potala Palace when they were stopped by the police. It is believed that around 60 monks suspected to be the leaders of the protest were arrested by the Public Security Bureau (PSB).
> [...]

On the same day, about 350 people, including 137 monks from Lhutsang Monastery in the Tibetan area of Amdo in Mangra County, organised a protest in front of the Mangra County Assembly Hall where a government-sponsored show was taking place. The protest was stopped by the People's Armed Police. A number of arrests took place during the disruption of the protest, but no information on the whereabouts of the arrested monks has been received.

Reports indicate that on 11 March, 500 to 600 monks from the Sera Monastery called for the release of the monks arrested the day before and began a march towards Lhasa, but were met on the way by approximately 2,000 armed police. The crowd was reportedly dispersed with tear-gas. A number of monks were detained and then released. On 11 March, the police surrounded and sealed off Ditsa Monastery in Hualong County in Qinghai Province after the monks held a protest.

On 14 March, violent incidents were reported in Lhasa as tension escalated between hundreds of demonstrators and police forces. Gunfire was heard in the streets, and shops and cars were set on fire. Allegations that a significant number of Tibetans and Han and Hui Chinese have been killed during the demonstrations have been received. Monks from Ganden and Reting monasteries joined the demonstrations, and the two monasteries were later sealed off by police. A number of monks from Sera Monastery started a hunger strike to protest against the sealing off of monasteries and the detention of monks. Reports indicate that, in particular since 14 March, the wave of demonstrations by monks and lay people has spread in the whole Tibet Autonomous Region and in neighbouring provinces. These demonstrations have reportedly sometimes been violently repressed, in many cases leading to arrests of demonstrators. Allegations were received that since 14 March, the People's Liberation Army has been patrolling the streets of Lhasa.

On 15 March, shooting was reported inside the compound of Tashi Lhunpo Monastery in Shigatse, and at least 40 lay people demonstrating around the monastery were arrested. The next day, monks trying to escape the Kirti Monastery in Amdo in the Sichuan Province, which had been sealed off by the military, have allegedly been shot at; tear-gas was reportedly used on the demonstrators supporting the monks outside the monastery, and many demonstrators were severely beaten by the police. The police is then alleged to have shot into the crowd, killing and injuring a considerable but unconfirmed number of people.

[...]

While we do not wish to prejudge the accuracy of these allegations, we would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

[...]

In this connection we would like to refer Your Excellency's Government to the fundamental principle set forth in Article 3 of the Universal Declaration of Human Rights which provides that every individual has the right to life and security of the person. I would also note the relevance in such situations of the UN Basic Principles on the Use of Force and Firearms by Law Officials. Principle 4 provides that, "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." Furthermore, Principle 5 provides that, "Whenever the 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 object 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 and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment."

The Special Rapporteurs also frequently addressed the mismanagement of assemblies during country-visits, for example in Afghanistan, the Democratic Republic of Congo, and The Gambia:

Report on Mission to Afghanistan (A/HRC/11/2/Add.4, 6 May 2009, ¶54)

54. [The] problem of killings by the police and other armed personnel acting under the authority of Government officials has been largely overlooked [in Afghanistan]. This should end. While there are no reliable figures on the number of such unlawful killings, known cases clearly indicate that the overall number is high. There is a crying need for a system which ensures that when the police and/or their political masters are accused of multiple killings an independent investigation is launched. The killing of nine and the wounding of 42 unarmed protesters in Sheberghan (Jawzjan province) on 28 May 2007 by either the ANP [Afghan National Police] or the Governor's private bodyguards provides a classic example. Local and national political interests have conspired to ensure that no effective investigation was undertaken. The technique is to let time pass until the evidence has faded and other political concerns have claimed the limelight. The matter can then be quietly filed away. The victims and their families are simply ignored.

Report on Mission to the Democratic Republic of the Congo (A/HRC/14/24/Add.3, 1 June 2010, ¶¶73-74)

73. In Kinshasa, I met with victims and witnesses of security force violence against members of the political-religious group *Bunda dia Kongo* (BDK), as well as those who had investigated the incidents. In early 2007, security forces killed at least 100 BDK supporters, following elections in Bas Congo, in which BDK-aligned candidates lost to Kabila supporters. There were widespread allegations of fraud, made especially by BDK supporters, and the BDK organised general strikes. In the ensuing police response, there were some killings on both sides. The army was then called in, and the police and soldiers killed over 100 people. While several security force officials were suspended as a result, no criminal charges were ever brought against the perpetrators. In February 2008, the Government launched a three-week, heavily armed police operation against the BDK. Homes and places of worship were attacked and burned, and an estimated 100-200 were killed.

74. The Government argued that its forces were lawfully attempting to restrain BDK violence. It is true that there have been a small number of credible allegations of violence and killings (especially against so-called "*es*") by BDK members, and that the BDK organised large public protests. However, the security force response was grossly disproportionate to any threat, and it was targeted to suppress the BDK as a political opposition force, not to protect victims of BDK violence. The police who carried out the operation had largely military backgrounds, with little anti-riot or crowd control training, and were armed with heavy weaponry (such as grenades and machine guns). Both UN and NGO investigations carried out shortly after the operation documented the excessive force that was used by the security forces.

Report on Mission to The Gambia (A/HRC/29/37/Add.2, 11 May 2015, ¶65)

65. In April 2000, 13 students and a journalist were killed and 28 persons were wounded when security forces opened fire during a peaceful demonstration organised by students. An inquiry set up to investigate the events concluded that the security forces deployed to control the demonstration were responsible for the deaths, however the Government subsequently rejected the findings and no one was brought to justice.

During his mission to Ukraine, Special Rapporteur Heyns encountered the legacy of two highly-publicised failures to adequately manage large demonstrations: the "Euromaidan" protests in 2013 and the events of 2 May 2014 in Odesa. These events proved critical in the recent history of Ukraine, and the Rapporteur presented an extensive account of subsequent investigations.

Report on Mission to Ukraine (A/HRC/32/39/Add.1, 4 May 2016, ¶¶32, 33-45)

A. Securing the right to life in the context of assemblies

[...]

32. On at least two occasions in the recent history of Ukraine [...] the State has failed in its responsibility to manage large-scale assemblies appropriately, in both cases leading to a loss of life that has become emblematic of the current situation in Ukraine:

1. Maidan protests

33. [...] In November 2013, protesters started to gather at Kyiv's Independence Square as part of a movement known as EuroMaidan ("European Square"), which demanded economic, social and political reform, the curbing of corruption and the strengthening of the rule of law. To some protesters, a closer integration with the European Union was seen as a desirable development, as they perceived the Government to be leaning progressively towards the Russian Federation. In eastern Ukraine, other citizens showed their support of the Government and expressed their opposition to ties with the European Union. On 24 November 2013, between 50,000 and 100,000 anti-Government protesters, including pro-European-Union sympathisers, gathered in the first demonstration at Independence Square in Kyiv. Pro-Government groups, including violent gangs (known as *titushky*) allegedly hired by the Government to "attack and intimidate" anti-Government demonstrators, also gathered at the square.[154]

34. The first instance of excessive use of force against demonstrators took place on 30 November 2013, when 290 riot police officers (special police unit known as the *Berkut*) dispersed protesters – mainly students and other young people – from the Square. Witness testimony and footage of the incident suggest that authorities used excessive force to clear demonstrators, including by chasing and beating demonstrators who ran away.[155] The violence escalated in the following days, with clashes in nearby streets between demonstrators and riot police. At least 50 riot police and hundreds of protestors were injured, and 12 persons detained on charges of "organizing mass disorder". Confrontations on 10 and 11 December 2013, after the riot police attempted to remove barricades, left up to 40 persons injured and 15 hospitalised, including law enforcement officers.[156] Clashes resumed on 19 January 2014, following the adoption of controversial new laws on 16 January limiting the ability to conduct unsanctioned public demonstrations.[157] Demonstrators, many of whom were linked to the far right-wing Right Sector group, attacked governmental buildings, throwing stones, firecrackers and Molotov cocktails at the police. The response of the police included the use of water cannons in sub-zero temperatures and live fire, as a result of which two demonstrators were injured by firearms.[158]

154 See Council of Europe, *Report of the International Advisory Panel on its Review of the Maidan Investigations,* 31 March 2015, para. 5.

155 Ibid., paras. 9-23. The Advisory Panel referenced videos that seem to show instances of excessive force against the demonstrators.

156 Ibid., para. 44.

157 See OHCHR, *Report on the Human Rights Situation in Ukraine*, 16 August to 15 November 2015, para. 56.

158 Council of Europe, *supra* note 154, paras. 53-57 and Annex IX.

35. A Council of Europe panel[159] commissioned to assess the subsequent investigation found no evidence of meaningful investigation into any allegation of excessive force before 18 February 2014.[160] Over and above the failure of accountability that this represents, such a lack of investigation during the early period of the demonstrations inevitably meant that full investigations, once started, were hampered by the lapse of time.

36. The violence in Kyiv reached its peak between 18 and 20 February 2014, when mass violent clashes took place mainly on Institutska Street. During those three days, around 90 people were killed, including 13 policemen, some by sniper shots that allegedly came from rooftops. It is not known who those snipers were, or to whom they answered. Investigations into this aspect of the violence have not reached any meaningful result, although it appears that this violence led to the largest number of intentional deaths and injuries. The former Minister of Health (who was in office from 27 February 2014 until 1 October 2014), Oleg Musii, was the chief of the medical services in the Maidan protests and a witness to the episodes of violence against demonstrators. He indicated to OHCHR that he saw law enforcement officers secretly removing bodies from Independence Square, which he suspected belonged to individuals who remain unaccounted for. He recounted cases of police brutality, including beatings and intimidation against medical staff, which prevented them from tending to the wounded (see A/HRC/27/75, para. 57). According to information gathered thus far, during the period from December 2013 to February 2014, in total 123 people lost their lives as a result of violence during the Maidan protests (some of them died in hospitals in March and June 2014). This number includes 106 persons with no connection to law enforcement (most of them protesters killed by firearms) and 17 officers of the internal affairs/police.

37. With respect to the use of force against protesters in the Maidan protests, most significantly between 18 and 20 February 2014, the Special Rapporteur is concerned that at least 77 persons were killed as a result of the firing of live ammunition, allegedly by Berkut and other law enforcement officers, at participants. As with any use of lethal force by police officers, it is vital that there be a prompt, thorough and impartial investigation into the events to establish whether the use of force was both necessary and proportionate.

38. The Special Rapporteur is greatly concerned by the apparent shortcomings of the investigation into these events.[161] While what process there is seems to be progressing very slowly, having reached court-level proceedings now in a very limited number of cases, there are more systemic failings. The escape of a principal suspect from house arrest, as well as the loss of a great deal of vital physical evidence, are both issues that should themselves be independently investigated.[162]

39. The Law on National Police was adopted on 2 July 2015 and fully entered into force on 7 November 2015, triggering the creation of a new police force. The national police has been established as a separate central executive body tasked with the provision of police services, as an attempt to depoliticise the police and give it a service-oriented approach.

2. Events of 2 May 2014 in Odesa

40. The Special Rapporteur visited Odesa and sought further information about the events of 2 May 2014, in which at least 48 people died in the context of clashes between rallies of people of opposing political opinions, to which authorities appear to have reacted in a deliberate, ill-prepared or negligent fashion. According to the accounts received from people who were at the

159 See Council of Europe, *International Advisory Panel on Ukraine,* available at: www.coe.int/en/web/portal/international-advisory-panel.

160 See Council of Europe, *supra* note 154, para. 522.

161 Ibid.

162 Ibid., paras. 421, 443, 449 and 471.

scene, the police kept a low profile as the crisis evolved, and did not intervene to prevent or stop the violence at the Kulykove Pole Square. Indeed, credible footage appears to show at least one armed "pro-federalist" protester shooting at "pro-unity" protesters from behind the police cordon, with no attempt being made to arrest him. Police officers present at the scene allegedly responded to repeated requests by protesters to intervene to stop the violence that they had no orders to do so.

41. In the immediate aftermath of these clashes, some protesters retreated into the Trade Unions Building, which was situated close to one of the protest camps. After barricading themselves inside, dozens of people were ultimately killed, both by assailants and by a fire that engulfed the building. The fire brigade, which was located very close to the Trade Unions Building, where many protestors burned to death, failed to respond for 45 minutes to repeated, urgent calls that they received. According to the Government, emergency department officials are under investigation for criminal negligence due to the alleged failure to fulfil their duties.

42. There were numerous failings in the official investigation into the events of that day. While both "pro-unity" and "pro-federalist" groups played a part in the escalation of violence, subsequent criminal prosecutions for hooliganism or public disorder were initiated against participants in a partial fashion. Of the 48 persons killed, all but two were "pro-federalist" protestors. Of the 10 protesters who were detained, accused of "mass riot," and still on trial at the time of the Special Rapporteur's visit, all but two were also "pro-federalist." Two years after the events, none of those responsible for the 48 deaths has been convicted. According to the Government, five persons are currently in custody on charges of rioting, unlawful handling of weapons and murder in relation to the 2 May 2014 events.

43. Moreover, by allowing almost immediate access to the scene by "pro-unity" protesters, members of the public and municipal authorities, investigators lost a large proportion of potentially valuable forensic evidence. As in the case of the lethal violence used in Maidan, the Special Rapporteur is concerned that no serious effort has been made to preserve critical evidence, and that investigations into these important events have been slow, thus far failing to produce any tangible result.

44. The Special Rapporteur is also concerned by indications that the Government has in the past year significantly reduced the size of the team investigating these events, before the team has had an opportunity to report. The slow progress of the investigation and the lack of transparency with which it is being conducted have contributed to a great deal of public dissatisfaction and provided a fertile environment for rumour and misinformation. The special unit of the Ministry of Internal Affairs that is investigating the 2 May events cancelled an appointment to meet with the Special Rapporteur in Odesa at the last moment without explanation.

45. The Special Rapporteur met with a group of families of some of the victims of those events. He was concerned to learn that administrative and personal impediments had been imposed to prevent or discourage families from obtaining the status of suffering or affected persons before the courts, and that, unlike the Maidan investigation, authorities had taken no coordinated measures to keep the next of kin informed of the status of the investigation. He was greatly alarmed by reports that authorities were tolerating verbal and physical intimidation, both of families attending court proceedings and of the judges in those cases, not only outside the court building, but also inside the building and in the courtroom itself.

2. Shoot-to-kill policies

Special Rapporteur Alston's 2006 report to the Commission on Human Rights examined the extent to which "shoot-to-kill" policies could conform with international standards on the use of force. The report was prepared in response to a number of high-profile pronouncements from officials of various governments authorizing police to "shoot on sight" alleged terrorists and criminals. Such dangerous official rhetoric risks displacing the clear legal standards on the use of lethal force.

Report to the Commission on Human Rights (E/CN.4/2006/53, 8 March 2006, ¶¶44-51)

44. In recent years there have been a number of high-profile pronouncements by officials, not infrequently at the most senior level of Government, that they have given orders for the police or the military to "shoot to kill," to "shoot on sight," or to use the "utmost force" in response to a particular challenge to law and order. Such statements have often been made in response to perceived terrorist threats but they have also come as a response to widespread looting, to a high incidence of armed robberies, or to an epidemic of drug abuse. All too often, the background context is one in which the official concerned has been subject to severe public criticism for failing to take adequate measures to protect the population. Rather than asking whether preventive measures taken in good time, or the use of accepted policing techniques, appropriately reinforced if necessary, might have been sufficient to deal with the situation, the temptation is to seek to escape blame by proclaiming a crackdown on crime, zero tolerance for any individuals suspected of terrorist ambitions, or a policy of unleashing the full fury of the State to root out drug dealers, etc.

45. But the rhetoric of shoot-to-kill and its equivalents poses a deep and enduring threat to human rights-based law enforcement approaches. Much like invocations of "targeted killing", shoot-to-kill is used to imply a new approach and to suggest that it is futile to operate inside the law in the face of terrorism. However, human rights law already permits the use of lethal force when doing so is strictly necessary to save human life. The rhetoric of shoot-to-kill serves only to displace clear legal standards with a vaguely defined licence to kill, risking confusion among law enforcement officers, endangering innocent persons, and rationalizing mistakes, while avoiding the genuinely difficult challenges that are posed by the relevant threat.

46. The use of shoot-to-kill tactics also imports, either consciously or otherwise, the language of international humanitarian law into situations which are essentially matters of law enforcement that international law requires be dealt with within the framework of human rights. The notion that the law of armed conflict is an appropriate frame of reference for a Government seeking to deal with law enforcement issues is one that must be soundly rejected. To do otherwise is tantamount to allowing Governments to declare war simultaneously on a given group and on human rights in general.

47. At its crudest, this rhetoric turns on erroneous conceptions about human rights law. There is no conflict between, for example, the human right not to be blown up by terrorists and the human right not to be arbitrarily shot by the police. Under human rights law, States must at once respect and ensure the right to life.[163] States have a legal duty to exercise "due diligence" in protecting the lives of individuals from attacks by criminals, including terrorists, armed robbers, looters, and drug dealers.[164] This may require the use of lethal force against a suspect, but only when doing so is proportionate and strictly unavoidable to prevent the loss of life.[165] No derogation is permitted from the right to life,[166] and none is needed.

48. Human rights law unconditionally prohibits the needless killing of suspected criminals, but it fully recognises that lethal force is sometimes strictly necessary to save the lives of innocent people from lawless violence. A measure of the value human rights law places on the "inherent

163 ICCPR, Art. 2 (1).

164 E/CN.4/2005/7, *supra* note 7, paras. 71-74. Human Rights Committee, *Jiménez Vaca v. Colombia*, CCPR/C.74/D/859/1999, 25 March 2002, para. 7.3, ("[T]he Committee points out that article 6 of the Covenant implies an obligation on the part of the State party to protect the right to life of every person within its territory and under its jurisdiction.").

165 *Basic Principles, supra* note 3, Principle 9 ("In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life").

166 ICCPR, Art. 4 (2).

right to life" is provided by the prohibition of the death penalty for other than the "most serious crimes."[167] For lethal force to be considered to be lawful it must be used in a situation in which it is necessary for self-defence or the defence of another's life.[168] The State's legal framework must thus "strictly control and limit the circumstances" in which law enforcement officers may resort to lethal force.[169] In addition to being pursuant to a legitimate objective, the force employed by law enforcement officers must be strictly unavoidable for its achievement. Non-lethal tactics for capture or prevention must always be attempted if feasible. In most circumstances, law enforcement officers must give suspects the opportunity to surrender,[170] and employ a graduated resort to force.[171] However, the use of lethal force may prove strictly unavoidable when such tactics would unduly risk death or serious harm to law enforcement officers or other persons. For States to grant law enforcement officers a vaguely defined licence to shoot to kill even when other means of preventing a suspected attack are available makes the daily lives of the innocent not safer, but far more hazardous. States facing terrorist or other threats alleged to require exceptional measures should instead clarify the implications of human rights law for law enforcement officers through training and written guidance.

49. At their most sophisticated, shoot-to-kill policies overlook the role human rights standards play in preventing tragic mistakes. The training documents published by the International Association of Chiefs of Police (IACP) are representative of shoot-to-kill thinking, and at critical points they advance doctrines that undermine the right to life. Human rights law normally requires that officers provide warnings, allow the opportunity for surrender, and employ a graduated use of force before resorting to lethal measures. These requirements serve in part to distinguish dangerous criminals, who can be stopped only with deadly force, from both the deterrable and the innocent. There are, however, exceptions to the requirements of warnings and a graduated response, because there are circumstances in which an immediate recourse to lethal force is strictly necessary to prevent an even greater loss of life. In most such situations, this necessity is the result of a threat's imminence. This too serves as a safeguard. When a criminal is already in the process or visibly on the verge of using a weapon, there can be little doubt regarding the inevitability of violence if immediate recourse to lethal force is not taken. A suspected suicide bomber, however, poses somewhat different challenges. Warnings and non-lethal tactics are risky not because they might fail to prevent an already imminent act of violence but because they might, in fact, trigger an explosion either by alerting the bomber that this is his final opportunity or by directly setting off the explosive material. With these risks in mind, the IACP guidelines advise law enforcement officers, in some circumstances, to shoot to kill without warnings, without attempts at non-lethal tactics, and without an imminent threat. This strips the use of lethal force of its usual safeguards – without providing any alternative safeguards.

167 Human Rights Committee, *Baboeram v. Suriname*, CCPR/C/24/D/154/1983, 4 April 1985, para. 14, links the "most serious crimes" and use of lethal force standards.

168 In *Baumgarten v. Germany* the Human Rights Committee found that shooting persons attempting to cross the border from the Former German Democratic Republic was a violation of the right to life. (Human Rights Committee, *Baumgarten v. Germany,* CCPR/C/78/D/960/2000, 31 July 2003, para. 9.4: "The Committee recalls that even when used as a last resort lethal force may only be used, under article 6 of the Covenant, to meet a proportionate threat.")

169 *Baboeram v. Suriname, supra* note 167, para. 14.

170 Human Rights Committee, *Suárez de Guerrero v. Colombia*, CCPR/C/15/D/45/1979, 31 March 1982, para. 13.2 ("the police action was apparently taken without warning to the victims and without giving them any opportunity to surrender to the police patrol or to offer any explanation of their presence or intentions"). *Basic Principles, supra* note 3, Principle 10 ("In the circumstances provided for under Principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident").

171 *Basic Principles, supra* note 3, Principle 4.

50. It is essential to account for the legal implications of the limited information officers will almost invariably have. The training documents refer constantly to "suspected suicide bombers," but they neglect to emphasise the high level of certainty required before lethal force is lawful. Unless intelligence is strong enough to permit interdiction before a suicide bombing operation begins, the burden will often fall on individual officers to evaluate whether a given person is a suicide bomber. The IACP's approach relies extensively on profiles of suicide bombers. Persons with freshly shaved beards, signs of drug use, tightly held backpacks, etc., are suggested as "among the most obvious signs" of possible suicide bombers. However, the scarcity of actual bombers relative to other people exhibiting these characteristics is such as to ensure that false alarms will predominate. No one has claimed that meeting a profile alone is sufficient to permit the use of lethal force, but insofar as law enforcement tactics often preclude warning suspected bombers, it is difficult to see how an officer is to either confirm or disconfirm his or her initial suspicions. Under human rights law, suspicion is not enough to justify a resort to lethal force. There is no legal basis for shooting to kill for any reason other than near certainty that to do otherwise will lead to loss of life.

51. States that employ shoot-to-kill policies for dealing with suicide bombers must develop legal frameworks to properly incorporate intelligence information and analysis into both the operational planning and post-incident accountability phases of State responsibility. If there is a solid factual basis for believing that a suspect is a suicide bomber capable of detonating his explosive if challenged, and if, to the extent possible, that information has been evaluated by persons with appropriate experience and expertise, the immediate use of lethal force may be justified. However, States employing shoot-to-kill procedures must ensure that only such solid information, combined with the adoption of appropriate procedural safeguards, will lead to the use of lethal force.

In his 2015 report on a country visit to The Gambia, Special Rapporteur Heyns noted several deficiencies in the police structure which included instances of a "shoot-to-kill" policy and insufficient domestic regulation of use of force:

Report on Mission to The Gambia (A/HRC/29/37/Add.2, 11 May 2015, ¶¶38, 42-43)

38. The Special Rapporteur is concerned that the Gambian legislation setting out the constraints and requirements for the use of force by the police is insufficient. The only instrument setting certain conditions for the use of force is the aforementioned manual, which provides a set of guidelines on "the reasonable" use of force, reporting structures and responsibilities for cases involving force, and directives for situations requiring medical attention. Although reference is made to an immediate threat to life or serious injuries as one of the factors determining such reasonableness, concern is raised that much emphasis is placed on the officer's discretion at the time of the events. While the manual provides for the use of restraining techniques and deadly force in such situations of threat, it does not include directives defining the circumstances, conditions, degree and manner in which such force may be used.

[...]

42. The Inspector General of the Police confirmed the existence of paramilitary units, which are established as armed wings of the police and are mandated to conduct crowd control during public events, riots or other civil disruptions, as well as to perform other general policing duties for which they are only armed with a truncheon and handcuffs. Likewise, he noted the existence of an anti-terror unit, consisting generally of police officers who perform their duties unarmed.

43. The Inspector General also confirmed the existence of a unit within the security forces called the "Bulldozers," which reports to the Inspector General and is headed by the Deputy of the Gambian Police Force. It is an operational task force consisting of agents from different security forces who come together, when required by a particular situation, to perform special tasks, which often entail

> patrolling and arresting suspects who are later rendered to the relevant departments. It has been criticised for abuses in the conduct of its operations. When launching "Operation Bulldozer" in 2012, Mr. Jammeh instructed security forces to "shoot first and ask questions later" to rid the country of all criminals.[172] This message gives security officers the idea that it is permissible to use lethal force as a first resort, which is in stark violation of international standards on the use of force.

In his 2010 report on targeted killings, Special Rapporteur Alston generally addressed the legality of the practice under international human rights law:[173]

> ***Study on Targeted Killings (A/HRC/14/24/Add.6, 28 May 2010, ¶33)***
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> 33. [U]nder human rights law, a targeted killing in the sense of an intentional, premeditated and deliberate killing by law enforcement officials cannot be legal because, unlike in armed conflict, it is never permissible for killing to be the *sole objective* of an operation. Thus, for example, a "shoot-to-kill" policy violates human rights law.[174] This is not to imply, as some erroneously do, that law enforcement is incapable of meeting the threats posed by terrorists and, in particular, suicide bombers. Such an argument is predicated on a misconception of human rights law, which does not require States to choose between letting people be killed and letting their law enforcement officials use lethal force to prevent such killings. In fact, under human rights law, States' duty to respect and to ensure the right to life[175] entails an obligation to exercise "due diligence" to protect the lives of individuals from attacks by criminals, including terrorists.[176] Lethal force under human rights law is legal if it is strictly and directly necessary to save life.

In a 2011 report presented in the context of the much publicised U.S. operation to pursue Osama Bin Laden in Abbottabad, Pakistan, Special Rapporteur Heyns elaborated on the implications of international standards for the use of force in such an operation:

> ***Report to the General Assembly (A/66/330, 30 August 2011, ¶¶65-74)***
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> 65. The issue of the use of lethal force and arrest also comes to the fore in the context of the increased use of targeted killing, as it manifests itself in practices such as drone strikes and raids (including, for example, the killing of Osama Bin Laden in Pakistan by forces of the United States of America).[177] In respect of the latter case, at least some of the information available suggests that the objective was to kill, not to capture, Bin Laden.[178]

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172 See *A Joint Security Operation Code Name "Operation Bulldozer" is Launched*, 12 May 2012, available at http://qanet.gm/statehouse/Operation-Bulldozer-Launched_22052012.htm.

173 ***Editors' Note:*** Most of the report on targeted killings addresses such killings under humanitarian law (the laws of war). Those extracts are contained in Chapter 5, "Killings During Armed Conflict."

174 E/CN.4/2006/53, *supra* note 8, paras. 44-54.

175 ICCPR, Art. (2) (1).

176 E/CN.4/2005/7, *supra* note 7, paras. 71-74.

177 See Report of the Secretary-General on the Situation in Afghanistan and its Implications for International Peace and Security, A/65/873-S/2011/381, 23 June 2011, para. 22; Report of the Secretary-General on the Situation in Afghanistan and its Implications for International Peace and Security, A/65/783-S/2011/120, 9 March 2011, para. 35; Mary Ellen O'Connell, *Unlawful Killing with Combat Drones: A Case Study of Pakistan, 2004-2009* (Notre Dame Law School, Legal Studies Research Paper No. 09-43, 2010), p. 21. See also Harold Koh, Legal Advisor to the United States Department of State, *The Lawfulness of the U.S. Operation against Osama Bin Laden*, 19 May 2011, available at http://opiniojuris.org/2011/05/19/the-lawfulness-of-the-us-operation-against-osama-bin-laden/.

178 See, for example, the comments by United States Attorney-General, Eric Holder: "The reality is, we will be reading Miranda rights to a corpse" (Carrie Johnson, 'If bin Laden is Found, He'll be Killed, Holder Says', *Washington Post,* 17 March 2010, available at http://www.washingtonpost.com/wp-dyn/content/article/2010/03/16/AR2010031603753.html).

66. In the context of the mandate, targeted killing has been defined as the intentional and deliberate use of lethal force, "with a degree of pre-meditation, against an individual or individuals specifically identified in advance by the perpetrator."[179]

67. Without commenting on the full range of issues surrounding the legality of such operations, including those related to matters such as sovereignty, the present report addresses the question as to what extent a decision that is taken in advance that rules out the possibility of offering or accepting an opportunity to surrender render such operations unlawful.

68. Much will turn on the applicable system of law. If the targeting occurs in the context of law enforcement, international human rights law applies exclusively. If it takes place during armed conflict, international human rights law remains applicable; however, international humanitarian law finds application as *lex specialis*.[180]

69. While both systems of law allow the use of lethal force by State agents under certain circumstances, the approaches followed are very different. In the case of international human rights law, the use of deadly force is regarded as exceptional, and is legal only in the limited set of circumstances applicable to law enforcement situations described in the rest of the report. International humanitarian law is generally more permissive with regard to the use of lethal force; however, for such force to be used lawfully, various rules have to be complied with, as will be discussed below.

70. The question may be asked whether the traditional law enforcement framework offers realistic solutions to extreme cases, such as those presented by some terrorist activities or hostage situations. Human rights law dictates that every effort must be made to arrest a suspect. In terms of the necessity test discussed earlier, graduated force that is proportional and necessary in the circumstances may be used in order to arrest the suspect. Where there is no other way to counter an immediate threat to life – for example where the proportionality requirement is met and there is reason to believe that a suspect will shoot immediately if confronted – instantaneous, unannounced force, including lethal force, may be used. Such cases can be resolved within the confines of the norms applicable to law enforcement without changing the well-established legal framework, or arguing that international humanitarian law applies in cases where it clearly does not.

71. In the case of international armed conflict, it is often stated that enemy soldiers "may be killed at any time and any place," and as a general rule no attempt to arrest has to be made and no opportunity to surrender need be given. However, as will be argued below, the use of lethal force during armed conflict remains subject to constraints such as military necessity. In non-international armed conflict, members of opposing forces may also be targeted as long as they directly participate in hostilities, but again this is subject to military necessity. When a combatant, or a direct participant in hostilities is placed hors de combat, or surrenders to the enemy, the enemy may not kill or injure such a person.[181]

72. A State may, under no circumstances, follow an approach in terms of which an offer to surrender will not be accepted. Orders that "no quarter be given" constitute war crimes.[182]

179 See A/HRC/14/24/Add.6, *supra* note 19, para. 9.

180 *Legality of the Threat or Use of Nuclear Weapons, supra* note 77.

181 Art. 40 of Additional Protocol I to the Geneva Conventions; Art. 4 (1) of Additional Protocol II to the Geneva Conventions.

182 Rome Statute of the International Criminal Court 1998, 2187 UNTS 3, Art. 8 (2) (b) (xii) and Art. 8 (2) (e) (x). Jean-Marie Henckaerts and Louise Doswald-Beck (ICRC), *Customary International Humanitarian Law, Volume I: Rules* (2005), rules 46 to 48 provide that it is also a crime under customary law

73. The underlying philosophies of international human rights law and international humanitarian law are different. Actions taken against a suspect in the law enforcement context are premised on the notion of suspected guilt of criminal conduct. As was alluded to earlier in the report, the final decision to shoot should be taken as near in time as is possible to the actual shot being fired, in order to allow for the suspect concerned to change his or her mind and withdraw from the conduct that poses a threat to the life of another or others.

74. In international armed conflict, the use of lethal force is generally based not on suspected individual guilt, but on the enemy's status or active membership of a larger collective, namely, a dangerous opponent. Individual guilt normally does not enter into the picture. Targeted killing, however, when conducted as part of such armed hostilities, does not conform to this paradigm. The target is identified on an individual basis, which is tied to his or her individual conduct or perceived guilt, which makes some comparison with the law enforcement paradigm difficult to avoid.

3. Death squads

In some countries, police and other officials work together in an organised fashion to undertake targeted, extrajudicial, and unlawful actions. Instead of investigating and arresting suspects in accordance with the law, the police form militias or death squads intentionally to murder. Such death squads may function at a low-level and receive no official sanction nor be part of any official policy; in other countries, high-level officials may support or direct such squads. Killings by death squads are often well-planned and carefully carried out, and they are generally difficult to investigate. Police either completely hide or destroy evidence of the killing, or evidence is tampered with to make the incident appear lawful.

Witnesses often fear speaking out, or police actively harass and intimidate victims' family members and neighbours into silence. The higher official support for death squad activity goes, the more likely it is that impunity will result. Senior officials can ensure that police internal affairs, prosecutors, or external accountability mechanisms fail to function effectively to counter police abuse. To uncover death squad activity, strong civil society or national human rights institutions or other external mechanisms are often needed to gather case pattern evidence, to follow individual cases closely, and to build trust with witnesses and potential whistle-blowers. Independent forensic experts will also often been needed to review crime scene reports and autopsies, and to provide objective assessment of the evidence of killings.

In Guatemala, Special Rapporteur Alston investigated the practice of "social cleansing" by police agents:

Report on Mission to Guatemala (A/HRC/4/20/Add.2, 19 February 2007, ¶¶19-20)

19. Based on my interviews with victims and others, I must conclude that allegations that personnel working for the *División de Investigación Criminal* (DINC) of the PNC [police] are engaged in social cleansing are highly credible. The pattern is that the police will recruit an informant by agreeing to overlook the informant's past or present criminal activities in exchange for cooperation and will then demand information regarding the identities and locations of gang members, suspected criminals, and other targets. Police will then drive to the location provided, typically without uniforms and in an unmarked vehicle, apprehend the person identified by the informant, and kill him or her at another location, sometimes following torture.

20. One person I spoke with was a man in his early twenties who reported that he had been retained as an informant by DINC. As an informant, he was witness to a number of incidents of social cleansing. In one incident, a suspected car thief was arrested at his home during the night, without an arrest warrant, and his dead body was subsequently found with signs of torture. In other incidents, the people killed were said to be distributing marijuana. In another incident, he took part in a burglary carried out by DINC policemen in which they kidnapped the residents of the apartment, who were not seen again. When another informant told him that the police wished

to harm him, he went into hiding; that informant was found dead with a bullet in his head after going to a meeting with those controlling him in DINC. The detailed accounts of this interlocutor were buttressed by those of a number of other individuals with whom I spoke. One individual had been tortured by the police for gang activity. Another had been taken away by police officers in an unmarked vehicle and threatened with death. Another well-connected individual confirmed the involvement of DINC in such activities.

In the Philippines, Special Rapporteur Alston investigated a death squad which carried out social cleansing and appeared to have high-level official support, (including that of the then-Mayor of Davao City, Rodrigo Duterte, who later became President of the Philippines):

Report on Mission to the Philippines (A/HRC/8/3/Add.2, 16 April 2008, ¶¶39-44)

39. It is a commonplace that a death squad known as the "Davao Death Squad" (DDS) operates in Davao City. However, it has become a polite euphemism to refer vaguely to "vigilante groups" when accounting for the shocking predictability with which criminals, gang members, and street children are extrajudicially executed. One fact points very strongly to the officially-sanctioned character of these killings: No one involved covers his face. The men who warn mothers that their children will be the next to die unless they make themselves scarce turn up on doorsteps undisguised. The men who gun down or, and this is becoming more common, knife children in the streets almost never cover their faces. [...]

40. The mayor is an authoritarian populist who has held office, aside from a brief stint as a congressman, since 1988. His program is simple: to reach a local peace with the CPP/NPA/NDF [the Communist Party of the Philippines, its armed wing the New People's Army and a civil society group the National Democratic Front] and to "strike hard" at criminals. When we spoke, he insisted that he controls the army and the police, saying, "The buck stops here." But, he added, more than once, "I accept no criminal liability." While repeatedly acknowledging that it was his "full responsibility" that hundreds of murders committed on his watch remained unsolved, he would perfunctorily deny the existence of a death squad and return to the theme that there are no drug laboratories in Davao. The mayor freely acknowledged that he had publicly stated that he would make Davao "dangerous" and "not a very safe place" for criminals, but he insisted that these statements were for public consumption and would have no effect on police conduct: "Police know the law. Police get their training." The mayor's positioning is frankly untenable: He dominates the city so thoroughly as to stamp out whole genres of crime, yet he remains powerless in the face of hundreds of murders committed by men without masks in view of witnesses.

41. It is a reality that when the mayor was first elected, the NPA routinely killed policemen. It is also a reality that Davao has a problem with youth gangs. These are primarily ad hoc social groups for street children aged 10-25, but use of drugs and involvement in petty crime is common, and violent gang wars do take place. By all accounts, the mayor has managed to largely insulate his city from the armed conflict and to limit the presence of some kinds of criminal activity. These accomplishments appear to have bought acquiescence in the measures he takes, and the public remains relatively ignorant of the human cost of death squad "justice."

42. The human cost is very high. Since 1998, when civil society organizations began keeping careful records, over 500 people have been killed by the death squad. Up until 2006, these victims were generally shot; since then, stabbings have become more common. I spoke with witnesses and family members of 8 victims and 1 survivor, and I reviewed the case files of an additional 6 victims and 3 survivors. These interviews gave some insights into how these killings take place and the enormous emotional damage they inflict on family and friends. The executions generally respond to suspicions of petty crimes, are preceded by warnings or notifications that clarify their significance, and are carried out publicly and with methodical indifference.

> 43. How does the death squad operate? The inquiries I made do not provide a complete picture, but they do indicate two starting points for investigation and reform. First, it would appear that the "assets" who identify targeted individuals for the death squad are often suspected criminals who are recruited after being arrested, with an early release as inducement. Second, it would appear that barangay officials [the smallest administrative division of the Philippines] are sometimes involved in selecting targets for the death squad, a practice perhaps originating in the role barangay officials have played in naming suspected drug dealers for inclusion in PNP watch lists. Insofar as prison officials and barangay councils help the death squad function, they can be reformed. The intelligence gathering role played by barangay officials can be limited, and the processing of inmates can be more tightly restricted. To shut the death squad down will, however, ultimately require following the evidence upward to the handlers who task "assets" to provide the location of persons on watch lists and who direct hit men to kill them. If it were not for the fact that the local office of the CHRP denies the existence of a death squad, it should be capable of conducting an effective investigation. There are many witnesses who would provide information anonymously or who would testify were they to receive a credible protection arrangement.
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> 44. Defending the rights of street children may be unpopular, but no one deserves to be stabbed to death for petty crimes. There are already preliminary indications that these practices are being replicated in other parts of Mindanao and in Cebu, and this trend needs to be halted immediately.

The situation in the Philippines deteriorated over the two years following Special Rapporteur Alston's report to the Human Rights Council; in his follow-up report in 2009 he again drew attention to the supportive public framing of the death squads by then-Mayor Duterte:

> ***Follow-up Report on Mission to the Philippines (A/HRC/11/2/Add.8, 29 April 2009, ¶¶18-23)***
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> 18. Perhaps the most troubling development over the past two years has been the rise in death squad killings in Davao City. Reliable information indicates that, in 2008, such killings were almost a daily occurrence in Davao City, jumping from a reported 116 in 2007 to 269 in 2008. The killings have clear patterns – similarly described perpetrators, victims and methods – and are rarely the subject of successful police investigations.
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> 19. The practice of barangay officials submitting names of suspected criminals for inclusion on law enforcement watch lists has yet to be abolished. Persons included on the list are first warned to stop suspected activities or to leave Davao City, and if they do not, then they are abducted or killed on sight. According to credible information provided to the Special Rapporteur, while barangay officials may deny the existence of such lists, this practice is an "open secret" in the local area, and such lists are maintained to this day.
>
> 20. The Special Rapporteur is not aware of a single conviction for a death squad killing in Davao. As a result, death squad members operate with complete impunity. Killing for hire is on the rise as death squad members become bold enough to sell their services, and some reports indicate that a killing only costs about 5,000 pesos (about US $100). Impunity also means that although killings take place in broad daylight, witnesses are not prepared to testify against the perpetrators.
>
> 21. The Mayor of Davao City has done nothing to prevent these killings, and his public comments suggest that he is, in fact, supportive. Mayor Duterte responded to the reported arrest and subsequent release of a notorious drug lord in Manila by saying: "Here in Davao, you can't go out alive. You can go out, but inside a coffin. Is that what you call extra-judicial killing? Then I will just"

bring a drug lord to a judge and kill him there, that will no longer be extra-judicial."[183] One positive development, however, has been that Mayor Duterte relinquished his post at the National Police Commission (NAPOLCOM) and his control over the local police Task Force Davao on 31 March 2009, amidst the CHRP investigations into the death squad.

22. The most encouraging development was the launch of independent investigations by the CHRP in March 2009. The CHRP should be supported in its investigations of the death squad, and encouraged to do so without reliance upon its own regional representatives, since the latter appear to share the same fear of death squad retaliation as other local residents.

23. Impunity has also encouraged death squad killings to sprout up in other cities beyond Davao. Since 2007, numerous patterns of death squad killings have been reported by media and civil society organizations in other cities in the region such as General Santos City, Digos City, and Tagum City, and even in Cebu, the Philippines' second largest city.

In 2016, once Rodrigo Duterte had been elected President of the Philippines and made a number of public comments supporting the use of deadly force in combatting drug-related criminality, Special Rapporteur Heyns, along with the Special Rapporteur on freedom of opinion and expression, issued a press release:

Press Release by the Special Rapporteur responding to comments of the President of the Philippines, Rodrigo Duterte (6 June 2016) (with the Special Rapporteur on freedom of opinion and expression, David Kaye)

Journalists' killings: UN experts urge Philippines president-elect to stop instigating deadly violence

GENEVA (6 June 2016) – Two United Nations independent experts on summary executions, and on freedom of expression today urged Philippines president-elect Rodrigo Duterte to stop instigating deadly violence immediately. The experts strongly condemned Mr. Duterte's recent statements suggesting that journalists are not exempt for assassination.

Speaking at a press conference, Mr. Duterte reportedly stated that most journalists killed in the country have done something wrong. 'You won't be killed if you don't do anything wrong,' the President-elect said, suggesting that victims were partly to blame for their fate.

"A message of this nature amounts to incitement to violence and killing, in a nation already ranked as the second-deadliest country for journalists," said the UN Special Rapporteur on summary executions, Christof Heyns. "These comments are irresponsible in the extreme, and unbecoming of any leader, let alone someone who is to assume the position of the leader of a country that calls itself democratic."

For the UN Special Rapporteur on freedom opinion and expression, David Kaye, "justifying the killing of journalists on the basis of how they conduct their professional activities can be understood as a permissive signal to potential killers that the murder of journalists is acceptable in certain circumstances and would not be punished."

"This position is even more disturbing when one considers that Philippines is still struggling to ensure accountability to notorious cases of violence against journalists, such as the Maguindanao massacre," the human rights expert added.

[...]

183 'Police Told: Solve Drug Problem or Be Fired', *Sun.Star Network*, Davao, available at http://www.sunstar.com.ph/davao/police-told-solve-drug-problem-or-be-fired.

> The President-elect has also been reported as promising to pay bounties to police and military officials for every drug lord they turn in. 'I'm not saying that you kill them, but the order is dead or alive," Mr. Duterte reportedly said in a televised news conference.
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> "Talk of 'dead or alive' has no role to play in any state that claims to uphold human rights in law enforcement," Special Rapporteur Heyns stressed, while recalling the limits imposed by international instruments on the conduct of law enforcement forces.
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> "Intentional lethal use of force may only be made when strictly unavoidable in order to protect life and not for common policing objectives," he said. "The President-elect fools no one when he says he is not calling on people to be killed."

In Kenya, Special Rapporteur Alston investigated allegations that the police ran a squad set-up to kill suspected gang members and criminals:

> ***Report on Mission to Kenya (A/HRC/11/2/Add.6, 26 May 2009, ¶¶9-10, 13, 16)***
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> 9. The Government has a clear obligation to protect citizens from *Mungiki* [a criminal gang/sect] and other criminal violence, while respecting human rights, including the right to life. Suspects should be arrested, charged, tried and punished accordingly. In a context of violent criminality, police will inevitably be required to use force on occasion, and sometimes lethal force in order to protect life. The police, including the Police Commissioner, assured me that there have been no unlawful police killings. However, as I detail below, the evidence is compelling that the police respond – frequently – with unlawful force: murdering, rather than arresting suspects. Further, investigations by police are so deficient and compromised that claims by the police that all killings are lawful are inherently unreliable and unsustainable.
>
> 10. During my mission, I received compelling evidence that death squads – including one called *Kwekwe* – exist within the police force in Kenya, and that these squads were set-up to eliminate the *Mungiki* and other high-profile suspected criminals, upon the orders of senior police officials. Detailed evidence was provided by civil society investigations,[184] witnesses to the squad's activities, survivors of attempted killings, family members of deceased or disappeared victims, and victim autopsy reports indicating shots at close range and back entry wounds. A further key component of this evidence is the now public testimony of a police whistleblower, who recorded his statement in July 2008, before he was murdered while in hiding in October 2008. His account provides, in precise and often excruciating detail the composition and operations of the death squad in which he was a part, and the circumstances of the murder of 67 persons between February 2007 and July 2008. Together, this evidence implicates the Commissioner of Police, and senior police officials from the Criminal Investigation Division, Special Crime Unit, and the Criminal Intelligence Unit. From this large amount of testimony, it is possible to set-out in detail the operations of the death squads:
>
> The suspected *Mungiki* or other criminal suspects appear to nearly always be known and individually targeted by police in advance. The police carrying out the operations (those driving the vehicles and committing the murders) are generally ordered by senior police to pick up a specified individual at a particular location (often his home, workplace, or a road on which he is believed to be traveling).
> - While most suspects are individually targeted, police will generally also detain others who may be accompanying the target at the time of arrest.

184 E.g., Kenya National Commission on Human Rights, *The Cry of Blood: Report on Extra-Judicial Killings and Disappearances* (September 2008).

- Very often, the initial detention is witnessed by family members, co-workers, or bystanders. In one well-known case, a man was actually photographed by a member of the press while being arrested.
- Some suspects are murdered at the location of arrest. They are generally ordered by the police to lie down on the ground and are then shot. Police then attempt to set the crime scene to look like a "shoot out" occurred between criminals and police – weapons will be placed next to the bodies of the suspect, and fired into the air to give the appearance of an exchange of fire. Such victims are often taken to the mortuary by the police. In other cases, the suspects are not immediately murdered, but are taken from the site of initial detention in generally unmarked police vehicles or private vehicles. The squads frequently work in convoys of 2-5 vehicles.
- Once detained, the suspect is most often held irregularly, and no record of the detention is made in the police Occurrence Book. Some suspects will be taken to police stations, or moved between multiple stations. Others are held in vehicles for a number of hours. Once family members realise that their relative was arrested or is missing, they generally embark on a search of police stations. Family members usually report obstruction or intimidation from officials in this process.
- In some cases, the police demand a ransom from the detainee, or call the relatives and demand a ransom upon threat of death to the detainee. In many cases, payment of the ransom is sufficient to obtain the detainee's release. Some victims have been detained and forced to pay ransoms on multiple occasions. Others have paid the ransom, but were then followed by police and subsequently murdered.
- Those suspects who are murdered in locations other than the site of initial detention are generally eventually taken in vehicles to a remote area, such a forest or farmland. Many of these individuals are interrogated and tortured for a number of hours. Those who are suspected Mungiki are asked about their role in the *Mungiki* sect, and for the names and details of other Mungiki members or leaders.
- During the detention or interrogation period, there is often communication via mobile phone between the interrogating officers, and senior officers at headquarters or police stations. In at least one case, the interrogations were tape-recorded, and played back via phone to senior police.
- Those suspects taken to remote areas are typically killed through strangulation, or by being beaten to death by *pangas* (machetes), *rungus* (sticks), or other means. Their bodies are generally left in the forest or farm area, and found by local residents. Many victims are last seen by witnesses or family members being arrested by police, but are never found.

[...]

C. Official response to allegations

13. Some Government officials stated that if killings occurred, they were committed infrequently and by "rogue" officers. To their credit, a small number of Government officials did acknowledge the magnitude of the killings. But senior police officials were unwilling to acknowledge the problem at all: in essence, their response was one of denial, stone-walling, and obfuscation. In the provinces, my efforts were stymied by blanket denials by police, the provision of partial or inconclusive data, or by referring me back to police headquarters in Nairobi. The official police account of any killing is generally predictable: the suspect was an armed criminal, there was a "shoot-out," and the police reacted with appropriate force. Senior police flatly denied to me any knowledge of the *Kwekwe* death squad. And yet its existence was confirmed in Parliament by the Minister of State for Provincial Administration and Internal Security, Professor George Saitoti.[185]

185 National Assembly of Kenya, Official Report, 12 February 2009, p 27: The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): "Mr. Speaker, Sir, I would also like to say that there is a body

[...]

16. [In certain respects] the police response to my visit has consisted of continued denials of all wrongdoing, ad hominem attacks against me, and apparent police involvement in the broad daylight assassination of two human rights defenders with whom I met. Rather than in any way addressing the substance of the allegations contained in my initial statement, some police officials have sought to structure public debate so that criticisms of police actions are equated with condoning criminal activity. In this way, the police have tried to position civil society – and also my own reporting – as aligned with the interests of criminal organizations. This in turn sets up the police to launch further attacks against the Mungiki and others, while failing to take any steps to address the real issues. Efforts to monitor and reform policing so that it is carried out with respect for human rights do not mean being "soft" on crime. Security policies only truly provide security if the rights of all – victims, the general public, police, and criminals – are respected. The violent police response to crime has done nothing to promote security. Innocent bystanders have been shot by police, the public has lost faith that the police force can protect them, and the police have undertaken few if any measures to investigate and prosecute those Mungiki and other criminals who continue to terrorise and extort private citizens.

The persistence of death squad activity in Brazil was highlighted in a 2010 follow-up report on a 2007 mission to Brazil:

Follow up report on Mission to Brazil (A/HRC/14/24/Add.4, 28 May 2010, ¶¶30-34)

30. Death squads, extermination groups, and vigilante groups are often formed by police along with others whose goal is to kill, generally for profit. These groups are also known to justify their actions as an extralegal "crime-fighting" tool.[186]

31. The Special Rapporteur's report focused largely on death squads in Pernambuco. During his 2007 mission, he was provided with evidence that 70 per cent of homicides in Pernambuco were committed by death squads. Pernambuco has taken significant steps to address this problem. On 29 January 2009, the state Government announced that about 30 police operations carried out since late 2007 had resulted in some 400 people being imprisoned for their participation in death squads.[187] The scope of death squad activity is so expansive, however, that intensive investigations and arrests will need to continue for many years if it is to succeed.

32. Efforts to combat death squads have been met with violent resistance. Human rights activist and former city councillor Manoel Mattos had been active in denouncing deaths squads in Pernambuco and Paraiba for many years, and, following repeated threats on his life, was shot to death in his home on 24 January 2009.[188]

33. For this report, the Special Rapporteur was also presented with evidence of significant death squad activity in São Paulo. According to the São Paulo Police Ombudsman, in 2008 there were 97 cases of suspected death squad killings, and 61 cases in 2009.[189] In January 2008, Colonel Jose Herminio Rodrigues was shot to death on the street after he began an investigation into death

called *Kwekwe* Squad that has been talked about here. We had that body and I would like to inform this House that, instructions were given out for its disbanding."

186 A/HRC/11/2/Add.2, *supra* note 111, para. 38.

187 Pernambuco: Pacto Pela Vida, "Combate aos grupos de extermínio será intensificado em Pernambuco," available on the Government of Pernambuco "Pacto Pela Vida" website at http://www.pactopelavida.pe.gov.br.

188 Amnesty International, *Human Rights Activist Assassinated in Brazil*, 27 January 2009.

189 Police Ombudsman of São Paulo, *Relatório Anual 2009*, available at http://www.ouvidoriapolicia.sp.gov.br/pages/RelatAnual2009.htm.

squads in northern São Paulo which appeared to involve over 50 military police.[190]25 In a positive step, 14 members of the military police were arrested in 2009 for links to 12 murders committed by the "Highlanders," a death squad infamous for decapitating its victims.[191]

34. In another positive move, the Government of Paraiba recently launched an investigation into a death squad allegedly responsible for some 300 murders over the last decade.[192] The group involved 30-40 active and retired police officers, from regular officers to a colonel and including corrections officers, who were operating on behalf of the jailed members of a drug trafficking gang. At the time of writing, none of the police officers has been arrested, although the investigation is ongoing.

In The Gambia, Special Rapporteur Heyns received reports about two different paramilitary groups associated with The Gambian government and security forces.

Report on Mission to The Gambia (A/HRC/29/37/Add.2, 11 May 2015, ¶¶49-51)

49. The Special Rapporteur received diverse reports and testimonies about the existence of paramilitary groups in the country associated with the security forces and operating under direct orders of the President. A group reportedly called the "Jungullars" or "Junglers" was associated in those reports with arbitrary arrests, detention, torture, enforced disappearances and extrajudicial killings, of persons opposed to the regime, journalists and ordinary civilians. Such a unit, if it exists, will clearly be unlawful under international law and expose anyone involved in it to criminal prosecution. A judicial commission should investigate the very serious allegations in this regard.

50. The Special Rapporteur has also received reports about another group called the "Green Boys," made up of young activists supporting the ruling party and accused, among other things, of taking part in a witch-hunting campaign against hundreds of villagers in 2009. In its discussions with the Special Rapporteur, State officials denied the armed character of the Green Boys, indicating that they were a political group.

51. The Special Rapporteur recalls that there is a positive obligation on the State of the Gambia to ensure the protection of persons under its jurisdiction against violations by private persons or entities. The authorities must exercise due diligence to prevent, investigate, punish and redress the harm caused by non-State actors, and to bring the perpetrators to justice (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18).

4. Killings during extortion attempts

In many countries investigated by the Special Rapporteurs, police corruption is a significant concern. Police supplement their often very low salaries with a wide range of corrupt activities. Police may require payments from members of the public in exchange for carrying out police duties, or for not charging or arresting an individual. A common situation is for police to set up "check-points," which ostensibly provide security on public roads, but are used by police to "fine" citizens for real or manufactured traffic offences. In some countries, corruption and extortion can spiral into serious violence or killings by police, especially where the state takes little action to clamp down on the practice.

190 U.S. Department of State, *2008 Human Rights Report: Brazil*, 25 February 2009; See also Human Rights Watch, *Lethal Force: Police Violence and Public Security in Rio de Janeiro and Sao Paulo*, 8 December 2009, p. 44.

191 Amnesty International, *Report 2009: State of the World's Human Rights: Brazil* (2009); see also Human Rights Watch, *supra* note 190, p. 45.

192 'Brazil Death Squad Suspected of 300 Murders', *Latin American Herald Tribune*, 7 January 2010.

Report on Mission to Nigeria (E.CN.4/2006/53/Add.4, 7 January 2006, ¶48)

48. No person can feel safe driving at night in Nigeria and there are regular reports of horrendous attacks by bandits on cars, buses and trucks on roads throughout the country, even in daylight. The result is strong public support for a significant police presence on the roads. The paradox is that the major highway "service" provided by the police consists of the erection of roadblocks or checkpoints, euphemistically known as "nipping points." In fact, these are used primarily for the purposes of extorting money from motorists and some even see them as a necessary means by which police officers can ensure a subsistence income. But to dismiss the widespread abuse of checkpoints as a minor inconvenience or fact of life, as many of the Special Rapporteur's interlocutors suggested, is to ignore three deeply corrosive effects: (i) checkpoints provide the occasion for a large number of extra-judicial executions by police;[193] (ii) checkpoint abuses have deeply alienated the general public; and (iii) the economic consequences are enormous.

Report on Mission to Central African Republic (A/HRC/11/2/Add.3, 27 May 2009, ¶¶44, 46)[194]

44. In addition to [armed conflict killings], the Special Rapporteur received many credible accounts of extrajudicial executions committed by State officials in the course of their regular law and order functions, as well as for a range of personal and corrupt ends.

[...]

46. [There] are many cases of killings in the context of efforts by the security forces to extort money from the public at legal and illegal checkpoints and elsewhere. In Bangui, the Special Rapporteur received testimony on three individuals who were allegedly killed by the GP [Presidential Guard] in December 2006. The GP, in front of large number of witnesses, pulled the men from a bus, seeking to extort the money that one of the men had earned that day by selling his produce at a market. Other witnesses then saw the men taken to a nearby GP base. During the night, witnesses heard shots, and the following day, the GP bragged that they had "killed them." Lawyers for the families of the deceased men sought to have the incident investigated and the suspects tried for murder by lodging official complaints in December 2006. But nothing was done by the State. During the Special Rapporteur's visit, one of these lawyers had gone to court to once again ask about the progress of the case. He was told that the file could not be found.

5. Militias, police-hired killers, and other off-duty police killings

In many countries, the Special Rapporteurs investigated killings by police that were far removed from any ostensibly legitimate police work (i.e. they did not involve even the pretence of law enforcement). When off-duty, as a way to engage in private profiteering or in extra-legal "crime fighting," police have acted as hired killers, vigilantes, and joined militias and extermination groups.

Special Rapporteur Alston documented the pervasiveness of this problem during his country mission to (and subsequent follow-up report on) Brazil:

193 The Centre for Law Enforcement Education estimates that the police kill one in 20 motorists who refuse to pay a bribe at a checkpoint. A communication submitted to the African Commission on Human and Peoples' Rights by Access to Justice, provides details of various such cases.

194 ***Editors' Note:*** Also see Follow-up Report to Central African Republic, A/HRC/14/24/Add.5, 28 May 2010, para. 14, in which the Special Rapporteur reports continuing extortion and the lack of steps taken to address the issue.

Report on Mission to Brazil (A/HRC/11/2/Add.2, 23 March 2009, ¶¶30, 32, 34-37, 38-40)

30. In addition to killings by on-duty police, there are a significant number of groups throughout Brazil, composed largely of off-duty government agents who engage in a range of criminal activities, including extrajudicial executions. Some of these groups (militias or para-policing operations) are similar to gangs in that they seek to control entire favelas through extortion and the use of force. Others (death squads, extermination groups) act as vigilantes, using executions as an off-duty "crime control" technique, or act as hired killers to supplement their low salaries.

[...]

32. While efforts are being made in Pernambuco, in São Paulo and Rio de Janeiro, it was clear to me that nothing at all was being done to address this problem.[195] In fact, the head of a military battalion in Rio de Janeiro frankly admitted to me that he not only knew that his officers were taking illegal second jobs, but that he encouraged them to do so.[196] The motivation for working second jobs is straightforward: police are very poorly paid.[197] Working a second job is also facilitated by the policing shift structure in which police may work for 12 to 24 hours, and then take 24 hours to several days off. Unregulated private security jobs, especially in the context of high rates of organised crime and violence, means that working as a security guard can easily involve police using force in their second job, or being hired to "collect" money for an employer, or to protect an illegal gambling or trafficking racket. A telling statistic is that, in Rio de Janeiro in 2007, nearly four times as many police were killed while off-duty as while on-duty.[198] The evidence I saw pointed not to the explanation proffered by some security officials to the effect that police are targeted because of their on-duty activities, but rather to the conclusion that they are killed because of the dangerous and often illegal nature of their second jobs.

[...]

34. As reported to me by police investigators, public prosecutors, civil society, and residents of militia-controlled areas, militias are groups composed of police, ex-police, firefighters, prison guards, and private citizens, who attempt to "take over" geographical areas, and engage in extra-state "policing." Like gangs, their motivations for such control are often economic – militias extort shop owners, and control the supply of gas, cable and transport services. Militias also seek to justify their control by contending that they are "protecting" residents from violent gangs and traffickers. However, for residents, rule under a militia is often just as violent and insecure as rule under a gang. Militias extrajudicially execute suspected traffickers while forcing them out of the area, execute other suspected criminals, intimidate residents, and threaten and kill those who speak out against the militia or are perceived to have allegiances to other groups vying for control.

35. Militias operate throughout Brazil but have become a particular problem in Rio de Janeiro over the last 3 years, where it is estimated that approximately 92 of the 500 Rio de Janeiro city

195 In Pernambuco, the Governor told me that when he took office in January 2007, he discovered that the police were overly entangled with private interests and that there were even written contracts between police and shopping centers and stores to provide security. His Government was taking steps to break these contracts.

196 In Rio de Janeiro, the numbers of police disciplined for holding second jobs is virtually nil: 2005 – 1 corporal arrested; 2006 – 3 corporals, 4 privates, and 1 sergeant reprimanded; 2007 – 1 inspector of police suspended.

197 Rio de Janeiro Military Police have the lowest rate of police pay in the country. In 2006, entry-level Military Police in Rio de Janeiro received just $ 718 Reais per month (approximately $ 450 USD). The Federal Government has in part attempted to address low remuneration by offering training scholarships (Bolsa Formação) to qualifying police earning under $ 1,400 Reais per month.

198 According to official statistics, in the state of Rio de Janeiro, in 2007, 119 members of the police were killed while off-duty while 32 were killed while on-duty. (In 2006, the numbers were 93 off-duty and 29 on-duty.) See: Rio de Janeiro, Public Security Institute (Instituto de Segurança Pública), 19 March 2008.

favelas are now controlled by such groups. In particular, I received detailed information on the militia activities in the Kelson's community, a neighbourhood of 6,000. My sources included long-term residents, local NGOs, Civil Police responsible for investigating the Kelson's militia, and the head of the Military Police battalion from which 4 police militia members had been arrested. For many years prior to 2006, the area was dominated by the drug traffickers from the Red Command gang (*Comando Vermelho*). In November 2006, a militia involving men from the 14th, 16th and 22nd Military Police battalions invaded Kelson's using police vehicles and equipment, and expelled the gang. The militia "policed" the area 24 hours a day, and extorted local businesses, restricted the ability of independent local shops to sell gasoline (only militia-run shops could do so), and required bus owners to pay the militia 600 Reais per week.

36. Jorge da Silva Siqueira Neto, who residents and police informed me had been installed as President of the Kelson's Residents' Association with militia cooperation, subsequently fell out with the militia and was expelled from the area. He then made public denunciations against the militia, which were covered by the press on 29 August 2007. The next day, police arrested certain police who Jorge had accused of belonging to the militia. They were released from administrative detention within several days. On 1 September 2007, with the militia's control undermined, the gang attempted to retake control of the area, but was kept out by police after heavy fighting. Jorge was kidnapped and murdered on 7 September 2007. Civil Police investigating the militia informed me that 6 members of the Military Police had been arrested for militia involvement, and a further 13 arrest warrants had been issued for non-police militia members. They stated that their investigations were ongoing but near completion. The head of the Military Police battalion told me that they were re-establishing control of the area, that police corruption and militia involvement by police in his battalion had already been investigated, and that the guilty officers had been arrested. However, I received credible accounts from residents and NGOs working in Kelson's that on 8 October 2007, some members of the Military Police received payments from the Red Command gang, allowing them to re-enter the community and that, at the time of my mission, the gang continued to operate in Kelson's.

37. Each time the control of the community changes hands, residents' lives are endangered. Those residents aligned with the group that was previously in control live in fear of retaliation from the new group, or are forced to leave.[199] The constant shifting of control makes it nearly impossible for residents to act in a way that will keep them safe in the present as well as when control changes hands in the future.

[...]

38. Death squads, extermination groups, and vigilante groups are groups formed by police and others whose purpose is to kill, primarily for profit.[200] Such groups sometimes also justify their actions as an extra-legal "crime-fighting" tool. In circumstances where the groups are hired for profit, those who hire them are sometimes members of other criminal organizations, traffickers, or corrupt politicians, seeking to control a perceived threat, gain an advantage over a rival group, or exact revenge. Killers are also hired by those who believe that the police and the criminal justice system are unable to effectively combat crime, and so "vigilante justice" is necessary when they, or a family member, have been the victim of a crime.

39. The public prosecution service in Pernambuco estimated that approximately 70% of the homicides in Pernambuco are committed by death squads. A federal parliamentary commission of inquiry found that extermination groups are mostly composed of Government agents (police and

199 I was informed that since the militia first took control, approximately 35 families (200-250 people) have been forced to abandon their homes and leave the area.

200 In Pernambuco, hired killers earn $1,000 to $5,000 Reais per killing.

prison guards), and that 80% of the crimes caused by extermination groups involve police or ex-police.[201] The Governor of Pernambuco also told me that his Government is aware that members of the Military Police are involved in most death squads. As the commission of inquiry report notes, it is police who have the power, information, resources, weapons, and training to most effectively run such groups.[202] The Pernambuco Government, which took office in 2007, appears committed to ending this phenomenon and has undertaken a number of promising initiatives.[203]

40. Extermination groups are also responsible for the murders of landless workers and indigenous persons in rural areas, generally in the context of disputes over land. While the numbers of landless workers or indigenous persons executed each year does not form a large proportion of Brazil's total homicides, the killings that take place serve to reinforce a broader system of repression by demonstrating the lethal consequences of defying powerful actors. The Pastoral Land Commission reports on average approximately 40 murders per year of landless workers.[204] In the state of Pará alone, over 770 landless workers and other human rights defenders have been killed since 1971.[205] These killings generally occur in retribution for the activism of landless workers or during violent evictions from land settled by landless workers.[206] The *Conselho Indigenista Missionário* (CIMI) informed me that they estimate that about 10 summary executions of indigenous persons occur each year.[207] While individual killings are a result of structural land conflict issues, complex and

201 Relatório Final da Commissão Parlamentar de Inquérito do Extermínio no Nordeste. Criada por meio do Requerimento no 019/2003 – destinada a "Investigar a ação criminosa das milícias privadas e dos grupos de extermínio em toda a região nordeste" – (CPI – extermínio no nordeste), p. 25.

202 Ibid. pp.25-6. As the commission of inquiry's report explains: "The extermination groups are composed mostly of government agents – civil and military police, penitentiary agents, in short, by personnel that are very powerful and possess the information, arms and circumstances to act. However, their composition varies: ex-police expelled from the corps owing to their participation in illegal activities; police on active-duty who use these groups as a means to augment their salaries; individuals contracted as private security; groups that participate in criminal organizations linked to drug-trafficking and other illegal activities; and groups that do not maintain specific relationships with organized crime but that exercise control over particular areas with the excuse of guaranteeing the 'security' of its residents – this type is very common in the outlying neighbourhoods in the big cities. There are also organizations that contract with cowboys."

203 Working with Federal Police and drawing on information gathered by a new integrated intelligence unit within the Public Security Secretariat, police arrested 197 people for death squad involvement during 2007. (During my visit, 34 people (police, lawyers, businessmen) were arrested and charged with participating in death squads, killing 35 people during the previous 5 month period, and suspected of killing several hundred victims over the years. One of the death squad groups was led by a former member of the Military Police. In April 2007, members of another death squad were arrested in Pernambuco, and charged with killing 200 people.) In addition, many police were suspended from duties during 2007, and charges were also laid against senior members of the Civil Police. (In 2007, 600 Military Police were expelled, and 16 Civil Police expelled.) Police now receive a bonus for every weapon they confiscate, and over 6,000 were confiscated in 2007. Pay rates, and health and education services for police have also been increased, and training for intelligence techniques has been provided. These efforts in Pernambuco need to continue, and other states should pursue similar initiatives.

204 See Comissão Pastoral da Terra, "Assassinatos" at www.cptnac.com.br. In 2007, the most recent year for which there are homicide statistics, the number of homicides (28) was lower than the previous years' averages. (However, in 2007, the number of states in which murders took place increased from 8 to 14).

205 Comissão Pastoral da Terra, Justiça Global, Terra de Direitos, "Violação dos direitos Humanos na Amazônia: Conflito e Violência na Fronteira Paraense" (November 2005), p. 33.

206 For example, I received reports that on 21 October 2007, a few weeks prior to my visit, an armed militia group shot and killed Valmir Mota de Oliveira (42 years old), a leader of the *Movimento dos Trabalhadores Rurais Sem Terra* (MST), at the Via Campesina encampment at the GMO field of Syngenta Seeds, Santa Tereza do Oeste, Paraná. Five other farmers were also shot and seriously wounded. The MST leaders had been threatened for the previous 6 months by the militia, who were believed to have been employed by Syngenta.

207 These killings either occur in the context of disputes over land that has already been demarcated to indigenous groups pursuant to the requirements of Article 231 of the 1988 Constitution, but on which others trespass for the purposes of resource exploitation, or the killings occur over land which is not yet demarcated but which an indigenous group chooses to begin to reclaim. The National Foundation for Indians (Fundação Nacional do Índio,

long-term land use and ownership issues should not be used as an excuse for failing to take immediate action to prevent, prosecute and punish extrajudicial executions in this context. Land conflicts form the context in which these murders take place. But it is not the case that executions inevitably follow from conflicts over land. Executions occur because those who order and carry out the murders know that they will get away with it. Brazil must ensure that reported death threats are investigated and the perpetrators punished.

Follow-up report on Mission to Brazil (A/HRC/14/24/Add.4, 28 May 2010, ¶¶25-29)

25. As noted in the Special Rapporteur's previous report on Brazil, militias are groups composed of military and civil police, ex-police, firefighters, prison guards, and private citizens who attempt to "take over" geographical areas, and engage in extra-state "policing."[208] These groups are responsible for extrajudicial executions and other violent crimes including torture and kidnapping. As with criminal gangs, their violence is largely compelled by efforts to exercise geographic control in order to make a profit by extorting "protection money" from communities and the provision of services such as illegal cable television, household gas and transportation.

26. Since the Rapporteur's visit, militias in Rio de Janeiro have been the subject of significant and much-needed attention. At the time of his visit in 2007, it was generally believed that militias were in control of roughly 92 favelas in Rio de Janeiro city. Following public outrage over the kidnapping and torture of three undercover journalists by a militia in May 2008,[209] two militia members were arrested and the state Government set up a Parliamentary Commission of Inquiry to investigate militias in Rio de Janeiro.

27. Led by state deputy Marcelo Freixo, the Commission published a lengthy report in November 2008.[210] It concluded that 171 areas in Rio de Janeiro were dominated by militias, nearly double the number previously thought to exist, and it was able to discover the identities of militia members, the communities under militia rule and the nature of profits engendered by militia activities. The Commission uncovered extensive evidence of official state involvement in militias, including election-related corruption, official membership in militias, and militias benefiting from the use of public resources (such as weapons and cars).

28. In response, the Government took a number of important steps. Two hundred suspected militia members were arrested, including a state deputy[211] Certain militias, such as the *Liga da Justiça* ("Justice League") were particularly hard hit. The Government also created a task force within the police to specifically investigate militias. According to information provided by interlocutors, this task force has kept up sustained pressure on key militias.

29. Given the extent of militia activity and control, these actions are important, but they constitute just the beginning. Militias continue to seek control of territory and of state politics, and remain a major threat to security in Rio de Janeiro. Many militias remain untouched, and recent examples of militia violence abound. In August 2009, seven residents of the Barbante favela were shot dead by

FUNAI) has responsibility for indigenous policies, and policing of indigenous areas is largely the responsibility of the Federal Police. I was told by NGOs and indigenous representatives that Federal Police presence was often non-existent or minimal. In indigenous areas known to have serious land conflicts, Federal Police presence should be increased, and police who work in and near indigenous areas should receive specialist training to sensitize them to the land issues and indigenous culture.

208 A/HRC/11/2/Add.2, *supra* note 111, para. 34.

209 'Milícias: politica do terror', *O Dia Online*, 31 May 2008; Human Rights Watch, *World Report 2009 – Brazil* (2009).

210 Asembléa legislativa do Estado do Rio de Janeiro (ALERJ), *Relatório Final da Comissão Parlamentar de Inquérito destinada a investigar a ação de Milícias no âmbito do estado do Rio de Janeiro* (November 2008).

211 Amnesty International, *supra* note 191.

members of a militia, and one victim was killed for refusing to pay the militia's security "tax."[212] In the same month, a member of Governor Cabral's personal security detail was arrested on charges of alleged participation in a militia that had recently murdered four people.[213] In a raid on the Rio das Pedras militia, Brazilian authorities discovered the militia's plans to assassinate state deputy Marcelo Freixo.[214]

During his 2013 visit to Turkey, Special Rapporteur Heyns documented again (the mandate had already documented the problem in 2001) the use of the "village guard" system, and the violations that were apparently occurring with limited or negligible oversight:

Report on Mission to Turkey (A/HRC/23/47/Add.2, 18 March 2013, ¶¶28-30)

C. Village guard system

28. During the visit, the Special Rapporteur noted that the village guard system in Turkey is operating and accounts for a force of tens of thousands. Officially known as "temporary village guards," and established in the 1980s, village guards are civilian villagers who are armed and paid by the State to participate in military or counter-terrorism operations alongside the regular security forces.

29. Village guards have reportedly been involved in human rights violations. The European Court of Human Rights (ECtHR) found them responsible for violations of the right to life,[215] and expressed concern about their functioning "outside the normal structure of discipline and training applicable to gendarmes and police officers," and thus about the fact that "it was not apparent what safeguards there were against wilful or unintentional abuses of position carried out by the village guards."[216] In 2012, the Council of Europe Commissioner for Human Rights endorsed the conclusions of the ECtHR, and called on Turkey to examine the possibility of abolishing the system of village guards.[217]

30. Following her visit to Turkey in 2001, the Special Rapporteur [Asma Jahanghir] recommended in her report the abolition of the village guard system. While the size of the force has been reduced, the Government of Turkey has not yet brought an end to the system.

In his follow-up report, Special Rapporteur Heyns noted that in response to his original report, the Government of Turkey had drawn the Council's attention to a law passed in 2008, which they contended provided oversight for the system of village guards. The Special Rapporteur nonetheless maintained his concerns about the system, and his recommendation that it be abolished:

Follow-up to country recommendations – Turkey (A/HRC/29/37/Add.4, 6 May 2015, ¶¶23-24)

C. Village guard system

23. The Special Rapporteur raised serious concerns about the village guard system operating throughout Turkey. Village guards have reportedly been involved in human rights violations,

212 Ibid.

213 Blog da Segurança, 'PM acusado de chacina cuidava de filho de Cabral', *O Dia Online*, 25 August 2009; Human Rights Watch, *supra* note 190, p. 50.

214 'Grupo tramou assassinato de deputado', *O Dia Online*, 29 May 2009.

215 See, *inter alia*, *Acar and others v. Turkey*, ECtHR Chamber Judgement of 24 May 2005.

216 *Seyfettin Acar and others v. Turkey*, ECtHR Judgement of 6 October 2009, para. 34.

217 Report by Thomas Hammarberg, Council of Europe Commissioner for Human Rights following his visit to Turkey from 10 to 14 October 2011 (CommDH(2012)2), p. 29

including violations of the right to life, and the lack of sufficient safeguards against potential abuses committed by village guards as well as their functioning outside of the standard training and disciplinary procedures applicable to law enforcement officers is of concern ([A/HRC/23/47/Add.2] para. 29). In its comments on the country visit report, the Government of Turkey indicated that Law No. 442 on the Villages and the by-law of 2008 governed the village guard system and provided an efficient oversight mechanism (see A/HRC/23/47/Add.6, para. 11).

24. Nonetheless, the Special Rapporteur recommended that the Government abolish the village guard system (see A/HRC/23/47/Add.2, para. 102). In 2012, the Council of Europe Commissioner for Human Rights made a similar recommendation,[218] which was echoed during the universal periodic review of Turkey, in 2015 (see A/HRC/WG.6/21/TUR/3, para. 68). The Special Rapporteur notes with regret that no attempt has been made to abolish the village guard system and that village guards remain on active duty

6. Private security providers performing law enforcement functions

When states deputize private security providers to conduct law enforcement functions, the substantive safeguards concerning their use of force should be identical to those of the police, or other state agents. In a report to the Human Rights Council in 2016, Special Rapporteur Heyns provided some history of the private security sector and outlined the significant human rights challenges it presents, particularly in relation to oversight and accountability.

Report to the Human Rights Council (A/HRC/32/39, 6 May 2016, ¶¶59-61)

A. Privatization of security services

59. The use of private entities for security or law enforcement is not a new phenomenon. Indeed, there is some evidence to suggest that the modern concept of professional, bureaucratic policing was pioneered by private firms such as the Pinkerton Detective Agency and its competitors during the mid-nineteenth century.[219] However, the private security sector is certainly rapidly expanding.[220] In 2011, the Small Arms Survey conducted a study comparing the number of private security personnel in 70 countries with the number of police officers. Several countries stood out, including Guatemala, with 6 times as many private security personnel as police officers, India, with nearly 5 times as many, South Africa, with more than 2.5 times as many, and the United States of America, with 2.26 times as many.[221]

60. The privatization of State security services has steadily been increasing over recent years, and the establishment of public-private partnerships in the area is not uncommon.[222] There are several arguments supporting the privatization of public functions or services.[223] Security may be privatised where government lacks the capacity either technically or materially to perform its duties, or in certain circumstances it may be cheaper to privatise certain functions than for governments to perform them themselves.[224]

218 Ibid., para. 147.

219 David A. Sklansky, 'The Private Police', 46(4) *University of California Los Angeles Law Review* (1999) pp. 1165-1287, p. 1182.

220 See Ashish Sinha and Paramita Chatterjee, 'Calling security', *Business World*, 5 January 2016, available at http://businessworld.in/article/Calling-Security/05-01-2016-89925/.

221 See Nicolas Florquin, 'A Booming Business: Private Security and Small Arms', in *Small Arms Survey 2011*, available at www.smallarmssurvey.org/publications/by-type/yearbook/small-arms-survey-2011.html.

222 Mariana Mota Prado, 'Regulatory Choices in the Privatization of Infrastructure', in Simon Chesterman and Angelina Fisher (eds.), *Private Security, Public Order: The Outsourcing of Public Services and Its Limits* (2009), p. 108.

223 Mota Prado, ibid., p. 109.

224 International Institute for Strategic Studies, 'Complex Irregular Warfare: The Privatisation of Force', 106(1)

61. Private security services provide some benefits, as far as the protection of life, limb and property is concerned. At the same time the sector presents major challenges. Since States are primarily responsible for human rights fulfilment, the increasing movement toward the privatization of security raises questions as to roles, responsibilities, and ultimately accountability in relation to human rights violations and abuses. The Danish Institute for Human Rights has raised concerns about the trend towards privatization, noting that "the logic of privatization suggests that states can distance themselves from responsibility by simply firing the company in question."[225] Moreover, there is concern that privatization could have a discriminatory impact because poor or marginalised communities cannot afford the private services and are left under-protected.[226]

D. Causes, Consequences, and Reforms

The Special Rapporteurs have identified a range of causes and contributing factors to killings by law enforcement officials, and have also analysed the impacts or consequences of such actions.

1. Causes and impacts of police killings

In 2010 and 2011 reports to the Council and the General Assembly, Special Rapporteur Alston addressed common causes and effects of police killings:

Study on Police Oversight Mechanisms (A/HRC/14/24/Add.8, 28 May 2010, ¶¶10-14)

10. The experience of the Special Rapporteur indicates that there are many factors in different contexts that can cause the police to unlawfully kill, rather than to arrest suspects and provide real security for citizens. Causes and enabling conditions can be historical, institutional or structural, legal, or political.

11. A lack of proper police training, particularly concerning weapons use, less than lethal measures, and training in human rights,[227] can make police officers more likely to resort to the use of deadly force.[228] Killings can also result from the lack of appropriate weaponry or other equipment, especially in the riot or crowd control context.[229] Domestic legal frameworks for the use of force which are either overly permissive, legalising the use of lethal force in instances where it is not necessary to protect life or unclear regarding the line between necessary and excessive force, similarly may make police more likely to kill.[230] Poor pay for police can also lead to corruption and violent activity, including by providing an incentive for police to act as hired killers.[231]

The Military Balance (2006) pp. 411-416.

225 See IRIN, 'Private Security Firms Prosper as More Migrants Detained', 12 March 2014, available at www.irinnews.org/report/99766/private-security-firms-prosper-as-more-migrants-detained.

226 See, for e.g., J. Cavallaro, 'The Urban Poor: Problems of Access to Human Rights', paper presented at the Sixth Annual Assembly of the International Council on Human Rights Policy, Guadalajara, January 2003, paras. 20-23. See also Inter-American Commission on Human Rights, *supra* note 127, paras. 70-73.

227 In Lesotho, police reform included the reform of the police training program to include human rights training, as well as the creation of a civilian directorate of policing. Julie Berg, *Police Accountability in Southern African Commonwealth Countries* (2005), p. 16.

228 Human Rights Watch, *Police Brutality in Urban Brazil* (April 1997); Report of the Special Rapporteur, Asma Jahangir, Mission to Brazil, E/CN.4/2004/7/Add.3, 28 January 2004, p. 13; A/HRC/11/2/Add.2, *supra* note 111, pp. 6-9.

229 Report of the Special Rapporteur, Philip Alston, Report on Election-Related Violence and Killings, A/HRC/14/24/Add.7, 21 May 2010.

230 A/61/311, *supra* note 35, para. 33; Report of the Special Rapporteur, Philip Alston, E/CN.4/2006/53, 8 March 2006; A/HRC/11/2/Add.6, *supra* note 108, para. 12.

231 A/HRC/11/2/Add.2, *supra* note 111, pp. 22-25.

12. Democratic police forces emerging from periods of violence, instability or violent dictatorship can be especially prone to continued violent tactics and policies. In particular, countries with a history of militarised police force can have high levels of police violence. The presence of a military rather than civilian ethos within a police force contributes significantly to the number of human rights violations committed by that force. The militarisation of a police force can be due to, for example, the incorporation of former rebels or members of the military into the police force as part of a peace agreement; the inheritance of a militarised police force from a colonial power; or the use of the police in quasi-military roles in countries where there is little security or respect for the rule of law.[232]

13. High numbers of police killings are also often seen in countries with high crime rates, and especially where there are high levels of violent or street crime, and where there are organised or semi-organised violent gangs or militias. While police forces face many challenges in insecure environments, some governments and police forces fail to prepare appropriate crime-control strategies, and instead opt to use unlawful, short-term and heavy handed tactics against alleged criminals. Killings can also be encouraged where there is high level political or public support for violent policing. Senior police officers or officials can contribute to the number of police killings by tacitly approving of or openly encouraging them.[233]

14. In some contexts, institutionalised racism or ethnic discrimination can result in the use of more violence against certain groups by the police.[234] In others, individuals perceived to be members of a political, religious, or ethnic rival group may be intentionally targeted by the police.[235] Politicised policing often results when members of the police force have strong allegiances to a particular political leader or party, and where command and control is not sufficiently independent.[236]

Report to the General Assembly (A/66/330, 30 August 2011, ¶¶10-11)

10. Heavy-handed policing can have far-reaching consequences for society as a whole. An escalation in the use of force by the police may raise the general levels of violence in society. Criminal suspects as well as demonstrators often respond to an escalation of force with greater aggression, and as a result police lives may be placed in jeopardy – the classic downwards spiral. The world has recently witnessed in a number of contexts how the use of lethal force during arrest can be the spark that ignites widespread demonstrations and riots. Police brutality in many cases has a disproportionate impact along racial and class lines and as such can exacerbate social division.

11. Various studies have attempted to identify the drivers of the excessive use of force by the police in general, which also finds application in the context of arrest (sometimes said to result in "atrocity environments"). This includes impunity and a culture of lawlessness; the presence of small or elite police units with operational independence; overly hierarchical police structures and autocratic

232 In addition to feeding into diminished regard for the human rights of suspects and civilians, the militarisation of police forces can also pose a problem when attempting to establish some form of accountability through external oversight. Civilian oversight bodies are more likely to be strongly resisted by police forces with a militaristic tradition or culture. Andrew J. Goldmsith, 'Police Accountability in Colombia', in Andrew J Goldsmith and Colleen Lewis (eds.), *Civilian Oversight of Policing* (2000), p. 189. See also Niels Uildriks and Piet van Reenen, 'Human Rights Violations by Police', *Human Rights Review* (January-March 2001).

233 A/HRC/11/2/Add.6, *supra* note 108.

234 Benjamin Bowling, Coretta Phillips, Alexandra Campbell and Maria Docking, *Policing and Human Rights: Eliminating Discrimination, Xenophobia, Intolerance and the Abuse of Power from Police Work* (United Nations Research Institute for Social Development, May 2004).

235 Report of the Special Rapporteur, Philip Alston, Mission to the Democratic Republic of the Congo, A/HRC/14/24/Add.3, 14 June 2010.

236 Ibid.

Governments; alternative power structures to the Government; police codes of silence; reluctance by prosecutors to bring charges against the police; pressure or tacit approval from politicians; a lack of oversight; public consent and encouragement; dangerous public rhetoric (e.g., "war on terror/drugs" and "shoot to kill") in a climate of public fear; corruption; a lack of faith in the criminal justice system; perceptions that the poor or other groups are dangerous; exposure of the police to dangerous persons and places; antagonism or abuse from suspects; intoxication; individual psychological reasons; and uncertainty.[237]

In his report on the Gambia, Special Rapporteur Heyns summarized the consequences of police abuse of force in that context:

Report on Mission to The Gambia (A/HRC/29/37/Add.2, 11 May 2015, ¶¶66, 71, 80)

66. According to testimonies received, the climate of fear engendered by this event and the impunity that followed have reduced to a minimum the numbers of demonstrations that have taken place in the country since then.

[...]

71. Mistrust and fear appear to be amplified in matters that concern accountability for abuses by members of the National Intelligence Agency. The legal gap governing their conduct and, equally, sanctioning their abuses, and the public perception that the institution operates behind a veil of impunity and that, ultimately, it has the power to exercise unrestrained control over the lives of Gambian citizens, makes the lodging of complaints of misconduct by its agents all the more implausible. Citizens are reluctant to denounce abuses, engage legal services or seek redress, even for the most serious violations, including disappearances, torture or probable executions. Moreover, the secrecy in which most of its operations are conducted makes any potential investigation inoperable. Nonetheless, the Special Rapporteur received countless confidential complaints of excessive use of force and possible summary executions by members of the National Intelligence Agency which remain unaccounted for by Gambian judicial, administrative and police institutions.

[...]

80. The visit of the Special Rapporteur took place in an atmosphere of fear on the part of civil society, victims, witnesses and other interlocutors. There was a climate of intimidation being experienced by almost every person that the Special Rapporteur interviewed. Some interlocutors conveyed particular concern about possible reprisals following the meeting. Moreover, in the course of an interview, interlocutors indicated their fear that the meeting was being monitored by individuals stationed near the meeting place.

2. Law enforcement training and equipment

In consulting on his report on demonstrations, as well when interacting with professional police officers on country missions, Special Rapporteur Heyns underlined the importance of both training and equipment in ensuring the greatest possible protection for the right to life:

237 See, for example, Luis Gabaldón, 'Uncertainty and the Use of Force Among Venezuelan Police Officers', 52(2) *Crime, Law and Social Change* (August 2009), p. 208; and Jyoti Belur, 'Why do the Police use Deadly Force?', 50(2) *British Journal of Criminology* (2010), p. 324.

Report to the Human Rights Council (A/HRC/17/28, 23 May 2011, ¶104)

104. Countries also face practical challenges in dealing with demonstrations. In one country, a former policeman who was interviewed drew attention to the lack of equipment, such as less-than-lethal weapons: "If policemen are carrying live rounds, and that is all they have, they are going to use it sooner or later when they face hostile crowds." A number of people interviewed stressed the fact that police who do not have the necessary protective gear will, understandably, resort more easily to the use of lethal force or firearms to defend themselves. An interviewee with practical experience in Northern Ireland commented on the drastic reduction in the use of force, after police officers had been issued body-length shields and fireproof overalls.

In his 2014 report to the Council on the legal frameworks concerning the use of force, Special Rapporteur Heyns returned, generally, to the state's obligation, as part of its duty of precaution, to establish proper training regimes and to provide adequate equipment. He focussed in particular on less-lethal weapons, and recommended that OHCHR should coordinate with other agencies to develop guidance on their use. He took up the issue of less-lethal weapons again in his 2016 report to the General Assembly, and repeated his recommendation for the development of guidance on less-lethal weapons in his joint 2016 report on the management of assemblies (see Section D.4, below). After the completion of his mandate, Heyns went on to collaborate with OHCHR on this issue, resulting in the launch and publication of the *United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement* in 2019.[238]

Report to the Human Rights Council (A/HRC/26/36, 1 April 2014, ¶¶51-53, 101-107)

51. States are also required to take reasonable precautions to prevent loss of life, wherever necessary in legislation or subordinate law. This includes putting in place appropriate command and control structures; providing for the proper training of law enforcement officials in the use of force, including less lethal techniques; where possible, requiring the issuing of a clear warning before using force; and ensuring medical assistance is available.[239] In the specific case of demonstrations, it also arguably entails adhering to the standards on the facilitation and control of demonstrations to prevent volatile situations from escalating out of control.

52. The Basic Principles require that 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 … For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment."[240] The point is thus not merely that it should be used if available (as is required by necessity), but that such equipment will be made available in the first place. States shall also ensure that "all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force."[241]

53. An increasing body of knowledge is available on how crowds can be handled in ways that can defuse as opposed to escalate the tension,[242] and it is the responsibility of the commanding leadership of law enforcement to ensure that this knowledge is used in the planning, preparation and concrete policing of assemblies. Failure to take note of such information and repeating the mistakes of the past with deadly consequences run contrary to the duty to protect life, and would have to be considered a failure in command responsibility. Indeed, making sure that domestic

238 The *UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement* was launched in Geneva during the 127th Session of the UN Human Rights Committee in October 2019, and published by OHCHR in 2020.
239 Melzer, *supra* note 28, p.203.
240 *Basic Principles, supra* note 3, Principle 2.
241 Ibid., Principle 19. Also Principles 18 and 20.
242 A/HRC/17/28, *supra* note 42, pp. 17-18.

law complies with the international standards on the use of force (and, arguably, human rights standards in general) is an important preventative measure.

[...]

101. The Basic Principles require States to develop and use so-called "non-lethal incapacitating weapons" where appropriate.[243] Given the relative lack of information on the risks associated with various weapons when the Basic Principles were drafted, it is not surprising that this reads almost like an unqualified endorsement of what today are commonly referred to in law enforcement as "less-lethal weapons." Modern developments require a more nuanced and analytical approach.

102. The increasing availability of various "less-lethal weapons" over the last few decades has been a significant development in law enforcement. Their availability can lead to greater restraint in the use of firearms and can allow for graduated use of force. However, this depends on the characteristics of the specific weapons and the context of its use.

103. The manufacture and sale of a wide variety of "less-lethal weapons" has become a veritable industry and is expanding. The weapons promoted in this category have diverse characteristics, mechanisms of injury and associated risks. They include chemical, blunt trauma, electric-shock, acoustic weapons and directed energy weapons.[244]

104. The problem is that in some cases "less-lethal weapons" are indeed lethal and can lead to serious injuries. The risks will be dependent on the type of weapon, the context of its use, and the vulnerabilities of the victim or victims. Innocent bystanders may also be affected where weapons cannot be directed at one individual.

105. The growing, largely self-regulated market of "less-lethal weapons" cannot solely determine policing weapons technology, especially when it could involve unacceptable human cost.[245] Clear and appropriate international standards are needed.[246]

106. There is a need for independent guidelines on the development and use of these weapon technologies, over and above standards that may be set by individual police forces or the manufacturers. Likewise, it may be necessary to place restraints on the international trade and proliferation of these weapons. Training of law enforcement officials in the use of new weapons should be relevant, regular and integrate a human rights law approach.

107. ICRC has made the argument that the use of toxic chemicals as weapons for law enforcement should be limited solely to riot control agents, i.e. "tear gas," highlighting the risks of using other chemical agents and the strict constraints of the current international legal framework. Their concern is that the use of some toxic chemicals for law enforcement presents serious risks of death and permanent disability to those exposed, risks undermining international law prohibiting chemical weapons, and could ultimately erode the consensus against the use of poison as a weapon during armed conflict.[247]

243 *Basic Principles, supra* note 3, Principle 2.
244 Neil Davison, *'Non-lethal' Weapons* (2009).
245 Neil Corney, *Less Lethal Systems and the Appropriate Use of Force* (2011), p. 2.
246 For e.g., *Basic Principles, supra* note 3, Principle 3.
247 See 'ICRC position on the use of toxic chemicals as weapons for law enforcement' (6 February 2013) available at: http://www.icrc.org/eng/resources/documents/legal-fact-sheet/2013-02-06-toxic-chemicalsweapons-law-enforcement.htm.

Report to the General Assembly (A/69/265, 6 August 2014, ¶¶65-76)

65. The use of force against the human person, including the use of deadly or potentially deadly force by agents of the State, is a central human rights concern. Recent years have seen a significant development in the technology available to law enforcement officials and to non-State actors such as private security companies. Industries have developed around those weapons and market forces are often significant drivers in their availability, functions and use.

66. Two problems raised by these new developments are discussed below: the sometimes lethal or otherwise serious effects of so-called less lethal weapons; and the possibilities that increasing depersonalization of the use of force – through unmanned force delivery technologies – may infringe upon human rights standards.

67. It is an underlying theme of the present section – and indeed of much of my work as Special Rapporteur – that, to the extent that the current, often astounding, advances in technology give States and others who use them the ability better to moderate and monitor the use of force, they come with heightened responsibility. The availability of advanced technology implies higher levels of obligation regarding the decisions on whether and how much force to use, and also accountability and monitoring with regard to the exercise of that discretion.

68. Consideration should be given to the question of whether the international trade in such devices needs to be controlled in addition to the requirements of the Arms Trade Treaty, and be subject to export control licensing.

A. Lethal potential of "less lethal" weapons

69. Principles 2, 4 and 5 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide that, where force is necessary, graduated force should as far as possible be used.[248] In this context, less lethal weapons may in some cases provide officials with less dangerous options than the use of firearms and thus may save lives. The availability of such weapons implies that law enforcement officials should, where appropriate, use them. However, while less lethal weapons should, in general, be welcomed, it must be remembered that almost any use of force against the human person can under certain circumstances lead to loss of life or serious injury.[249]

70. An increasing number of detailed reports by human rights organizations document how protesters and bystanders have been wounded and sometimes died following the use by police and security personnel of rubber-coated metal bullets,[250] the reckless use of tear gas,[251] electric shock projectiles,[252] rubber ball projectiles,[253] plastic bullets and water cannons.[254]

248 See also A/HRC/26/36, *supra* note 105, paras. 59, 69, 102 and 139; A/61/311, *supra* note 35, paras. 33-45; A/HRC/14/24, *supra* note 29, paras. 33-37; and A/68/382 and Corr.1, *supra* note 29, paras. 33-37.

249 See, generally, Abi Dymond and Neil Corney, 'The Use of "Less Lethal" Weapons in Law Enforcement', in Stuart Casey-Maslan (ed.), *Weapons Under International Law* (2014).

250 See, for e.g., Amnesty International, *Trigger-Happy: Israel's Use of Excessive Force in the West Bank*, 27 February 2014.

251 Physicians for Human Rights, *Weaponizing Tear Gas: Bahrain's Unprecedented Use of Toxic Chemicals Agents against Civilians* (August 2012), available at http://physiciansforhumanrights.org/library/reports/weaponizing-tear-gas.html.

252 Amnesty International, *USA: 'Less than lethal'? The Use of Stun Weapons in US Law Enforcement*, 16 December 2008, available at www.amnesty.org/en/library/asset/AMR51/010/2008/en/530be6d6-437e-4c77-851b-9e581197ccf6/amr510102008en.pdf.

253 Amnesty International, *Spain: The Right to Protest under Threat*, 24 April 2014, available at http://www.amnesty.org/en/library/asset/EUR41/001/2014/en/019b583d-9f93-484f-b7e0-e499126e2ebc/eur410012014en.pdf.

254 Human Rights Watch, *Turkey: A Weekend of Police Abuse*, 18 June 2013, available at http://www.refworld.org/docid/51c949a34.html.

71. Deadly consequences could also occur because of the use of such weapons in confined spaces, for example where tear gas accumulates or leads to stampedes.[255]

72. Moreover, the requirement under human rights law is not merely to distinguish between lethal and any non-lethal force. Even if it is unlikely to lead to death, the force used must still be the minimum required by the circumstances of each case. The danger is that law enforcement officials may argue that the weapons that they use are labelled "less lethal" and then fail to assess whether the level of force is not beyond that required.

73. While there is a high level of agreement on the international standards applicable to the use of force during law enforcement, the increasingly advanced technology requires a more detailed regulatory framework. A process involving States and the international community, in addition to civil society, is needed to set out how the standards set by the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the relevant jurisprudence should be applied to the scenarios created by the new technology.

74. Of particular importance are precautionary measures, such as appropriate training to use increasingly sophisticated weapons. I have argued elsewhere that precaution is an often overlooked but crucially important component of the protection of the right to life (A/HRC/26/36, paras. 63 and 64). It is bound to grow in importance as technology develops further. In addition to general training on the Basic Principles, law enforcement officials should undergo training on each type of device with which they have been issued and the standards mentioned above. In some instances, licences for specific devices may be required.

75. Minimum standards need to beset for the development of weapons and their use, and good practices need to be identified. A few examples of areas in which more specificity may be required are: the accuracy required of a projectile; how much kinetic force may be delivered to a human body; the amount of electricity that could be used; and the safe levels of a chemical irritant to be delivered by an aerosol spray. The same applies to where such devices could be used (e.g. tear gas grenades should not be used in closed spaces, and tasers should not be used when people are standing on walls). The new technologies may require that monitoring of force is mandatory in many cases.

76. It may be necessary to require selection and testing of law enforcement weapons to be carried out in each State by a legally constituted, independent, multidisciplinary and transparent panel of experts, free of direct commercial or law enforcement interests. The system as a whole – the weapon, ammunition, sighting device and guidelines for use – should be tested in real situations (e.g. in the dark or while wearing riot gear).

Special Rapporteur Heyns highlighted the adverse impact of improper usage of "less-lethal" weapons in 2015 in following-up to the recommendations he made after his country visit to Turkey:

Follow-up to country recommendations – Turkey (A/HRC/29/37/Add.4, 6 May 2015, ¶¶14-15)

14. Incorrect or excessive use of "less-lethal" weapons has resulted in serious and permanent disability of a number of civilians in Turkey.[256] The Special Rapporteur recommended that security

255 See, for e.g., 'DR Congo Football Fans Killed in Stadium Stampede', *France 24,* 12 May 2014, available at http://f24.my/1gsH4Qm.

256 Amnesty International USA, "Gezi Park protests: brutal denial of the right to peaceful assembly in Turkey" (2 October 2013), available from www.amnestyusa.org/research/reports/gezi-park-protestsbrutal-denial-of-the-right-to-peaceful-assembly-in-turkey; see also Human Rights Watch, "Turkey: End incorrect, unlawful use of teargas" (17 July 2013), available from www.hrw.org/news/2013/07/16/turkey-end-incorrect-unlawful-use-teargas.

officers receive further training on the principles of necessity and proportionality, including on the appropriate use of methods other than lethal weapons (ibid. para. 98). In that regard, the Action Plan is again a welcome step, in particular the activities listed under subheading 2.1 on the proportionate use of force only when it is definitely necessary during meetings, demonstrations and arrest and police custody proceedings. The Special Rapporteur notes the Government's response that in-service training on "human rights and proportional force" and on the use of "less-lethal" equipment, devices and defence weapons is provided to riot-control officers.[257]

15. The Government of Turkey stated that tear gas has been used legally by the police to suppress riots and other turbulent incidents and that its use in such events is regulated by the Law on Development, Production, Storage and Prohibition on the Use of Chemical Weapons (2006) (see A/HRC/23/47/Add.6, para. 8). The Special Rapporteur was also informed that advanced training is being provided to personnel responsible for giving orders to use tear gas, in March and April 2015 and he is aware of the Directive on the Operational Principles and Procedures Charged in Social Events that finds application across the State and is aimed at ensuring a proportionate use of force by the police. The Special Rapporteur also notes the call by the European Commission that non-compliance with the June and July 2013 circulars from the Ministry of the Interior on the use of tear gas by riot police and action taken in cases of social unrest should be consistently and immediately penalised.[258] The Special Rapporteur welcomes the proposed revision of and, if necessary, amendments to the Meetings and Demonstration Marches Act (Law No. 2911) to bring it in line with the case law of the European Court of Human Rights, as well as emphasis on the standards set out in the case law of the European Court on training provided to law enforcement officers.[259] Although the Special Rapporteur welcomes those measures, he is seriously concerned about the draft law to amend various articles of the Law on the Duties and Powers of the Police and articles of statutory decrees, as it will not address the concerns raised in relation to restrictions on the right to peaceful assembly, excessive use of force and concerns regarding public-order policing. It is unfortunate that the draft law contains provisions granting greater powers to the police with regard to searches and arrests, without providing for the requisite judicial oversight, and it will substantially widen the use of firearms by police, without the requisite safeguards.

In his 2014 report to the General Assembly, Special Rapporteur Heyns also considered the human rights implications of depersonalised, or even autonomous use of force in a law enforcement context. The broader questions around both forms of force-delivery are fully discussed in Chapter 11, but the specific issues in law enforcement are noted here:

Report to the General Assembly (A/69/265, 6 August 2014, ¶¶77-89)

B. Increased depersonalization of the use of force through unmanned systems

77. On the battlefield, the depersonalization of force against human beings has manifested itself in unmanned systems that are remotely controlled by humans, as is the case with armed drones. The use of such weapons during armed conflict is not inherently unlawful, but there are serious concerns about their use (see A/68/382and Corr.1, para. 13, and A/68/389, para. 20).

78. There is now also an increased availability of unmanned systems – often labelled as less lethal – aimed at law enforcement and at non-State actors such as private security companies.

257 State response, October 2014.

258 European Commission, "Turkey Progress Report" (October 2014), p. 15 (see footnote 7) available from http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progressreport_en.pdf

259 Turkey, "Action Plan for the Prevention of Violations of the European Convention on Human Rights", subheading 2.1

79. Possible areas in which unmanned weapons may be used in the law enforcement context include crowd control; action against specific classes of perpetrators, such as prison escapees or big game poachers; and provision of perimeter protection around specific buildings, such as high security prisons or in border areas. Such systems may also be used to patrol pipelines or in wars on drugs or other crime control or anti-terrorism operations.[260]

80. A South African company, Desert Wolf, is producing a drone known as Skunk Riot Control Copter, which is designed to control unruly crowds without endangering the lives of the protesters or the security staff.[261] A United States firm, Chaotic Moon Studios, is developing the Chaotic Unmanned Personal Intercept Drone, which can fire a dart packed with 80,000 volts at any unwanted intruder or criminal on the run.[262]

81. Another United States company, Vanguard Defense Industries, has manufactured a drone known as Shadowhawk, which can be armed with37-mm and 40-mm grenade launchers, a 12-gauge shotgun with laser designator or can be fitted with an XREP taser with the ability to fire four barbed electrodes that can be shot to a distance of 100 feet, delivering neuromuscular incapacitation to the victim.[263]

82. There are also armoured robotic platforms and launchers to disperse demonstrators with tear gas or rubber bullets, to inflict powerful electrical shocks and to mark perceived troublemakers with paint. Such weapons platforms may also be equipped with firearms, light weapons or tear gas. A Germany company, VDI Technologiezentrum, has developed automatic tear gas systems that release doses of tear gas if perpetrators ignore the warning and enter further into a restricted area. Some States, including Brazil and the United Arab Emirates, use autonomous robots to monitor crowds.[264]

83. It should be asked whether remote-controlled weapons systems should be as readily viewed as legal weapons in the law enforcement context as in armed conflict. The relationship between the State and those under its protection is very different from its relationship with those whom it regards as its enemies during armed conflict. Law enforcement officials have a much stronger duty to consider the specific circumstances of each individual case before using force, including the subjective intention of those against whom force is used, than is the case during armed conflict. Unmanned systems generally also do not allow for capture, rather than the use of force.

84. The international community has over the past two years begun to engage with the emergence of increasingly autonomous weapons systems in the military context; that is, unmanned weapons with on-board computers that, once activated, can select and engage targets with no further human

260 See H. G. Nguyen and J. P. Bott, 'Robotics for Law Enforcement: Beyond Explosive Ordnance Disposal' (Space and Naval Warfare Systems Center, Technical Report No. 1839 November 2000); Kylie Wightman and John Burkett, *SWAT and Law Enforcement Robots* (2014), available at http://prezi.com/mjqjpo66zvzc/swat-and-law-enforcement-robots/; Carl Lundberg and Henrik I. Christensen, *Assessment of Man-Portable Robots for Law Enforcement Agencies* (2014), available at www.hichristensen.net/hic-papers/Permis07-Lundberg.pdf.

261 See 'Riot Control Drone Armed with Paintballs and Pepper Spray Hits Market', *RT,* 19 June 2014, available at http://rt.com/news/167168-riot-control-pepper-spray-drone/.

262 See 'CUPID Drone to "Shock the World" with 80,000 Volt Stun Gun, *RT,* 8 March 2014, available at http://rt.com/usa/drone-taser-gun-security-650/.

263 See P.J. Watson, 'Big Sis Gives Green Light for Drone that Tazes Suspects from Above', *Prison Planet,* 24 August 2011, available at www.prisonplanet.com/big-sis-gives-green-light-for-drone-that-tazes-suspects-from-above.html.

264 See 'Dubai Debuts Drones for Crowd Control', *Fast Company,* 16 May 2013, available at www.fastcompany.com/3009827/dubai-debuts-drones-for-crowd-control.

intervention.[265] This may well happen in the law enforcement context as well, thereby challenging a range of human rights.[266]

85. The rights in question are, in particular, the right to life (and bodily integrity in general) and the right to human dignity. It can be questioned to what extent autonomous weapons systems will have the capacity to determine the level of force, including lethal force, permissible in a particular context, especially given the limitations of the systems in terms of understanding human intentions and the subtleties of human behaviour. Using unmanned systems to deliver force in the law enforcement context is also likely to be seen in many contexts as adding insult to injury, and an affront to human dignity. For example, using unmanned systems against striking mine workers, even if less lethal, could easily be viewed as less than human treatment. [...]

86. Serious consideration needs to be given to whether unmanned systems, in particular autonomous weapons systems used in the context of law enforcement, whether with lethal or less lethal force, can be considered lawful weapons *per se*.

87. The question arises about the appropriate forums within the international system to deal with these concerns. Increasing autonomy in force delivery can occur in various contexts: during armed conflict (where the force at stake will mostly be lethal) or law enforcement (where the norm is the use of minimum force, often taking the form of "less lethal force").[267] A coherent approach is called for: the human rights bodies dealing with these issues should take note and engage with the processes in disarmament bodies, and vice versa, with both approaches having an important role to play (see A/HRC/26/36, para. 144).[268]

C. Recommendations

88. The United Nations High Commissioner for Human Rights should convene an expert group to examine the application of the international human rights framework to less lethal weapons and unmanned systems in the context of law enforcement and private security, focusing on the legality of the weapons and restrictions on their use. The High Commissioner should recommend a process to the Human Rights Council, also involving other important stakeholders such as the United Nations Office on Drugs and Crime (UNODC), to fill identified gaps.

89. The international community, and in particular the various United Nations bodies, must adopt a comprehensive and coherent approach to autonomous weapons systems in armed conflict and in law enforcement, one which covers both the international humanitarian law and human rights dimensions, and their use of lethal and less lethal weapons. As such, the various international agencies and institutions dealing with disarmament and human rights, such as the Convention on

265 Human Rights Watch and Harvard Law School's International Human Rights Clinic, *Losing Humanity: The Case against Killer Robots* (2012), p. 2, available at www.hrw.org/sites/default/files/reports/arms1112ForUpload_0_0.pdf. See also *Campaign to Stop Killer Robots* at www.stopkillerrobots.org; Report of the Special Rapporteur, Christof Heyns, A/HRC/23/47, 9 April 2013, para. 38; ICRC, *Report of the Expert Meeting on Autonomous Weapon Systems: Technical, Military, Legal and Humanitarian Aspects*, 9 May 2014, p. 6, available at www.icrc.org/eng/assets/files/2014/expert-meeting-autonomous-weapons-icrc-report-2014-05-09.pdf.

266 Human Rights Watch and Harvard Law School's International Human Rights Clinic, *Shaking the Foundations: The Human Rights Implications of Killer Robots* (2014), available at www.hrw.org/sites/default/files/reports/arms0514_ForUpload_0.pdf.

267 The term "lethal autonomous weapons systems" (LAWS), is used in the Convention on Certain Conventional Weapons (see http://bit.ly/1jSlCro). The Special Rapporteur has used the term "LARS" (lethal autonomous robots) (see A/HRC/23/47, *supra* note 265). Upon reflection, the use of the word "lethal" unduly restricts the discussion, and excludes less lethal applications, for example during law enforcement.

268 That autonomous weapons systems are not yet in use does not diminish the responsibility of the various bodies. The Human Rights Council, for example, is explicitly required to contribute towards the prevention of human rights violations (General Assembly, Resolution 60/251 (Human Rights Council, A/RES/60/251, 3 April 2006, para. 5 (f)).

Certain Conventional Weapons and the Human Rights Council, each have a responsibility and a role to play.

3. Security sector reform

The Special Rapporteurs' country reports provide extensive analysis of the causes of police killings in particular contexts, and indicate the ways in which various factors come together to cause frequent police killings. They also provide detail on the types of reforms that follow from careful analysis of causes.

In Nigeria, killings by police in the context of extortion and purported attempts to arrest "armed robbers" are common, and result from a combination of very poor police resources, inadequate discipline, inappropriate legal frameworks, and high levels of general armed violence. Special Rapporteur Alston outlined the security sector reforms needed:

Report on Mission to Nigeria[269] ***(E/CN.4/2006/53/Add.4, 7 January 2006, ¶¶39, 43, 46-47)***

39. The Nigeria Police have grown significantly under civilian rule to 325,000 in 2005. But the numbers are still inadequate, their level of training and funding insufficient, and their morale low. Although Nigeria suffers from high violent crime rates, the force is chronically under-resourced. All too often new recruits pay for their own uniforms, salaries are delayed for many months, equipment required in an emergency needs to be borrowed from other agencies, and complainants (even those alleging murder) are asked to cover the costs of the police investigation including travel and accommodation. Where they cannot afford to do so, the investigation fizzles. In addition, corruption is widespread among police officers, in part due to very low salaries.

[...]

43. Despite the fact that the scourge of armed robbery plagues much of Nigeria, the label of "armed robber" is very often used to justify the jailing and/or extrajudicial execution of innocent individuals who have come to the attention of the police for reasons ranging from a refusal to pay a bribe to insulting or inconveniencing the police. The problem lies in part in the elevation of armed robbery to the level of a capital offence. This seems to have at least two perverse consequences: (1) criminals interrupted in an armed robbery have no disincentive to use arms (either way it will be a capital offence); (2) the police are given a justification to shoot to kill any person who has committed a capital offence and is seeking to flee.

[...]

46. But the standing "rules for guidance in use of firearms by the police" are equally flawed. Police Order No. 237 provides for the use of firearms in situations where it is essential in order to protect the life of the police officer or of another person, or where necessary to prevent "serious offences against life and property" by rioters. These provisions are unexceptionable but the rules which effectively relate to "armed robbers" are formulated very differently. They authorise the use of firearms if a police officer cannot "by any other means" arrest or re-arrest any person who is suspected (or has already been convicted) of an offence punishable by death or at least seven years imprisonment. The rules which elaborate upon this provision are even more permissive. They note that any person who seeks to escape from lawful custody commits a felony warranting a seven year sentence. As a result shooting to kill someone charged with stealing goods of negligible value but alleged to be seeking to escape from custody would be justified. The only qualification contained in

269 ***Editors' Note:*** In his Follow-up Report on Mission to Nigeria (A/HRC/8/3/Add.3, 14 May 2007), Special Rapporteur Alston found that these problems continued, and that his recommendations relating to the rules regarding the use of firearms by police officers had not been implemented.

> the rules is "firearms should only be used if there are no other means of effecting his arrest, and the circumstances are such that his subsequent arrest is unlikely." These rules are deeply flawed. They provide close to a *carte blanche* to the police to shoot and kill at will.
>
> 47. Police Order No. 237 should be amended immediately to bring it into conformity with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The resulting emphasis should be on proportionality, on the use of lethal force as an absolute last resort, and only "when strictly unavoidable in order to protect life." Thus, the possible escape of an alleged robber who presents no direct threat to the lives of others, cannot justify shooting to kill.

In his 2007 report on his visit to Guatemala, Special Rapporteur Alston underscored the difficulty of addressing police killings where they have a long and institutionalised history in a country.

> ***Report on Mission to Guatemala (A/HRC/4/20/Add.2, 19 February 2007, ¶21)***
>
> 21. The evidence shows that social cleansing is more than the actions of a few rogue [police] officers. This does not mean that it has risen to the level of officially-sanctioned policy, but the frequency and regularity of social cleansing does indicate that it presents an issue of institutional responsibility. Neither can the well-documented involvement of the police in social cleansing prior to the Peace Accords be overlooked. The practice of social cleansing today appears to represent the reintroduction of practices of selective killing and social cleansing that emerged in the later phases of the armed confrontation. During the armed confrontation, intelligence services of the police and military were often involved both in gathering information on possible threats to the State and in eliminating them – without recourse to any judicial process. Today, not only is the modus operandi similar but some of the same intelligence institutions appear to be involved. In particular, the *Cuerpo de Detectives of the Policía Nacional*, a predecessor of the PNC's DINC, was named by Project for the Recovery of Historical Memory (*Recuperación de la Memoria Histórica*, REMHI) as having been involved in social cleansing operations during the armed confrontation. While efforts to clean up the PNC have been made, resulting in the expulsion of over 100 policemen in 2005 and an even higher number in the first eight months of 2006, groups engaged in social cleansing evidently continue to operate.

Brazil has one of the highest homicide rates in the world and faces severe gang violence in many major cities. Extrajudicial executions by police occur on and off-duty, and vigilante justice is supported by a sizable proportion of the population, who fear street violence and who perceive that the criminal justice system is too slow to prosecute criminals effectively. In 2009, Special Rapporteur Alston reported to the Council as follows:

> ***Report on Mission to Brazil (A/HRC/11/2/Add.2, 23 March 2009, ¶¶28-29, 31, 33, 77-81)***
>
> 28. An acceptable policing strategy cannot ignore or discount the need to protect individuals living within the communities controlled by criminal organizations. A clear lesson from the Complexo operation is that police operations to remove a criminal organization from a particular area must be followed by a sustained police presence. If the police withdraw, many of the very same gang members will return, as operations are unlikely to arrest the entirety of the local criminal organization. Even if the operation did arrest all or most of the gang members within that community, failure to maintain a police presence will permit members of the gang from other areas, or members of other gangs, to move in. If control returns to the gangs, the operation is likely to have left residents in great danger. One of the key reasons that people are killed by criminal organizations is that they are believed to be collaborating with the police or rival gangs. In many communities in Brazil, being labeled a "snitch" is tantamount to being sentenced to death. When one gang controls a community over time, its residents at least know the rules and how to act to survive. But when control changes hands, the residents face an impossible challenge: they must

conduct themselves in a manner that will not be perceived as resistant to the current group's control (which will likely result in death today), but they must also conduct themselves in a manner that will not be perceived as collaborating with that group when control subsequently swings to another group (which would likely result in death tomorrow). The police should not gratuitously inflict this further punishment on the residents already so unfortunate as to have their communities be controlled by criminal organizations.

29. By attempting to re-establish government control over a large area almost instantaneously, large-scale operations are not only too ambitious but contain the seeds of their own failure. Police dashing through a community are unable to develop a sufficient understanding of the local criminal structures as to be able to reliably identify and arrest the organization's members. This is certainly the case when the level of government presence and thus of reliable intelligence was previously very low, as in the Complexo. This ignorance engenders fear and frustration and is likely to lead some policemen and units to commit acts of indiscriminate violence.

[...]

31. Participation in organised criminal groups [such as militias and death squads carrying out unlawful killings] should be seen as the most extreme end of a continuum of illegal police actions that begins with corruption and the holding of second jobs. It is openly acknowledged by senior Government officials, police, and police commanders that the prohibited practice of police working second jobs[270] – primarily as security guards – is widespread.

[...]

33. Many police are also engaged in corruption and extortion to varying degrees.[271] Corruption and second jobs cause harm in themselves, but high-level tolerance of them also contributes to a culture of impunity in which police know they can operate outside the law. Importantly, it also creates a context in which police can choose to collaborate or compete with organised crime groups, thereby increasing the likelihood that police will become involved in militia and death squad activity.

[...]

[Recommendations:]

77. State Governors, Secretaries for Public Security, and Police Chiefs and Commanders should take the lead to make publicly clear that there will be zero tolerance for the use of excessive force and the execution of suspected criminals by police.

78. The State Government of Rio de Janeiro should eschew large-scale, or "mega," operations in favour of systematic and planned progress in reasserting a sustained police presence and government authority in gang-controlled areas. Present policies are killing large numbers of people, alienating those whose support is needed for potential success, wasting precious resources, and failing to

270 The relevant regulations are state-specific. In Rio de Janeiro, it is a disciplinary infraction for a member of the Military Police to have other paid employment. *Regulamento Disciplinar da Polícia Militar do Estado do Rio De Janeiro*, Decreto No. 6.579 (5 March 1983), Art. 14(1); Annex I, para. 120.

271 In Pernambuco, I was given detailed information about the relationship between police and gangs in a number of communities. In one favela, every weekend police would come to the community to collect money from the traffickers. The leader of each gang generally has a number of "directors" in charge of the different types of trafficked drugs. The police would come to negotiate with "directors" (who in turn negotiate with their leader) on payments. Refusals to pay the police are met with death threats and murder. The weapons and drugs confiscated by police are regularly fed back into the trafficking system. Police "arrest" traffickers for the purposes of making money – demanding a bribe in return for the criminal's freedom. When the gangs do not have sufficient funds to pay for one of their members, the gangs collect small sums from each resident to pay the police fee.

achieve the stated objectives. Designing policing strategies solely with electoral objectives in mind does a disservice to the police, the communities affected, and society at large.

79. The use of armoured vehicles should be monitored by equipping them with audio and visual recording equipment. The results should be regularly monitored in cooperation with community groups.

80. In the longer term the Government should work towards abolishing the separate system of military police.

81. The federal Government should implement more effective measures to tie state funding to compliance with measures aimed at reducing the incidence of extrajudicial executions by police.

In his follow-up report in 2010, Special Rapporteur Alston noted that in the run-up to two major sporting events in Brazil, efforts had been made to implement police reforms, but highlighted that implementation had been uneven, and that certain core essentials in terms of human rights content within additional training had not been provided for:

Follow-up report on Mission to Brazil (A/HRC/14/24/Add.4, 28 May 2010, ¶¶21-23, 35-39)

21. Since the Special Rapporteur's mission, the Rio de Janeiro Government has introduced Unidades de Polícia Pacificadora (UPPs, "Pacifying Police Units") into a small number of favelas in the city of Rio de Janeiro. These units are a sustained police presence in each favela, and aim to re-take control from gangs, and promote security in the long term. The UPP experiment is currently under way in seven favelas.[272] The officers deployed are given special training, including human rights training, and increased salaries. The Rio de Janeiro Government plans to have some 3,500 police in 15 UPPs by the end of 2010, and intends to ultimately extend UPPs to 100 favelas, at a rate of at least 10 new favelas per year.

22. This new strategy is largely to be commended. Where it has been implemented, it represents a significant departure from the "war" approach of the brief, large-scale, violent operations. The UPP approach avoids the "shoot-out" scenarios that so often result from rapid, heavily armed police incursions into the favelas. According to information provided to the Special Rapporteur, for those favelas under UPPs, the Government has made real progress in preventing gangs from re-asserting their presence. There is also strong evidence to date of community support for the UPPs.[273] Residents have reported that they feel safer, and that relationships with police have improved. In some areas, there have also been improvements to the provision of basic services.

23. Notwithstanding these positive developments, concerns have been expressed about the way in which the UPPs have been conducted. The government language used to describe UPPs is heavily laced with warlike terminology – they "invade" a favela, and maintain an "occupation." Some civil society members expressed concerns that this policy will continue to criminalise favela residents who will be living under de facto militarised police control. There has been concern about harassment of residents, through increased searches and seizures, and heavy police control over the daily lives of residents, including by banning popular music concerts and funk dance parties. Some interlocutors also expressed concern that the promised social services, including

272 The most recent to be "occupied" was Providência, in Rio de Janeiro's city centre. "UPP arrives at Brazil's oldest Favela," *UPP Repórter*, 23 March 2010.

273 A 2010 poll by the Brazilian Institute of Social Research found that 93 per cent of people resident in UPP areas feel safer. According to that poll, 70 per cent of residents of communities without UPP would like to have UPP. Another study, by the Getúlio Vargas Foundation, indicated that 66 per cent of those surveyed in 2009 in the Santa Marta and Cidade de Deus favelas approved of the UPP. "UPP: I want one too!" *UPP Repórter*, 23 February 2010.

those related to education, health, and sports activities, were slow to be implemented, and that residents' associations were not always consulted on social projects. The Government must ensure that its retaking of favelas includes both improved security for residents, as well as the provision of basic services that residents have for decades been denied. In addition, independent reviews of the UPPs should take place, to provide an unbiased account of their successes, and areas where improvement is needed.

[...]

3. Police salaries

35. In his report, the Special Rapporteur explained that police participation in organised criminal activity was at the extreme end of a spectrum of police activity that began with extortion and the taking of prohibited second jobs, generally in the security sector. Much of this activity was motivated by the poor pay that police received. It was also easy for police to take second jobs because of their shift structure, and the reluctance of commanders to discipline police for doing so. Consistent with this analysis, Rio de Janeiro's Commission into militias specifically identified inadequate police salaries as a cause for police participation in militias.[274]

36. Since the Special Rapporteur's visit, the Brazilian Federal Government has taken some important steps to increase police salaries. In November 2009, President Lula stated that adequate pay was the key way to prevent officers from accepting bribes and engaging in other unlawful activity, and he announced a new career plan for the Federal District whereby the Government would hire 3,000 new officers and would promote 12,000 current officers.[275] In anticipation of the World Cup in 2014 and the Olympic Games in 2016, President Lula also announced an increase in police salaries by providing for a Bolsa Copa (World Cup Grant) and a Bolsa Olímpica (Olympic Grant). For the Bolsa Copa, which will be paid to both firefighters and police in the lead up to the World Cup, the increase begins in 2010 with 550 reais, increasing in 2011 to 665 reais, in 2012 to 760 reais, in 2013 to 865 reais and finally to an extra 1,000 reais for 2014.[276] The Bolsa Olímpica will be fixed at 1,200 reais for all civil and military police. In order for any police officer to receive the grant, the officer must attend one training course per year.

37. However, the negative consequences of low police salaries also exist outside of Rio de Janeiro, independently of the upcoming sporting events. Brazilian police staged strikes in early 2010 in order to protest unequal salary differentials between Federal District police and military police nationwide.[277] In February 2010, the police demanded a national minimum wage to ensure that police officers across the country receive pay increases.

38. As part of a strategy to improve the police forces through salary increases, professional police tactics and human rights training must also be on the agenda. The Olympic and World Cup Grants described above link increased salaries and advanced training to a minor extent. However, the training must be serious and of high quality in order to rectify the systematic use of excessive force. Interlocutors provided information to the effect that in Pernambuco, for example, training

274 Asembléa legislativa do Estado do Rio de Janeiro (ALERJ), *Relatório Final da Comissão Parlamentar de Inquérito destinada a investigar a ação de Milícias no âmbito do estado do Rio de Janeiro* (November 2008), p. 40.

275 'Brazilian President: Paying Good Salaries to Police is Guarantee of Tranquility To Society', *Xinhua News*, 7 November 2009.

276 Marianna Jungmann, 'Rio Olympics: Lula Creates New Bolsa (Allowance) to Raise Police Salaries', *BrazzilMag*, 22 January 2010.

277 Lourenço Canuto, 'Brazilian Police March on the Streets and Threaten National Strike', *BrazzilMag*, 3 February 2010; 'Polícia Civil ameaça iniciar greve na véspera do carnaval', *Nomomento.com*, 25 January 2010; see also PEC 300, *Constitutional Amendment Proposed by Police Officers*, available at http://www.camara.gov.br/sileg/integras/610200.pdf.

courses for military police officers in 2009 were deficient in a number of respects. The four-month course decreased from 1,246 hours in 2004 to only 800 hours in 2009. Classes were crowded, there was insufficient training on self-defence techniques and expert training with firearms, just three hours of training on the preservation of evidence at a crime scene, and no training on dealing with vulnerable groups in society.

39. The Special Rapporteur is not aware of any changes having been made to the policing shift structure.

In many countries experiencing armed conflict, abuses by police are overlooked as attention is focused on abuses by armed forces, rebel groups, and other armed actors. Special Rapporteur Alston's 2009 report on his visit to Afghanistan explained the importance of continuing to investigate and remedy abuses by the police:

Report on Mission to Afghanistan (A/HRC/11/2/Add.4, 6 May 2009, ¶¶44, 50-52)

44. In most parts of the country, the police are the face of the Government. In many districts where they are the only government officials seen by the people, the perceived legitimacy of Government depends almost entirely on them. Legitimacy will follow if they maintain law and order for all, but not if they extort, intimidate, and kill. All too often, the police do not truly represent the interests or diversity of the community. They are drawn dominantly from the members of one tribe or the followers of one commander. For ordinary Afghans, this means that police function not as enforcers of law and order, but as promoters of the interests of a specific tribe or commander.

[...]

50. [Training] alone will not fix Afghanistan's police force. Training is important but people who have an interest in summarily executing their enemies don't stop doing so simply because they've read the Universal Declaration of Human Rights or received instruction in an escalation of force protocol.

51. However, the Focused District Development (FDD) program has, in an unexpected manner, pointed the way toward genuine reform. The program takes an entire district's police force to another location to receive intensive training. While they are being trained, the Afghan National Civil Order Police (ANCOP) moves in to police the district. They have generally been well-received. Why? The answer may lie partly in their training, but the dominant factor seems to be that the ANCOP police do not have any connection to local tribes, commanders, or warlords. There are a number of plausible approaches, ranging from a more comprehensive pay-and-rank reform effort to the construction of a national gendarmerie. But any serious effort to reform the ANP must focus on establishing a police force that represents the interests of communities rather than the narrow interests of particular tribes, warlords, and politicians.

52. [The] Government must stop establishing and legitimizing more militias. It seems that the now abandoned "auxiliary police" program amounted to little beyond legitimizing existing militias by giving them Government uniforms. It is not clear, however, that the lessons of that experience have truly been learned and an ongoing "social outreach program" is quite worrying.

In Kenya, a death squad operated within the police force to kill suspected criminals and others. Police also used excessive force during law enforcement operations, and during assemblies and protests. At the time of Special Rapporteur Alston's visit, police killings were reported nearly every day of the week by the press, and were caused by a complex combination of factors. He reported as follows to the Council in 2009:

Report on Mission to Kenya (A/HRC/11/2/Add.6, 26 May 2009, ¶6)

6. There are six primary factors which account for the frequency with which police can kill at will in Kenya: (i) official sanctioned targeted killings of suspected criminals; (ii) a dysfunctional criminal justice system incentivises police to counter crime by killing suspected criminals, rather than arresting them; (iii) internal and external police accountability mechanisms are virtually non-existent; there is little check on, and virtually no independent investigations of, alleged police abuses; (iv) use of force laws are contradictory and overly permissive; (v) witnesses to abuse are often intimidated, and fear reporting or testifying; and (vi) the police force lacks sufficient training, discipline and professionalism.

In the Central African Republic, police and other security forces were heavily politicised and poorly trained and disciplined. In his country report, Special Rapporteur Alston outlined key principles for human rights based reform of the security forces:

Report on Mission to Central African Republic (A/HRC/11/2/Add.3, 27 May 2009, ¶¶48, 68-74, 77-78)

48. [In the Central African Republic], deaths occur during law enforcement operations. Encouragingly, at the time of the visit, both Government and civil society interlocutors noted improvements in the operations of the Office central de repression du banditisme (OCRB), which was set up to address banditry in Bangui. Theoretically, it has national jurisdiction, but in practice its efforts are limited to the capital. Civil society representatives reported that police in the OCRB have sometimes used excessive force, killing, rather than arresting, criminal suspects. Government officials admitted that in the past some police had "gone too far." However, the Special Rapporteur was told that unlawful incidents had decreased, especially after BONUCA conducted human rights training for police. Civil society representatives also stated that abuses by the OCRB had reduced over the previous year. Continued training, and the implementation of effective police oversight mechanisms are essential to ensure that the OCRB develops as a reliable institution.

[...]

68. In conjunction with the reform of the justice system, it is crucial to reform the security sector – including the FACA [armed forces], the GP [Presidential Guard], the gendarmerie, and the police – and regain the trust of the population. While the population, especially in the north, rightly distrusts the current armed forces in light of their past conduct, they desperately want the presence of security forces that can protect them from bandits and lawlessness.

69. Most interlocutors were fundamentally pessimistic with respect to whether the Government had the will to implement the necessary transformation. One foreign soldier who had helped train the FACA at various points throughout the past 20 years said that he had witnessed zero progress in terms of tactical competence or of respecting the rule of law. While this is sobering, it is encouraging that interlocutors did believe that change is possible if the international community eschews "quick fixes" in favour of a long-term strategy and commitment.

70. A seminar on security sector reform held in Bangui in April 2008 was a significant step forward. It brought together members of civil society and Government to discuss wide-ranging reforms. The detailed timetables for reforms to each institution that were developed provide a promising basis for future efforts. However, while reform efforts must focus on precise measures, the big picture must always be kept in mind as those steps are taken. Reforms must result in security forces that can both ensure and respect human rights. In what follows, the key lessons learned during the mission are outlined.

Principles to guide human rights-based reform of the security sector

71. It is necessary to start by recognizing that, while the steps taken by the President to reduce abuses were positive, change that is rooted in a single individual's words cannot be expected to endure. Reforms must be institutionalised. This requires that decision-making based on personal relationships be replaced with decision-making based on stable institutional structures.

72. First, there is a fundamental problem with the very concept of a GP directed personally by and loyal to the President, which not only provides close protection to him but also carries out wide-ranging security activities. These problems are compounded by the fact that the GP takes orders from the President rather than through the regular chain-of-command and is recruited through an ad hoc process.

73. As long as a single individual is permitted to control what amounts to a private army, there will always be a danger that large-scale abuses will recommence as quickly as they were brought to an end. Moreover, the pattern in which each new president remakes this critical component of the security sector in his own image will continue, meaning that every transition will threaten to undo all previous efforts at reform. Nevertheless, it must be candidly acknowledged that the GP will not be permanently eliminated until incoming presidents feel that they can rely on the existing FACA and do not need to form ad hoc units to ensure their regime's survival. This suggests that an element of sequencing is pragmatically reasonable. As the FACA is reformed, the elimination of the GP will be facilitated. There is not, however, anything inevitable about this progression. An end to the use of the GP for any purpose other than the President's close protection must be treated as a key aim of security sector reform, and donors should link the issues.

74. The limited efficacy of formal legal proscription in making permanent the elimination of an institution that emerges and re-emerges in conjunction with regime transitions must also be acknowledged. Again, there is no perfect solution, but a starting point would be for civil society groups to prioritise this issue and promote a non-partisan understanding that new presidents must accept the existing security forces rather than "supplementing" them – and that the security forces must support whomever is president. Entrenching a new societal norm will not be easy, but the country's history provides ample evidence of why such a norm is necessary.

[...]

77. [The] principle that the security sector is accountable to the State and its people rather than to any single individual or regime should be entrenched. As a reflection of this principle and in furtherance of its implementation, the security forces should consult closely with local populations in need of protection in the north-west to guide operations responding to banditry. For a territorial army to provide protection requires a close relationship with the people, in addition to more general reforms in operational performance and respect for human rights.

78. These lessons suggest that donors should continue to provide assistance to increase the effectiveness of the security sector and that this assistance should be accompanied by efforts to provide strong human rights training, ensure effective monitoring of the military and police, and promote respect for human rights.

In 2011, Special Rapporteur Heyns cautiously commended Kenya on a range of legislative and institutional measures designed to reform the police force undertaken since Special Rapporteur Alston's visit:

Follow-up country recommendations: Kenya (A/HRC/17/28/Add.4, 26 April 2011, ¶¶18-23)

18. There has been extensive reform of the legislative framework governing the police. In the original report it was recommended that the Police Commissioner should be replaced; in September 2009 he was transferred to the Postal Corporation of Kenya. The 2010 Constitution reviewed the appointment procedure of the Police Commissioner. The Police Commissioner will now be appointed by the President with the approval of Parliament.

19. On 8 May 2009, the Government established the National Task Force on Police Reform,[278] with a wide mandate to examine the existing policy, institutional, legislative, administrative, operational structures, systems and strategies, and to recommend comprehensive reforms. The Task Force reviewed previously commissioned reports, including the 2009 mission report by the Special Rapporteur on extrajudicial executions and the report of the Commission of Inquiry into the Post-Election Violence Experienced in Kenya after the General Elections held on 27 December 2007 (Waki Commission of Inquiry report).

20. In January 2010,[279] the President established the Police Reforms Implementation Committee with a mandate *inter alia* to coordinate, supervise and provide technical guidance and facilitation for the implementation of the police reforms and to sustain, monitor, and evaluate the progress and momentum of the police reforms as recommended in the report of the National Task Force on Police Reform. The Committee was given powers for mandatory cooperation from the police, State officials and civil servants and power to enforce implementation of its decisions.

21. Currently a number of bills are pending for approval before Parliament including the National Police Service Bill, the National Police Service Commission Bill, the Independent Police Oversight Authority Bill, the Private Security Providers Bill, and the National Coroners Service Bill. It is hoped that when passed into law, these Acts will aid in reforming the law enforcement sector to ensure respect and protection of human rights as well as promote accountability and transparency.

22. Regulations relating to use of force have been slightly amended to explicitly recognise the principle of necessity under the proposed National Police Service Bill (2010). The Bill introduces into the current reading of the provisions on use of force the wording that "a Police officer may use force and firearms, if and to such extent only as is necessary." The Court of Appeal has recently interpreted the provision on the use of force under section 28 of the Police Act in the case of *Charles Munyeke Kimiti v Joel Mwenda & 3 Others*[280] to mean that "the law only allows the police to use all means necessary to effect arrest and even then, they are not allowed to use greater force than reasonable or necessary in the particular circumstances." The Criminal Procedure Act under section 21 also provides that, when making an arrest, the use of greater force is not justified than was reasonable in the particular circumstances in which it was employed or was necessary for the apprehension of the offender.[281]

23. The reforms undertaken by the Government are to be commended. The Special Rapporteur is cognizant that realizing the reforms will not be instant; there has to be commitment to translate the laws into practice. The institutions will not change overnight, there has to be continued evaluation to assess progress being made.

278 Gazette Notice No.4790, *Kenya Gazette*.
279 Gazette Notice No.169, *Kenya Gazette*.
280 Court of Appeal at Nyeri, Civil appeal 129 of 2004.
281 Criminal Procedure Act; Chapter 75.

In the report on his 2013 mission to Mexico, Special Rapporteur Heyns examined the link between the military becoming involved in policing and excessive use of force:

Report on Mission to Mexico (A/HRC/26/36/Add.1, 28 April 2014, ¶¶20-26)

20. According to information provided to the Special Rapporteur, [President] Peña Nieto has stated that the armed forces will continue carrying out public security tasks until the new strategy on security and justice is applied, which will allow for their gradual return to the barracks. The Special Rapporteur welcomes this commitment, although few details were available on its implementation at the time of writing.

21. The Special Rapporteur further notes that, in any country, soldiers involved in policing are notoriously unable to relinquish the military paradigm. Their training often leaves them unsuited for law enforcement. The primary objective of the military is to subdue the enemy through the use of superior force, while the human rights approach, in terms of which all law enforcement operations must be judged, focuses on prevention, arrest, investigation and trial, with force only as the last resort, and lethal force being permissible only to prevent the taking of life. The Special Rapporteur warns that following a military approach to public security risks creating a situation where a civilian population is vulnerable to a wide range of abuses. Moreover, there is insufficient accountability for these abuses in the military justice system, which lacks independence and transparency and has systematically failed to effectively prosecute soldiers alleged to have committed serious abuses. This reality is particularly critical in Mexico and should be addressed immediately.

22. The Special Rapporteur was informed that, from 2006 to April 2013, of the 52 recommendations made by the National Human Rights Commission (CNDH) relating to violations of the right to life, 39 were made to the Ministry of Defence and the Ministry of the Navy. Therefore, three out of four CNDH recommendations involving the right to life were directed at the armed forces. He considers this to be a highly revealing figure that underscores the risk of assigning public security tasks to the military.

23. Interlocutors at various levels of Government described how, within the strategies to reduce violence, the Pact for Mexico proposes the creation of a national gendarmerie. However, in the Special Rapporteur's estimation, many questions remain about this new governmental security force and the level of support it enjoys. The reasons for its creation were not clarified and its characteristics remain undefined, along with the nature of its relationship with other security institutions.

24. The Special Rapporteur received information that the national gendarmerie was expected to have 40,000 officers who are militarily trained but under civilian control, although information subsequently obtained suggests that the numbers could be significantly lower. He reiterates that, if the gendarmerie's establishment moves forward, all efforts should be made from the outset to ensure that, as a law enforcement body, it functions within a human rights framework, including through sufficient and specialised training on the use of force in law enforcement contexts, rather than a focus on military principles. In line with this, the Special Rapporteur stresses that officers who commit wrongful acts should be held accountable under the civilian justice system.

25. An important component of overcoming the military paradigm is to focus on strengthening the capacity of civilian authorities – including judges, prosecutors, investigative police, and other justice officials – to prevent, investigate and prosecute crimes. Information received stipulates that the budget of the army and the navy has increased significantly since late 2006. Mexico should consider making the necessary budgetary allocations to strengthen the capabilities of the civil authorities responsible for ensuring order and justice.

26. Likewise, the number of civilian police should be increased. According to information received, only half of the states have a police presence above the minimum recommended by the United Nations. Coahuila and Tamaulipas, where some of the highest levels of insecurity prevail, have the lowest rate of police presence in the country. The quantity and quality of police personnel should be improved significantly and other measures taken to reconstruct the social fabric in a country gravely affected by social disparity.

4. Recommendations for the management of assemblies

In relation to the management of assemblies and protests, political considerations (especially where protestors are opposed to the government or are voicing concern about government abuses) and/or discrimination on the basis of, for example, ethnicity or religion, may be factors driving poor police protection or police violence. To that end, Special Rapporteur Heyns proposed a set of norms to ensure human rights compliance when managing these events.

Report to the Human Rights Council (A/HRC/17/28, 23 May 2011, ¶119)

F. Policing protest: evolving principles

119. The Special Rapporteur suggests that a set of norms, such as the following, could provide a foundation for managing demonstrations in a way that protects the lives of all concerned:

1. The State has a duty to facilitate public protest by providing protesters with access to public space, and protecting them, where necessary, against outside threats.
2. The proper management of demonstrations depends on communication and collaboration among protesters, local authorities and police – the so-called "safety triangle." Dialogue, and not draconian legislation, is the key.
3. There should be a presumption against limitations on assemblies (including prohibition and conditions). Limitations should be prescribed by law and be necessary, in a democratic society, to achieve a legitimate purpose, such as protecting the rights of others, and should, in principle, be content neutral. The possibility of appeal against limitations before an independent judicial organ should be available.
4. During the actual protest, the normal preoccupation about law and order by State agents should, as far as possible, give way to the narrower focus of preserving the peace, and protecting people and property against harm.
5. International standards in respect of the use of force by the police centres around necessity and proportionality. Firearms should be used only to prevent grievous bodily harm and death. Lethal force may be used intentionally only if the objective is to protect life, and less harmful measures are inadequate.
6. The standards applicable to the right to assembly and the use of force should be accessible to the public, e.g., through readily available legislation, to enable adequate planning and rational decision-making on how to protect one's own interests.
7. Procedures should exist, as a matter of course, for the investigation of any use of deadly force or discharge of firearms during demonstrations, and adequate disciplinary action should be taken where appropriate.

In their joint report on managing protests and assemblies, Special Rapporteur Heyns and the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, made a number of practical recommendations specifically relating to the use of force. After his mandate ended, Heyns continued to work on these issues, leading the process that developed the UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement (discussed above), as well as serving as Rapporteur to the UN Human Rights Committee for the adoption of its General Comment No.37 on the right of peaceful assembly (article 21).

Joint Report (with the Special Rapporteur on the rights to freedom of peaceful assembly and of association) on the proper management of assemblies (A/HRC/31/66, 4 February 2016, ¶¶49, 67)

D. States shall facilitate the exercise of the right of peaceful assembly

[...]

49. Practical recommendations:

a) States should promote diversity in law enforcement, so that communities see themselves in the police. This requires a sufficiently representative body with the inclusion of women and minority groups;
b) States should implement consistent planning approaches for all assemblies that follow a model based on assessing threat and risk and that incorporate human rights laws and standards as well as ethics;
c) Public authorities, including law enforcement, must be able to evidence their attempts to genuinely engage with assembly organisers and/or participants of assemblies;
d) Law enforcement agencies should ensure there is an accessible point of contact within the organization before, during and after an assembly. The point of contact should be trained in communication and conflict management skills and respond to security issues and police conduct as well as to substantive demands and views expressed by the participants. The liaison function should be separate from other policing functions;
e) States and law enforcement bodies should ensure that post-event debriefing mechanisms for assemblies are established permanently to facilitate learning and ensure the protection of rights;
f) Law enforcement should cooperate with stewards, where organisers choose to arrange them for an assembly. Stewards should be clearly identifiable and should receive appropriate training and briefing. Authorities should not require organisers to provide stewards;
g) Intrusive anticipatory measures should not be used in an assembly. Participants on their way to an assembly should not be stopped, searched or arrested unless there is a clear and present danger of imminent violence.

E. Force shall not be used unless it is strictly unavoidable, and if applied it must be done in accordance with international human rights law

[...]

67. Practical recommendations:

a) States should ensure that law enforcement officials have the equipment, training and instructions necessary to police assemblies wherever possible without recourse to any use of force;
b) Tactics in the policing of assemblies should emphasise de-escalation tactics based on communication, negotiation and engagement. Training of law enforcement officials should include pre- and in-service instruction in both classroom and scenario-based settings;
c) Before the selection and procurement of equipment, including for less-lethal weapons, by law enforcement agencies for use in assemblies, States should subject such equipment to a transparent and independent assessment to determine compliance with international human rights law and standards. In particular, equipment should be assessed for accuracy, reliability and its ability to minimise physical and psychological harm. Equipment should be procured only where there is sufficient capacity to train officers effectively on its proper use;
d) Specific regulations and detailed operational guidance should be developed and publicly disseminated on the use of tactical options in assemblies, including weapons, which, by design,

tend to be indiscriminate, such as tear gas and water cannons. Training must encompass the lawful and appropriate use of less-lethal equipment in crowds. Law enforcement officials should also be properly trained on protective equipment and clearly instructed that such equipment should be used exclusively as defensive tools. States should monitor the effectiveness of the training in the prevention of abuse or misuse of weapons and tactics;

e) Automatic firearms should not be used in the policing of assemblies under any circumstances; Autonomous weapons systems that require no meaningful human control should be prohibited, and remotely controlled force should only ever be used with the greatest caution;

f) States should develop comprehensive guidelines on the dispersal of assemblies in accordance with international human rights law and principles. Such guidelines should be made public and provide practical guidance to law enforcement officials detailing the circumstances that warrant dispersal, all steps required to be taken before a decision to disperse (including de-escalation measures), and who may issue a dispersal order;

g) Effective systems for monitoring and reporting on the use of force must be established by the State, and relevant information, including statistics on when and against whom force is used, must be easily accessible to the public;

h) The United Nations High Commissioner for Human Rights should convene an expert group to examine the application of the international human rights framework to less-lethal weapons and unmanned systems for law enforcement purposes, including with a focus on their use in the context of assemblies;

i) Effective controls should be established at national and international levels prohibiting the trade in policing and crowd-control equipment, including surveillance technology, where a serious risk exists that they could, in the context of assemblies, facilitate unlawful killings, torture or other cruel, inhuman or degrading treatment or punishment, or other human rights violations or abuses.