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USE OF POLICE FORCE: A FRAMEWORK TO ENSURE GOOD GOVERNANCE OVER THE USE OF FORCE

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CONTENT

While consideration of police use of force has been a contested space for many decades, recent events occurring across different regions of the world have ensured that the discussion has become a pressing topic on international policy and policing agendas. Controversial incidents of excessive use of force have failed to respect the principles of necessity and proportionality. This raises questions about the legality of police actions and the extent to which law enforcement institutions are accountable.[1]

Given the importance of police use of force and its centrality to both police legitimacy and effectiveness, DCAF has developed this paper to outline a framework for ensuring good governance and accountability regarding the use of force by the police. It aims to provide both policymakers and international partners who support reform efforts with guidance on the key pillars that drive police use of force governance, specifically effective accountability and legitimacy. The paper draws from multiple guidance documents and analyses experiences from the field to identify the structural and systemic issues impacting police use of force. Based on this wider understanding of the dynamics involved, DCAF aims to develop additional guidance, including a self-assessment framework on good governance and the use of force.

Experience shows that even when there is a robust policy framework, incidents related to the misuse of force still occur. This divergence between a fit-for-purpose policy and operational practice is in many cases driven by organisational culture. While not the only factor, when culture embeds defensive attitudes, such as 'them and us attitude', and tolerates values such as loyalty prevailing over integrity, for instance, it is likely that the operational practice will fall short of proper standards for the use of force. The counterbalance is a strong governance system anchored in a framework of accountability that deters misconduct, restores public confidence in policing and contributes to strengthening police officers' own confidence to act in complex situations.

Understanding use of force practices – how and the extent to which law enforcement agencies use force – is essential for policing as it has a direct impact on legitimacy and effectiveness particularly within a democratic context. Citizens need to be confident that the institution granted with special powers to enforce the law also observes the law, protects their rights, and is accountable for their actions.

This document has been built upon the work that DCAF has undertaken with police organisations in different regions along with the support of international policing experts. It is also informed by DCAF's decades of experience supporting police reform processes across a range of countries. The document offers specific examples that aim to illustrate the context dependent nature of each countries' practices. While some of

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1 This dilemma has been compounded over the last year when police institutions were granted additional powers to enforce necessary but often draconian and controversial pandemic control measures. In many cases, an expansion of the powers of law enforcement agencies has brought increased calls for accountability

the examples come from countries with relatively low levels of crime and violence, the rationale behind their use of force practices is still worth considering as the underlying principles can often be adapted even to contexts that are more fragile or complex.

This paper considers the different pillars of a governance system across external, organisational, and individual dimensions to ensure that police operational practices reflect the high expectations of international standards on the police use of force. The analysis focuses on three main dimensions of the use of force: rule of law, human resources, and accountability.

- **Rule of Law -** Defining how the police should use force:

  Effective policing starts with a clear legal framework that provides proper guidance and a clear delimitation of police powers. However, no legal framework is effective without political and social commitment to the protection of democratic values and recognition of police as a legitimate institution. Accountability mechanisms (or check and balance mechanisms) should be in place to mitigate the risk that governments place the police in an inappropriate situation. Governments must also ensure that domestic laws as well as internal rules and protocols on the use of force are in harmony with internationally recognised norms and good practices. Internal policies should be built with a transparent and participatory approach and should be complete and understandable for both officers and the public. Law enforcement institutions should ensure that policies are internalised by officers so that a culture of accountability is maintained. Policies should be also periodically reviewed by independent bodies.

- **Human Resources** - Selecting, preparing and equipping those who will use force:

  Police officers use force, not police institutions, but institutions do shape individual officers' approaches to using force, for instance through the selection and training of officers and their equipment. Recruits must meet, or be able to attain, basic eligibility criteria that should include level of education, physical requirements, good mental health, a clean criminal record, and other specific skills. Police staff should be diverse, inclusive, gender sensitive, and reflective of the communities they serve.

  Working conditions such as compensation, benefits, rewards, facilities, and equipment are factors that should be considered because they motivate police officers to work with integrity.[2] Working conditions also play an important role in the recruitment of new members, their qualifications, and the quality of their work in the field. Training on the use of force should be provided to all officers and in particular to frontline officers who are in regular contact with the public. It must go beyond lessons on how to exercise force applying the principle of progression. It should emphasise alternatives to force (such as non-violent conflict resolution, de-escalation techniques, and communication skills) and include the development of judgmental and stress management skills. The latter, along with emotion management, plays a key role in

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[2] DCAF Training Manual on Police Integrity, 179-180.

officers' behaviour and decision making. A proactive and supportive approach in this regard is also important. Equipment should be procured, stored, managed and used in line with international guidelines. Trainings and reports on when and how lethal and less lethal weapons are used should be emphasised.

- **Accountability** - Checks and balances to ensure compliance:

  Accountability is crucial for effective policing. It is key for building trust in police institutions. Accountability involves different actors (the police themselves, state institutions, oversight bodies, civil society, etc.) who play complementary roles via internal and external control mechanisms. Internal mechanisms should be based on proactive supervision and strong reporting systems that record decisions and the rationale behind the use of force. This informs investigations as well as training, planning, and tactical decisions. Internal investigation departments are key for an effective disciplinary system. Any case of arbitrary or excessive use of force should be treated as a criminal offence.

  External mechanisms are also crucial; they foster transparency, build legitimacy and help reduce impunity. They may deal with complaints, set priorities, exercise control and scrutiny, provide independent assessment, undertake monitoring, and/or inform decision making processes. A strong system of internal and external checks and balances deters misconduct and provides the basis for a culture that upholds democratic values, including respect for human life, protection of human rights, integrity and legitimacy. A culture based on these values discourages violence and the use of force which, when needed, is used in compliance with proper policy standards.

  Ensuring that police institutions fulfil the responsibilities incident to their power to use force requires more than increasing the number of hours of training on human rights or adjusting public order protocols. While necessary, governance itself must also be strengthened and organisational models (within which police use of force is operationalised) must be designed to encourage a culture of accountability that restrains the use of force when it is not compliant with legal principles.

  While the police is the institution empowered to use force, the issue of the use of force sits in a much broader system and includes the executive, legislative, and judicial structures of the government. The stakeholders in this system also include, but are not limited to, those who provide formal and informal external oversight. The issue of police use of force requires an understanding of the whole system in which it is embedded. The engagement of many stakeholders is what underpins the good governance required to ensure force is used in a way that is proportional, human rights compliant, and ultimately supports the police in their mission of keeping communities safe and secure.

GLOSSARY

Accountability (principle of good SSG)	Clear expectations for security provision, and independent authorities oversee whether these expectations are met and impose sanctions if they are not met.
Best practices	Strategies, guidelines, protocols, norms, and experiences from law enforcement agencies that have produced positive results in improving police respect of human rights and human dignity and are conducive to effective policing.
	Over many years a range of internationally recognised standards with respect to the use of force have been published including by the United Nations, European Union, and African Commission on Human and Peoples Rights.
	These are complemented by reports and recommendations from a variety of other respected organisations such as UNODC Handbook on Accountability Oversight and Integrity and Amnesty International's Guidance for the Implementation of the Basic Principles on the Use of Force. Internationally respected, comprehensive police reform reports have been published on contexts as different as Northern Ireland, South Africa, and the Philippines. Each of these have significant contributions to make in strengthening governance approaches to the use of force by police.
Blue wall of silence	A feature of police culture where loyalty is valued over integrity; it facilitates misbehavior by keeping misconduct concealed.
Checks and balances* [mechanisms]	A system that allows each branch of a government to amend or veto acts of another branch so as to prevent any one branch from exerting too much power.
	Check and balance mechanisms are the processes, techniques and/or systems that ensure the above.
Effectiveness (principle of good SSG)	When institutions fulfil their respective roles, responsibilities, and missions to a high professional standard.
Efficiency (principle of good SSG)	When institutions make the best possible use of public resources to fulfil their respective roles, responsibilities, and missions.
Fit-for-purpose+	Adequate to the job it was designed to do; suitable; proper; convenient.
Good security sector governance (SSG)	Good SSG means applying the principles of good governance to security provision, management, and oversight in a national setting.
	Good SSG is based on the idea that the security sector should be held to the same high standards of public service delivery as other public sector providers.
	The concept of good SSG shows how to make a state's security sector more

	effective and accountable within a framework of democratic civilian control, rule of law, and respect for human rights.
International standards on police use of force **Internationally recognised norms**	For the purposes of this document, we refer to international guidance provided by the United Nations such as the UN Code of Conduct for Law Enforcement Officials (CCLEO) of 1979 and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF) of 1990 whose compliance is mandatory for Member States that have ratified such conventions. In 2020, the UN issued supplementary guidance on less than lethal weapons. Collectively these documents create a framework of principles for both States and their Law enforcement Agencies.
Participation (principle of good SSG)	All men and women of all backgrounds have the opportunity to participate in decision making and service provision on a free, equitable and inclusive basis, either directly or through legitimate representative institutions.
Principles of good security sector governance (SSG)	Accountability, transparency, rule of law, participation, responsiveness, effectiveness, efficiency
Responsiveness (principle of good SSG)	When institutions are sensitive to the different security needs of all parts of the population and perform their missions in the spirit of a culture of service.
Rule of law (principle of good SSG)	All persons and institutions, including the state, are subject to laws that are known publicly, enforced impartially, and consistent with international and national human rights norms and standards.
Security Sector Governance (SSG)	Focuses on the formal and informal influences of all the structures, institutions and actors involved in security provision, management and oversight at national and local levels.
Them and us [attitude] also: them vs. us°	Used when describing disagreements or differences, especially between different groups.
Transparency	Information is freely available and accessible to those who will be affected by decisions and their implementation.

* Merriam-Webster dictionary,
https://www.merriam-webster.com/
⁺Macmillan dictionary,
https://www.macmillandictionary.com/us/dictionary/british/fit-for-purpose
°Cambridge Dictionary,
https://dictionary.cambridge.org/dictionary/english/them-and-us

INTRODUCTION

Law enforcement agencies are entrusted with a broad range of duties to protect and uphold people's rights. For this purpose, police are granted power and authority which enable them to serve and protect their communities through the provision of social assistance, maintenance of order, and the deterrence of criminal behaviour. Such authority comprises, in many cases, the power to use force elevating law enforcement institutions to a uniquely privileged position. With this power comes obligations and responsibilities. Establishing a balance between authority and responsibility is central to issues of legitimacy and consent, and requires a robust system of governance.

Governance is the exercise of power and authority and encompasses formal and informal norms, structures, rules, and processes that have an impact on the provision of public goods and services.[3] In democratic states, both power and authority are subject to a system of check and balance mechanisms to ensure the right use of those special faculties. The institution of the police is embedded within this system and its functions, particularly those related to the use of force, are bound to comply with the same democratic principles of good governance.

Police use of force has been a contested topic for many decades, yet recent events occurring across different regions of the world have ensured that the discussion has become a pressing topic on international policy and policing agendas. Controversial incidents of excessive use of force and failing to respect the principles of necessity and proportionality have raised questions about the legality of police actions and the extent to which law enforcement institutions are accountable.[4]

Internationally recognised standards with respect of the use of force have been published by the United Nations, the European Union, and the African Commission on Human and Peoples Rights over the course of many years. These are complemented by reports and recommendations from a variety of other respected organisations such as the UNODC Handbook on Accountability Oversight and Integrity and Amnesty International's Guidance for the Implementation of the Basic Principles on the Use of Force. Internationally respected, comprehensive police reform reports have been published on such dissimilar contexts as Northern Ireland, South Africa and the Philippines. Each of these have significant contributions to make in strengthening governance approaches to the use of force by police.

How and the extent to which police use force is central to their legitimacy and their relationship with the communities they serve. In some contexts, the police will be politically directed or influenced, and their operational practices, especially in dealing with assemblies or protests, will be designed to further a government's agenda. Even

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3 DCAF, Security Sector Governance SSR Backgrounders, 2.
4 This dilemma has been compounded over the last year when police institutions were granted additional powers to enforce necessary but often draconian and controversial pandemic control measures.

in democratic contexts with a high degree of operational independence, a strong policy framework, and robust internal guidelines incorporating international standards, incidents and allegations of misuse of force still occur.

This divergence between fit-for-purpose policy and operational practice which falls short of such standards, is in many cases driven by organisational culture. There are many positive qualities associated with a recognised police culture, but these values can easily shift to negative attributes, including a 'them and us attitude' and a defensive 'blue wall of silence' – where loyalty is often valued over integrity.[5] The counterbalance is strong governance and a framework of accountability, defined as a system of internal and external checks and balances aimed at ensuring that police carry out their duties properly and are held responsible if they fail to do so. Such a system is designed to ensure police integrity, deter misconduct and restore or enhance public confidence in policing. It also helps strengthen police officers' own confidence to act in complex situations. Dilemmas found on the ground often involve the choice between potentially using force and inaction. The latter option is often perceived as safer in contexts where human rights is deemed to be a burden and is used by police detractors to criticize them; or in cases where public confidence in the judicial system is low (i.e., where offenders are easily released).

Understanding use of force practices from a governance/accountability perspective is essential for policing as it has a direct impact on the legitimacy and effectiveness of the police within a democratic context. Citizens need to be confident that the institution granted with special powers to enforce the law also observes the law, protects their rights and is accountable for the way in which it fulfils the responsibilities with which it has been entrusted.

Society, and particularly cultural norms, can greatly impact policing and particularly how police use force. Police officers are members of their communities and their values are for the most part similar to the rest of their society.[6] A society's specific social, economic, and cultural characteristics (including its levels of violence and crime) along with citizens' needs and expectations largely explain the differences among police services around the world. Different political contexts might influence the role of the police, different legislative systems might result in judicial direction of the police or in operational independence. There are countries where completely independent organisations have been created to oversee the role of the police or to carry out investigations into complaints. In other contexts, these matters might be handled by a specialised unit within the police who are answerable to an external supervisory figure.

Figure 1 illustrates how public support is essential for policing. Such support follows from accountability, transparency and integrity in all aspects of policing and particularly the use of force. This approach, also known as 'policing by consent', is the basis of police traditions in countries such as the United Kingdom, Canada, Australia, and New Zealand.[7]

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5 UNODC - Handbook on police accountability, oversight, and integrity, 76.
6 DCAF Training Manual on Police Integrity, 148.
7 "Policing by consent" is based in the concept that the public as a whole gives consent to the idea that some members of the community (the police) are trusted to have and exercise the powers required to keep the peace on behalf of the community. This concept derives from the nine principles of policing developed by Robert Peel in 1929.

Countries where policing traditions or philosophies have revolved more around the concept of crime control (such as Germany) have, over the last two decades, also increased their emphasis on community engagement and cooperation.[8]

Figure 1. The Confidence Cycle
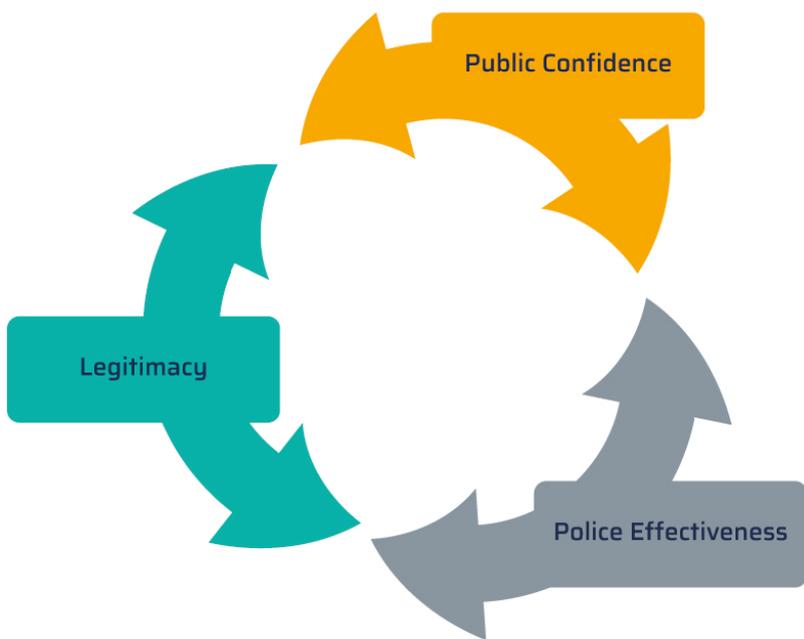
Source: Strengthening the Role of Civil Society in Holding the Police Accountable for Human Rights Violations, Workshop Report, 17 April 2019.

Given the importance of the debate around the use of force and its centrality to both police legitimacy and effectiveness, DCAF has developed this paper to outline a framework for ensuring good governance and accountability over the use of force by the police. It aims to provide both policymakers and international partners supporting reform efforts with guidance on the key pillars whereby the police use of force systems enable effective accountability and legitimacy. The paper draws from multiple guidance documents and analyses experiences from the field in order to identify the structural and systemic issues impacting police use of force. Based on this wider understanding of the dynamics involved, DCAF aims to develop additional guidance, including a self-assessment framework on good governance and the use of force.

This paper builds upon the work that DCAF has undertaken with police organisations across a range of regional contexts with the support of international policing experts. The inclusion of diverse country examples aims to highlight that there is no perfect system or model. Rather, there are practices with underlying principles which can be applied in a context-specific manner.

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8 Policing in Germany: Development in the last 20 years, Chapter 7.

Most considerations of police use of force tend to focus on specific incidents. Media attention is often placed on injuries sustained by civilians or images of police officers using batons, tear gas or similar equipment. Investigations and reviews usually examine the actions of individual officers, particular units or specific events. While attention to specific incidents is important, this paper is intended to support a wider and more systemic understanding of the dynamics involved in the use of force by police. These dynamics may fall in any of the three dimensions: individual, organisational, or external.

Figure 2. Dimensions of the Use of Force

Organisational culture and subcultures Internal polices and guidelines Human Resources Management Decisions on training, equipment, accountability

Talent and qualifications Values and beliefs

USE OF FORCE

Political and social context Legislation External accountability

Source: Prepared by the authors based on DCAF's Training Manual on Police Integrity

The following sections of this paper consider the key links which ensure that operational practice reflects the high expectations of international standards on the police use of force:

- **Rule of Law:** Defining how the police should use force
- **Human Resources:** Selecting, preparing and providing proper tools to those who will use force
- **Accountability:** Checks and balances to ensure compliance

USE OF POLICE FORCE: THE BASIC FRAMEWORK

Definition and internationally recognised norms: main principles

Whereas there is no single universally agreed upon definition of use of force, there is a common understanding of use of police force as the "amount of effort required by police to compel compliance by an unwilling subject".[9]

Police officers may resort to using force to mitigate an incident, confront resistance, or protect themselves or others from harm. Force may be required across the whole range of police functions, including stop and search, seizures, arrests, detentions, crime-fighting operations, and the management of public assemblies.[10]

Depending on the context, the levels of force employed can range from mild physical restraint to deadly force. In every case, the use of force must be governed by international human rights law and domestic law.

Key international guidance is provided by the United Nations with the UN Code of Conduct for Law Enforcement Officials (CCLEO) of 1979 and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF) of 1990 whose compliance is mandatory for Member States that have ratified such conventions. Both the European Court of Human Rights and the Inter-American Court of Human Rights have cited them as authoritative statements governing police use of force.[11] In 2020, the UN issued supplementary guidance on less lethal weapons.[12] Collectively, these documents create a framework of principles for both States and their Law enforcement Agencies:

> " In carrying out their duties, law enforcement officials shall, as far as possible, make use of non-violent means before resorting to the use of force or firearms. They may use force only if other means appear ineffective or without any promise of achieving the intended result.[13] Any use of force by law enforcement officials shall comply with the principles of legality, precaution, necessity, proportionality, non-discrimination and accountability. "

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9 International Association of the Chiefs of Police, Police Use of Force in America. Alexandria,1.
10 In many countries, due to the COVID-19 pandemic, this has been extended to include lockdown and curfew enforcement and restrictions related to mask wearing.
11 ee European Court of Human Rights (ECHR), Benzer v Turkey, Former Second Section, Judgment No. 23502/06 §90, 12 November 2013 (as rendered final on 24 March 2014); Cruz Sánchez et al v Peru (Preliminary Objections, Merits, Reparation, and Costs), No. §264, Inter-American Court of Human Rights, 17 April 2015. The Court refers to the 1979 UN Code of Conduct for Law Enforcement Officials in the same paragraph; and the Case of Women Victims of Sexual Torture in Atenco vs. México, Inter-American Court of Human Rights, 28 November 2018. The Court states that the observance of action-oriented measures, when the use of force is imperative, requires compliance with the principles of legality, absolute necessity, and proportionality.
12 UNOHCHR, Guidance on Less-lethal Weapons In law enforcement, 2020.
13 UNOHCHR, Basic Principles Use of Force and Firearms by Law Enforcement Officials, Principle 4.

REGIONAL AND SUB-REGIONAL POLICY FRAMEWORKS DEFINING OR REAFFIRMING STANDARDS AND VALUES FOR USE OF FORCE IN AFRICA

In Africa there are several important policy and guidance frameworks at the continental and sub-regional levels that help define common principles, values, and standards for police when using force. This includes core principles for use of force being described in the 'Model Police Law' as presented by the Pan African Parliament (2021), Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa published by the African Commission on Human and Peoples Rights, and the Common Standards for Policing in East Africa which were developed by the African Policing Civilian Oversight Forum (APCOF) in collaboration with the East African Police Chiefs Organisation (2010).[14] These policies help translate international norms and guidelines into regionalised frameworks and can serve as important reference frameworks when new procedures or laws are being developed at national levels.

Legality: The use of force shall be regulated by domestic law and administrative regulations in accordance with internationally recognised norms. The use of force can be justified only when it is used with the aim of achieving a legitimate law enforcement objective. The relevant State legislation must be clear enough to ensure that its legal implications are foreseeable and must be widely published to ensure that it is easily accessible to everyone. In law enforcement, force shall never be used punitively. Only equipment duly authorized by the relevant state authorities may be used by law enforcement officials. Domestic law and regulations shall specify conditions for the use of less-lethal weapons and related equipment and shall impose limitations on their use in order to minimize the risk of injury.

Precaution: Law enforcement operations and actions shall be planned and conducted while taking all necessary precautions to prevent or at least minimize the risk of recourse to force and to minimize the severity of any injury that may be caused.[15] Law enforcement officials should delay direct contact or engagement with members of the public if that would make the need to use force or the potential for violent outcomes less likely, and if the delay causes no danger to the individual posing the threat or to others. Training law enforcement officials, equipping them with adequate protective equipment and an appropriate range of less-lethal weapons, and deploying these officials are essential precautionary measures if unnecessary or excessive harm is to be prevented.

Necessity: The principle of necessity requires that, to achieve a legitimate law enforcement objective, no reasonable alternative appears available at that moment other than resorting to the use of force. In particular, law enforcement officers must seek to de-

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14 African Policing Civilian Oversight Forum, https://apcof.org/.
15 See McCann and others v. United Kingdom, Judgment para. 194, European Court of Human Rights, 27 September 1995; Nadege Dorzema and others v. Dominican Republic, Judgment para. 87, Inter-American Court of Human Rights, 24 October 2012; UNOHCHR 1990 Basic Principles Use of Force and Firearms by Law Enforcement Officials, Principle 5(b); UNOHCHR Report of the Special Rapporteur on extrajudicial, summary, or arbitrary executions (A/HRC/26/36), para. 63 New York: United Nations 2014; African Commission on Human and Peoples' Rights, General Comment on the Right to Life para. 27.

escalate situations, including by seeking a peaceful resolution to a dangerous situation whenever possible. When the use of force is reasonably necessary in the circumstances, only the minimum force required to achieve that objective shall be used. The use of force must cease as soon as it is no longer necessary.

Proportionality: The type and level of the force used and the harm that may reasonably be expected to result from it shall be proportionate to the threat posed. In no case should the force used be excessive in relation to the legitimate objective to be achieved. For example, force that is likely to result in moderate or severe injury – including when applied by less-lethal weapons – may not be used simply to obtain compliance with an order by a person who is only passively resisting. At all times, law enforcement officials should consider and minimise the possible incidental impact of their use of force on bystanders, passers-by, medical personnel and journalists. They shall not direct force against such persons, and any incidental impact must be strictly proportionate to the legitimate objective to be achieved.

Non-Discrimination: Law enforcement officials shall not discriminate against any person on the basis of race, ethnicity, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, disability, property or birth, or other similar criteria. To ensure non-discrimination and de facto equal treatment of persons subject to the use of force, a heightened level of care, precaution and differentiation shall be exercised with respect to individuals who are known or are likely to be especially vulnerable to the effects of a particular use of force. Monitoring, including with reference to appropriate information about those against whom force is used, is a critical element in efforts to ensure that force is not used in a discriminatory manner.

Accountability: Under international human rights law and international principles on the use of force, States are under an obligation to ensure that law enforcement officials are held accountable for their actions, including any decision to use force. As law enforcement officials are required to protect the public, in certain circumstances States are also obliged to hold them accountable for omissions.[16] Effective accountability for law enforcement officials involves many different actors: government representatives, parliament, the judiciary, civil society actors and independent oversight bodies, including national human rights institutions or ombudspersons' offices. Primarily, however, it concerns the police and other law enforcement agencies themselves.[17]

Accountability is key to bridging the gap between policing policy and practice. Part three of this paper deals with the concept of accountability in more detail.

While it is important to recognise that there is not such a thing as a comprehensive legally binding international legal framework on use of force that holds all countries accountable, the guidance provided by the United Nations works as a broadly recognised reference point to assess domestic legislation and actual practice.

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16 UNODC, Handbook on police accountability, oversight, and integrity, 31.
17 Idem, iv.

INTERNATIONAL NORMS AND GUIDELINES AS THE BASIS FOR MINIMUM USE OF FORCE STANDARDS IN THE SOUTHERN AFRICAN REGION [18]

The code of conduct adopted by the Southern African Police Chiefs Cooperation Organisation (SARPCCO) which brings together 13 countries (Angola, Botswana, the Democratic Republic of the Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe) derives mainly from the UN principles and norms including the CCLEO and BPUFF. The SARPCCO Code of Conduct sets a basic framework on police use of force in the region which country-members undertook to implement even if they are not signatories of specific UN treaties.[19]

Key Aspects Of A System Of Good Governance For The Use Of Force

Effective policing starts with proper guidance and a clear delimitation of police powers. Laws, rules and regulations, procedures, and protocols related to use of force should be in harmony with the internationally recognised norms and guidance. The legal framework should be accompanied by functional processes and systems to bolster compliance with the rules established along with the faculties and capabilities to enforce conformity and impose sanctions when needed. All of these key aspects require a robust system of accountability to ensure compliance.
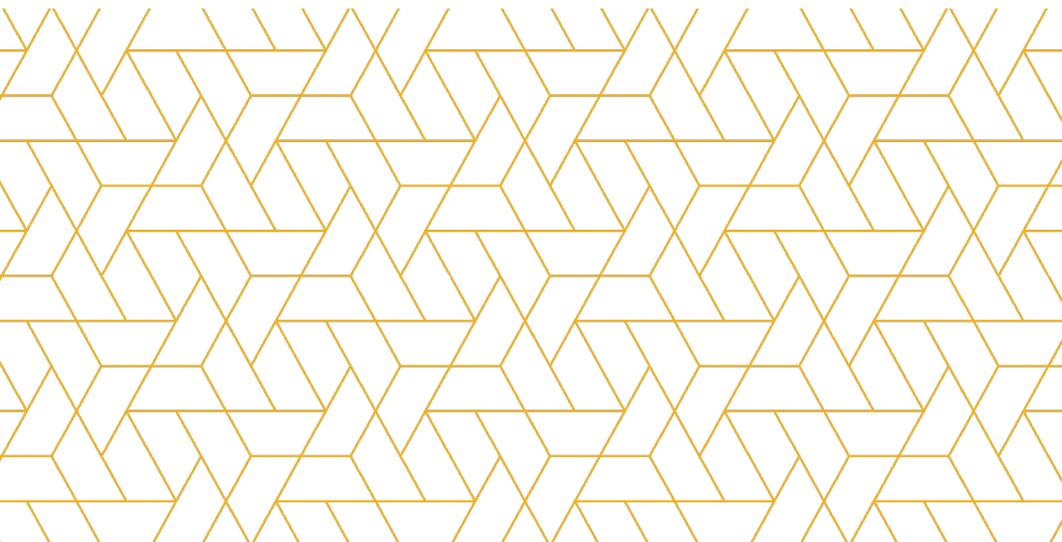
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18 SARPCCO Code of Conduct for Police Officials, http://apcof.org/wp-content/uploads/2016/05/Implementing-the-SARPCCO-Code-of-Conduct-.pdf.
19 Implementing the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO) Code of Conduct, 1-49.

Police institutions can benefit from strengthening their governance system as this helps to ensure compliance with international and domestic legal frameworks and leads to higher levels of legitimacy. International experience can provide examples on how good governance principles - applied to the aspects of the use of force, including on policy, human resources and equipment - are essential for achieving effective policing.

The governance principles and systems considered within this paper not only concern the police themselves, but also many other state and non-state actors. The nature of the political and social context and the legislative framework within which they work will ultimately define the organisational structure for the use of force. The police are strongly influenced by outside factors: the political system determines its structures (decentralised in a federal state, centralised in a unitary state); the legislation and the justice system play an important role as do the values and strength of civil society. These important influences necessitate looking at the relations between the surrounding environment and the police.[20]

To create an environment where the police are orientated toward human rights compliance requires positive political direction with regard to the rule of law and a framework of legislation that incorporates internationally recognised standards and principles.

Strategic / Political factors

States, in particular those which are signatories to international conventions (both the UN and regional human rights courts), are responsible for setting the agenda to create and oversee a complete framework that ensures compliance with the highest standards on the use of force. Normative changes, organisational reform and modernisation processes are insufficient and inefficient if not accompanied by political commitment.[21]

> ### IMPACT OF POLITICAL DECISIONS ON POLICE REFORM IN MYANMAR
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> The recent case of Myanmar illustrates how strongly political direction and leadership can influence policing, regardless of existing police internal guidelines, rules, and protocols. Since 2012, the Myanmar Police Force (MPF) had been under an administrative reform process, adopting community-based policing as its main philosophy. A study conducted in 2019 shows that the stagnation in adopting the new philosophy was due to the influence of key decision-makers who held a discipline-oriented ethos with values that were in conflict with the community-oriented concept. This hindered the efforts to attain the public participation necessary for adopting community-based policing.[22] More recently, the

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20 DCAF Training Manual on Police Integrity, 86.
21 David H. Bayley. Police reform: Who done it, 7.
22 Aung Myo Maung, Administrative Reform in the Myanmar Police Force: Decision-Making and Community-Based Policing, 428-443; CNN, Myanmar police who fled to India say they refused orders to shoot protesters, https://www.cnn.com/2021/03/11/asia/myanmar-india-mizoram-intl-hnk/index.htmll.

conflict between democratic values and political factors can be seen in the cases of police officials fleeing the country as they refused to follow orders to shoot protesters.[23]

Police act under the authority of the government in power, and the specifics of this relationship are unique in each country. Governments have the responsibility to emphasise the role of police as a guarantor of citizens' rights. Police reform or modernisation processes undertaken to improve use of force practices are long term endeavours and likely extend across presidential or parliamentary terms. Achieving observable progress may take longer than the average election cycle of most countries. This means that besides political support, processes to improve use of police force should be grounded in dialogue, openness, transparency and citizen participation. This promotes trust and confidence building which is essential for reform processes and especially for legitimacy and public support.

The policing of assemblies highlights the importance of governments to set strategic direction for the actions of the police. Often protests can be directed specifically at governments, their policies or the positions they take on foreign affairs. Having a legal framework that facilitates the right to freedom of assembly and protest is an essential factor in determining how the police facilitate and manage such assemblies. Equally important is the tolerance by governments of such freedoms and their public and private positions on how the police should respond.

IMPACT OF POLITICAL FACTORS ON POLICE MANAGEMENT OF PUBLIC ASSEMBLES IN NICARAGUA

In 2020, a divisive political discourse that stigmatized public assemblies and branded them as violent riots generated hostility between police officers and protesters. During the National Coalition Protests against President Daniel Ortega, police were commanded to detain demonstrators protesting against the current regime. This violation of international law took place despite the fact that the right to free assembly is enshrined in the Nicaraguan National Constitution.[24]

Legal framework

Police observance of law along with its correct and impartial implementation is imperative for democracy and legitimacy. However, this presupposes that the law itself is fit-for-purpose. The broadly recognised international framework referred to earlier in this paper contains the standards upon which each State must create its domestic legal framework.

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23 BBC News, Myanmar coup: 'We were told to shoot protesters', say police who fled, https://www.bbc.com/news/world-asia-56343982.
24 DW, Policía de Nicaragua encierra a opositores para impedir protestas, https://www.dw.com/es/polic%C3%ADa-de-nicaragua-encierra-a-opositores-para-impedir-protestas/a-52516801

While police use of force should reflect the international standards and adhere to the key principles that are enshrined within the various United Nations Codes, police officers will still be required to enforce national legislation. If this national legislation is deficient in their instructions, then implementation outcomes by officers will be inappropriate.

National governments use legislation to set the tone for the nature of operational policing particularly with regards to the use of force. Although legislation cannot deal with all of the challenges that law enforcement officials may face in their daily work, it must at least provide basic guidance to ensure that law enforcement officials comply with relevant international human rights law and standards.

Law enforcement officials must not be exempt from criminal liability for unlawful acts committed in the course of their duty and legal provisions should ensure an entitlement to refuse orders which are clearly unlawful.

National courts may also contribute positively or negatively through their interpretation and implementation of law. While international and regional human rights courts might review and contradict domestic interpretation, these processes are lengthy and take many years to reach a judgement, which then requires more time to be incorporated into domestic law.

The legislative framework of countries should be complete, clear, unambiguous, enforceable, and consistent with human rights law and international standards. Domestic laws and standards should be accessible and understandable to both police officers and the public. Since policing takes place in an ever-changing environment, the suitability and compliance of the legal framework should be periodically reviewed by competent, independent, and impartial administrative and judicial authorities, and updated as needed.

COMPLIANCE OF LEGAL FRAMEWORK ON USE OF FORCE AS A BASIS OF LEGISLATIVE REVIEW IN INDONESIA

In Indonesia, police organisations and the operation of the national police is governed by the Law on State Police No.2 (2002) and by Presidential Decree No. 70 (2002). However, neither the Law nor the Decree mention use of force by police. Instead, use of force is governed by two subsidiary regulations issued by the Chief of the National Police: No. 1 on the Use of Force in Police Action (2009), and No. 8 on Implementation of Human Rights Principles and Standards in the Discharge of Duties of the Indonesian National Police (2009). The two regulations highlight important principles relating to use of force by police, including legality, proportionality and use of force as a last resort. Nevertheless, the absence of independent mechanisms to provide oversight, to ensure police accountability and to address public complaints limits the effectiveness and credibility of these regulations.

POLICE TASKS AND POWER ACT (ZNPPol): SLOVENIA

The Slovenian Police Tasks and Power Act is a national law that regulates the powers and tasks of the police. It delineates in a clear and detailed manner the way in which police should perform their tasks and exercise their powers. The Act includes provisions for ensuring that basic police duties respect the security of individuals and communities, human rights, and fundamental freedoms, and enhance the rule of law. This comprehensive legal framework includes specific sections to regulate aspects of the use of force such as use of instruments of restraint, data collection and processing, reporting and supervision, and complaints against the work of police officers. For instance, Articles 80 and 81 provide a definition of the use of physical force and specify the circumstances in which it can be employed. Subsequent articles go further into detail about the use of gas spray, baton, police service dogs, and other means related to the use of physical force. The final sections contain several provisions on complaints mechanisms and procedures. These are often left uncovered in other national legislations and are only dealt with in police internal guidelines and protocols. In addition, the Act contains a robust level of detail while ensuring clarity of the content, as in Article 3 which contains key definitions of police concepts. This feature is important as it can be helpful to avoid ambiguity – a challenge often found in texts containing legal language.[25]

Internal Policy and Guidelines

Internal policies, protocols, and guidelines constitute fundamental building blocks of an approach to police use of force which complies with all relevant legal provisions. Whereas the legal framework delineates the rules governing police use of force, the internal policy and guidelines are intended to ensure compliance with that legal framework by providing direction about how and when such force can be used.[26]

Internal policies need to be clear and robust. Their objective is to provide guidance to police officers that is operationally achievable, sets high standards for the application of force, and ensures that individuals are responsible for their own conduct and those who they are commanding and supervising.

USE OF FORCE DURING PUBLIC HEALTH CRISIS IN THE ASIA-PACIFIC REGION: COVID-19 MEASURES

Reports about excessive and disproportionate use of force by security agencies in the enforcement of measures, such as lockdowns, curfews, and the wearing of masks emerged from many places around the world since the early stages of the COVID-19 health crisis. In responding to the pandemic, many governments quickly passed legislation and/or

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25 Republic of Slovenia, Police Tasks and Powers Act (ZNPPol), Official Gazette of the RS No.15/2013
26 Elements such as police doctrine, training plans and materials, operational practice, and accountability mechanisms are governed by internal policies, protocols, and guidelines.

executive orders that failed to adhere to human rights standards and also failed to address the risk of abuse of powers by police. For example, in the **Philippines,** security agencies have been accused of prioritising the security response to the health crisis with reports of abuses such as curfew violators being beaten and kept in dog cages.[27] In other places such as **Thailand,** state of emergency laws conferred unfettered powers on governments to respond to COVID-19; this disproportionately restricted the rights to freedom of peaceful assembly and freedom of expression.[28] Similarly, in **Cambodia** laws were quickly passed to regulate states of emergency, giving authorities unprecedented powers to implement measures that, while deemed appropriate and necessary by the Government, circumvented usual checks and balances.[29] In **India,** the COVID-19 pandemic prompted an internal migrant crisis that law enforcement agencies were unprepared for with responses including widely-publicised incidents of the use of batons and excessive force to manage the quarantine protocol among migrant workers seeking to return to their places of origin during the lockdown.[30] To ensure appropriate use of force which supports legitimate emergency response, **guidelines** are required with respect to the roles, responsibilities and appropriate actions of police and security services during public health crisis. Such guidelines should define appropriate uses of force and forms of punishment in the case of lockdowns, curfews, and other public health measures.[31]

Ensuring that officers know, understand, and internalise these policies is crucial to improve use of force practices. Having in place effective mechanisms to disseminate, promote, and test comprehension of internal policy/guidance is a key responsibility of law enforcement institutions, and this requires an awareness that police institutions are a reflection of their societies. Police institutions have evolved along with the societies they belong to, and tend to reflect their values, culture, levels of equality, social stratification and history.

SEPARATION OF POWERS IN GERMANY AS A RESPONSE TO ITS OWN HISTORY

A clear separation of powers, including checks and balances, are built into the German security system with the intent of distinguishing Germany's security agencies from the former secret police or Gestapo which, during the Nazi era, was granted broad intelligence and security authority with very little oversight.[32] Nowadays, Germany has three separate branches of security and intelligence-gathering: constitutional protection, criminal police and 'regular' police. Agencies belonging to these branches work at the federal and state levels with different degrees of independence.[33]

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27 The Philippines' COVID-19 Response: Securitising the Pandemic and Disciplining the Pasaway, 1-21; Philippines: Curfew Violators Abused, https://www.hrw.org/news/2020/03/26/philippines-curfew-violators-abused
28 Human Rights Watch World Report Thailand, https://www.hrw.org/world-report/2021/country-chapters/thailand
29 Cambodia: Scrap Abusive Covid-19 Bill, https://www.hrw.org/news/2021/03/05/cambodia-scrap-abusive-covid-19-prevention-bill
30 COVID-19: UN human rights chief "distressed" over plight of India's internal migrants, welcomes measures to limit impact, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25767&LangID=E
31 For more on the security sector and health crises, consult The Security Sector and Health Crises
32 Germany's domestic security services explained, https://www.dw.com/en/germanys-domestic-security-services-explained/a-16070984
33 Law enforcement in Germany, https://themarshall.fandom.com/wiki/Law_enforcement_in_Germany

Transparency is a key mechanism in establishing legitimacy and building confidence. Police agencies should therefore be encouraged to engage with stakeholders during policy development. Similarly, policies should consider communities' diversity and the gender perspective.

THE GENDER PERSPECTIVE IN THE PROTOCOLS OF USE OF FORCE OF NUEVO LEON MUNICIPAL POLICE, MEXICO

The 2018 Protocol of Action on Legitimate Use of Force and Obligations in the Accusatory Criminal System with a Human Rights, Gender and Intercultural Approach incorporates innovative elements. Unlike protocols of other police agencies, it explicitly points out that special consideration should be given when dealing with women, children and adolescents, pregnant women, people with disabilities or chronic illnesses, the elderly, those who speak another language, and members of the LGBTI community.[34]

Participation refers to the openness of the police institution to allow external actors to be part of the process. Involving external oversight bodies, who are charged with investigating complaints against police may help to ensure realistic expectations of policy demands. Technical knowledge should not be used as an argument against citizen participation. Focusing only on operational and procedural aspects while overlooking community concerns and expectations is a strategic mistake. Academia, civil society, NGOs and community interest groups will make important contributions, notably by giving the perspective of those who might be subject to use of force by the police. This maxim of openness, transparency and a collaborative approach should pervade all aspects of policing and ensure that internal guidelines are published and placed in the public domain to the furthest extent possible.

PARTICIPATION AND TRANSPARENCY IN THE DEVELOPMENT OF THE UK POLICE POLICY

In the United Kingdom it is normal procedure to consult interested parties when the police are developing policy and there are statutory obligations to do so. For instance, when developing a policy/guideline on issues relating to hate crimes or violence against women and girls, consultation and engagement will include non-governmental organisations, academia and specific interest groups.

The Independent Commission on Northern Ireland is an example of participation and inclusiveness. It brought together police officials, government representatives, external consultants and diverse groups from civil society such as political parties, churches, NGOs, community youth organisations, workers, editors, and academics to work together in meetings, research, consultations and written submissions with the aim of obtaining and assessing their views and opinions regarding policing.[35]

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34 Protocolo del Uso de la Fuerza Policías Municipales, Gobierno de la ciudad de Guadalupe Nuevo León, https://cadhac.org/docs/protocolo-uso-fuerza.pdf; Nuevo Sistema de Justicia Penal: La Policía en el Nuevo Sistema de Justicia Penal https://www.gob.mx/cms/uploads/attachment/file/53039/Revista_NSJP_X.pdf; Ley de Seguridad Pública del Estado de Nuevo León, http://www.hcnl.gob.mx/trabajo_legislativo/leyes/leyes/ley_de_seguridad_publica_para_el_estado_de_nuevo_leon/
35 Independent Commission on Policing for Northern Ireland, A New Beginning: Policing in Northern Ireland, 10.

Individual police officers use force, not police institutions. Likewise, teams of people plan operations where force might be necessary, and people command and supervise such situations. There is therefore a duty placed on police agencies to properly invest in selection, recruitment, training and equipping officers. There is also an obligation to provide support to officers, recognising that use of force situations can be stressful and traumatic.

In addition to an effective monopoly on the use of force (which may not be the case in some contexts), police officers also require, due to the nature of their functions, a significant level of discretion in how they intervene in any number of circumstances. This degree of discretion allows them to take appropriate actions as they confront diverse, often complex and unpredictable scenarios. The previous section looked at the role of law and policy in defining a framework for using force only when necessary and in proportion to the circumstance. This section addresses those issues where police organisations are required to invest in order to ensure that the people who exercise such discretion are competent and prepared to do so.

Attracting and retaining the right people

Police working conditions engage a range of dimensions including the physical, social, psychological, and emotional. Police officers typically work long, unpredictable hours. Depending on the department and rank, officers may have frequent contact with the public in conflictive and stressful situations and be daily exposed to different kind of hazards.[36]

Considering the nature of the responsibilities they hold, ensuring that police officers have proper working conditions is essential. Earlier, this paper referred to the concept of police culture. The conditions in which officers work as well as the level of perceived support from both senior command and more generally from the government are likely to impact the officers' sense of professionalism which, if negatively impacted, can result in corrupt practices, including in relation to the use of force. Officers who are charged with the responsibility to uphold the human rights of citizens must feel valued by the organisation that they work for. The phrase 'police officers have human rights too' is a much-cited retort when officers feel that their human rights are compromised. Ultimately, it is difficult to enforce a requirement for police officers to uphold the rights of others when theirs are being denied.

Beyond basic safety requirements and the physical environment that they work within, officers also have to be properly equipped and adequately paid to be able to carry

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36 As demonstrated by the COVID-2019 pandemic, police officers can also have higher exposure to diseases and infections.

out their duties effectively and with integrity. Appropriateness of the equipment also includes considerations related to gender; in many law enforcement agencies, uniforms and equipment are designed exclusively for men. Police budgets should not neglect the pay/conditions for officers on the ground. Keeping salaries low may have two key impacts:

- It deters higher quality recruits and leaves their position to be filled by less competent candidates.
- It creates enormous temptation for low-level corruption which impacts police integrity and legitimacy.

Working conditions, including remuneration, living conditions and health and safety provision, can all contribute positively or negatively to attracting a high standard of recruits to the organization and encourage a positive organizational culture that is supportive of the aims and objectives of the police institution.

Recruitment and career development

Police recruitment, retention, promotion, and career development practices all contribute to a positive organisational culture. As in any other organization, the way in which police institutions manage human resources plays a central role in its wellbeing. Human resources management is a broad topic that needs to be considered in any effort to improve policing practices, including those related to the use of force. Two aspects deserve special attention: recruitment and career development.

Recruitment is a key factor for effective policing as it has an impact on every other function of the police institution. Police officers are conferred with upholding the law, protecting people's rights, and keeping communities safe. A police officer's role is complex and requires professional competencies, skills, values, motivation, discipline, and the ability to meet high professional standards. This requires attracting talented people. Poor standards, illiteracy, substandard cognitive ability, or a lack interpersonal skills is detrimental to good decision making and to ensuring force is used within a good governance framework. Recruits must meet, or be able to attain, basic eligibility criteria that should include level of education, physical requirements, good mental health, a clean criminal record, and other specific skills which are required to deal with complex and sensitive cases, work effectively as part of a team, and remain calm and patient in stressful or volatile situations. Selection processes should include mechanisms to test and assess suitability, for example: exams, police assessment centres, vetting procedures, and some form of competency or psychometric testing.

Policing often relies on community relationships based on mutual trust and respect. This encourages citizen support, approval, and cooperation which reduces instances requiring the use of force. Developing strategies to recruit officers who are reflective of local communities is important as they are more likely to have a better understanding of people's needs, and communities can more easily identify with a police organisation composed of officers with whom they share similar values and traits.

Inclusiveness and diversity should be key considerations in any recruitment campaign. Strategies need to be developed to attract a diverse pool of applicants to ensure representation of women, youth, and other minorities and underrepresented groups. Targeted recruitment literature, welcoming statements and induction information workshops can all play an outreach role.[37]

DIVERSITY IN POLICE RECRUITMENT IN NORTHERN IRELAND

School liaison programs, cadet schemes, and explorer programs – which offer activity programmes for teenagers aiming to strengthen cooperative relationships with the communities – have led to improved recruitment from under-represented groups in countries such as Ireland.[38]

Principles such as equality and non-discrimination must be present in recruitment practices. The United Nations International Human Rights Standards for Law Enforcement include provisions to ensure fair community representation and that recruitment, hiring, training, assignment, salary, and promotions in police institutions are free from discrimination – for instance, recruiting sufficient numbers of women helps to protect the rights of female suspects, arrestees, and detainees.[39]Having a gender perspective is one of the ways, although not the only one, in which police improve responsiveness, particularly when it comes to use of force practices. For instance, women shall be detained separately from male detainees; pregnant women and nursing mothers require the provision of special facilities while in detention; and law enforcement agencies should recruit a sufficient number of women to ensure fair community representation and the protection of the rights of female suspects, arrestees, and detainees.[40]

U.S. STATISTICS SHOW THAT FEMALE POLICE OFFICERS ARE LESS LIKELY TO GET INVOLVED IN USE OF FORCE INCIDENTS

A US nationwide survey of 7,917 police officers conducted in 2017 by the Pew Research Center found that only 11% of female officers reported they had ever fired their weapon while on duty, compared with 30% of male officers. Female officers were also less likely to believe aggression is more useful than courtesy, less likely to agree that some people 'can only be brought to reason the hard, physical way' and less likely to report their jobs had made them callous. Similarly, a 2015 New York Police Department's (NYPD) Inspector General's report examined all substantiated cases of excessive force by NYPD officers between 2010 and

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37 In the United States, for instance, the guidelines of the Community Relations Service (a U.S. Department of Justice agency) for resolving community disputes involving excessive use of force, highlight the importance of making every attempt to have a police force that reflects the makeup of the community they serve. Targeting minorities (racial-ethnic; youth) in recruitment programmes is one of the main strategies.
38 Independent Commission on Policing for Northern Ireland, A New Beginning: Policing in Northern Ireland, 85-87; U.S. Department of Justice, Police Use of Excessive Force: A Conciliation Handbook for the Police and The Community.
39 UNOHCHR, International Human Rights Standards for Law Enforcement: A Pocket Book on Human Rights for the Police, 4, 13, 16, 17.
40 UNOHCHR, Professional Training Series No. 5/Add.3 Human Rights Standards and Practice for the Police Expanded Pocket Book on Human Rights for the Police.

2014 and concluded that although women made up 17% of all officers, they were involved in only 3.2% of excessive force cases. While addressing gender disparities in policing is not likely to solve deeper problems such as over-criminalization or structural racism, the aggregate data make a compelling case that gender diversity could reduce police violence.[41]

Women still represent a small fraction of the police force in most police agencies. Gender mainstreaming strategies addressing aspects such as recruitment, training, treatment of officers, and organisational culture are required to maintain a certain proportion of male and female officers in the service. In addition to gender considerations, police officers should be conscious of the particular needs that the people involved in any given event may have. This includes women, men, girls, boys, youth, LGBT, people with disabilities, etc.[42]

Overall, police institutions that ensure recruitment from all sectors of the community will be better suited to serve and protect citizens and comply with the international human rights legal framework.

Integrating professional civilian staff for recruitment processes is also recommended. The recruiting team should be diverse and reflect the types of individuals the institution is seeking to attract. New recruits should show willingness to embrace the organizational culture and doctrine. This facilitates organizational goals particularly regarding the use of force. For this purpose, special attention should be given to psychological testing, qualities such as integrity, and the reasons why applicants decide to become police officers.[43]

IMPACT OF RECRUITMENT CHALLENGES IN LATIN AMERICA ON USE OF FORCE

While countries such as Germany and the Netherlands have around 300 officers per 100,000 people and in England, Scotland and Wales the figure is around 200, countries such as Honduras and Mexico, where security conditions are more demanding, barely reach 144 and 65 officers per 100,000 people respectively. The pressure to increase numbers may work against the logic of strengthening the selection criteria.[44]

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41 One reason for police violence? Too many men with badges, https://www.washingtonpost.com/outlook/2020/06/18/women-police-officers-violence/

42 A good practical example would be the additional considerations regarding the use of force such as tear gas where children or pregnant women are present. Likewise, good practice requires a warning before any use of force, but those who have impaired hearing might not realise, those with impaired mobility might not be able to comply with the warning as quickly.

43 DCAF, Training Manual on Police Integrity, 2; Orrick, Recruitment and Selection of Police Officers, 82.

44 Secretaría de Seguridad y Protección Ciudadana México, Únete a la Guardia Nacional, https://www.gob.mx/sspc/articulos/y-tu-por-que-luchas-unete-a-la-guardia-nacional; Policía Nacional de Honduras, Requisitos para Ingresar Academia Nacional de Policía, https://www.policianacional.gob.hn/formar-parte; Politie Academie Netherlands, Welcome to the Police Academy https://www.politieacademie.nl/english; U.K. National Careers Service, Police Officer, https://nationalcareers.service.gov.uk/job-profiles/police-officer

Loosening the recruitment criteria may be detrimental to the qualifications of officers, which is critical in terms of the use of force. In Mexico, the National Guard - created in 2019 to replace the Federal Police as an answer to the country's 'internal security emergency' - asks for minimum requirements[45] in an attempt to increase the size of police forces. Although the National Guard performs a civilian role, it brings together personnel transferred from the Army, the Navy, and the former Federal Police. In 2019, the National Guard expected to have 82,747 members appointed as follows: 51,915 from the military, 12,837 from the Navy, and 17,955 from the dissolved Federal Police.[46] Procuring staff from three different institutions that do not share the same doctrines, standards, and procedures poses challenges in terms of culture and the adoption of use of force polices suitable to a law enforcement institution.[47] Amnesty International has reported incidents of abuses to human rights by member of the National Guard.[48]

Career development refers to the retention of staff and the progression through promotion or selection of those who are suited for higher rank or specialised functions. Prospects of a promising career based on merit can improve recruitment quality, lead to talent retention and development, and support police integrity since they have as incentive the potential to grow within the structure of the organisation. Career development pathways should be based on training, professionalization, and performance assessment. Promotion policies should also reflect gender equality and inclusion principles.

Compensation and reward systems

One of the implications of having the power to use force is that it places police institutions in a unique position. Unlike schools or hospitals, police forces are not subject to consumer preferences and citizens do not have the option to select another police agency to provide their services.[49]

Reward systems are often used in private industry to enhance employees' performance and achieve organizational goals. While these types of incentives are not common in the public sector, evidence shows that, when accompanied by factors such as satisfaction

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45 Secretaría de Seguridad y Protección Ciudadana México, Únete a la Guardia Nacional, https://www.gob.mx/sspc/articulos/y-tu-por-que-luchas-unete-a-la-guardia-nacional

46 The Federal Police only had 46,000 members (half of which are administrative staff) to tackle drug trafficking and organized crime. It is important to note that the Federal Police is not the only law enforcement organization, as there are also regional and local police institutions. Similarly, the National Guard performs a civilian role; it is made up of personnel transferred from the army, the navy, and the former Federal Police. In 2019, the National Guard expected to have 82,747 members appointed as follows: 51,915 from the military, 12,837 from the navy, and 17,955 from the dissolved Federal Police.

47 La Jornada, Acusan en Nuevo Laredo falta de protocolos de las fuerzas de seguridad, https://www.jornada.com.mx/notas/2021/04/10/sociedad/acusan-en-nuevo-laredo-falta-de-protocolos-de-las-fuerzas-de-seguridad/

48 Amnesty International. Mexico's National Guard Breaking Vow to Respect Human Rights. https://www.amnesty.org/es/latest/news/2020/11/mexicos-national-guard-breaking-vow-respect-human-rights/

49 Advocates of implementing rewards systems and incentives for police institutions maintain that psychological research suggests that officers' performance could be improved through "the skilful use of workplace rewards and (when necessary) punishments". Operant conditioning, 115-144; The Patrol Officer's Perspective on Rewards and Punishments, July 2017 Brief; Police Effectiveness: Measurement and Incentives, 25-42.

and motivation, reward schemes may improve productivity.[50] Reward schemes do not have to be financial and should be understood as a part of a holistic human management system. They usually require investing in data systems or technologies for data entry and analysis, and personnel resources to manage them. It is recommended that police institutions conduct a feasibility assessment prior to implementing a rewards system. Domestic context is critical to building an adequate and effective rewards system. Research suggests that external incentives for police performance may also be effective as long as they are part of an integral management system.[51]

PHILADELPHIA POLICE: MEDAL OF TACTICAL DE-ESCALATION

In June 2015 following a recommendation from the U.S. Department of Justice, the Philadelphia Police Department (PPD) updated its policy of commendations, awards, and rewards (Directive 6.1) and incorporated the Medal of Tactical De-escalation. The award is granted to sworn personnel who utilize 'exceptional tactical skills or verbal approaches and techniques to de-escalate any deadly force situation resulting in the saving or sustaining of a human life'.[52] From January to June 2016, PPD awarded this medal to more than 40 police officers for 'defusing conflicts without shooting, clubbing or use of excessive force'.[53] Shooting incidents were reduced by roughly 50% from 2015 to 2018.[54] An update on Directive 6.1 was accompanied by changes to other use of force directives and an enhanced system of Complaints Against Police (CAP). This case illustrates how a holistic approach to accountability paired with well-designed reward systems focused on strengthening openness, transparency, accessibility and participation[55] can lead to improved practices in the use of force.

Training and specialisation

Training is the vehicle which ensures that use of force regulation, policy, and standards are applied and put into action. Training on use of force should go beyond the progressive and discriminative exercise of force and the proper use of equipment such as batons, tasers, and firearms.

Training of police officers and police units should also include:
- Human rights, policing ethics and the national legal framework on the use of force
- The three dimensions of integrity: individual, organisational and external[56]
- The use of non-violent means, the importance of communication, conflict resolution, de-escalation, and persuasion techniques
- Use of defensive equipment
- Use of less than lethal means

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50 Rewards in Bureaucracy and Politics, 5.

51 Rewards systems usually require investing in data systems or technologies for data entry and analysis, same as personnel resources to manage them. Police Effectiveness: Measurement and Incentives, 26-28.

52 Philadelphia Police Department Directive 6.1-Commendations, Awards, and Rewards, 4.

53 Philadelphia Magazine: Philly Cops Awarded for Not Shooting First, https://www.phillymag.com/news/2016/06/01/policeinvolved-shootings/

54 Philadelphia Police Department: Officer Involved Shootings, https://www.phillypolice.com/ois/

55 To learn more about the Collaborative Reform Initiative and for data, statistics, and reports please visit the Accountability sections of PPD's website.

56 DCAF, Training Manual on Police Integrity

- Personal stress management
- Gender perspective
- Recording and reporting the use of force

RESULTS OF TRAINING ON DE-ESCALATION IN THE US

In the United States at least 80 departments across the country[57] have adopted the de-escalation training called Integrating Communication Assessment Tactics (ICAT) as part of their training curriculum. This training takes the essential building blocks of critical thinking, crisis intervention, communications, and tactics, and puts them together in an integrated approach to training. ICAT is designed especially for situations involving persons who are unarmed or are armed with weapons other than firearms, and who may be experiencing a mental health or other crisis. The training program is anchored in the Critical Decision-Making Model that helps officers assess situations, make safe and effective decisions, and document and learn from their actions.[58]

A case example that reflects positive results of the implementation of ICAT is the Volusia County Sheriff's Office. By the end of 2018, every police officer of the Volusia County completed ICAT training. Comparing statistics from 2016 (prior to training) and 2019 (after training), it was found that use of force dropped 50%, arrests dropped by 30% and injuries against deputies dropped 50%.[59]

Training in use of force should not be limited to technical training, which teaches only how to use the equipment, or to definitions of human rights. Training on use of force needs to be practical and periodically reviewed, updated, and evaluated. While concepts and theory are important, simulation exercises help understanding and assimilation. 'Refresher' activities should be promoted, and the skills gained should be regularly assessed. Both inception training and on the job training need to be evaluated carefully and at regular intervals to assess whether they have a positive impact on police performance.

EFFECTIVE TRAINING ON THE USE OF FORCE: METRO-DADE POLICE DEPARTMENT

A partnership between the Metro-Dade Police Department (MDPD) and The Police Foundation in Miami, Florida (USA) developed a project aiming to enhance patrol officers' skills in reducing the potential for violent encounters in everyday policing. They provided training based on simulation exercises that included the role playing of potentially violent situations, lectures, and case study videos all of which enhanced dispute resolutions techniques. The results were positive, reporting a significant change of a 24% reduction in the use of force in one of the districts where it was implemented.[60]

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57 Although it is still a small number, knowing there are more than 18,000 police departments in the United States. U.S. Department of Justice, Employment Data 2016, https://www.bjs.gov/content/pub/nsleed.pdf

58 Police Executive Research Forum, ICAT: Integrating Communications, Assessment, and Tactics, https://www.policeforum.org/icat

59 Press release The Municipal, Volusia County, Fla., Sheriff's Office uses Scottish tactics to de-escalate high-stress situations,http://www.themunicipal.com/2020/11/volusia-county-fla-sheriffs-office-uses-scottish-tactics-to-de-escalate-high-stresssituations/

60 Prenzler, Porter, and Alpert, Reducing police use of force: Case studies and prospects, 343-356.

ASSESSMENT OF JUDGMENTAL ASPECTS IN THE POLICE OF SCOTLAND

Scottish police officers are tested on their critical decision-making skills, such as an ability to reason critically and their reactions and decisions during stress. All training is based on the sanctity of human life.[61]

Training needs to be specific and relevant to the role that officers undertake. All police officers are likely to encounter situations where some level of force will be required. Frontline officers are in permanent contact with citizens and are likely to be involved in arrests, stop and search, or executing warrants. Therefore, the initial training that all officers receive needs to include modules relating to the use of force as highlighted above.

Many police agencies are just recently making the transition to training models that include basic training on the use of force for all officers. Others still have this challenge in front of them. Bridging this training gap is important because most of the use of force incidents occur in scenarios unrelated to public assemblies and involve officers who do not receive the training of special units.

COLOMBIA ON THE PATH TO STRENGTHEN POLICE TRAINING ON USE OF FORCE

In 2015, Colombia started working on a police tactical guidance that provides for withdrawal tactics and de-escalation techniques. The training aims to reduce the need to use force and emphasizes communication skills to deal with situations that have the potential to escalate force. It also includes mental aspects such as control of emotions, fear, and stress management. In 2018 this guidance was incorporated in the curricula for new trainees. Although results are yet to be assessed, and there is a need to increase the number of training hours for lower-rank officers (who represent the larger portion of front-line officers), this action represents progress towards improving the quality of training in the use of force.[62]

Certification and re-certification

Training is not equivalent to qualification. Not all officers who undertake training will automatically be suited for the functions for which they have been trained. Assessment is a key part of training and should place emphasis on sound judgment, i.e., when force is necessary and proportionate. Officers must internalise and be able to demonstrate that they can apply what they have been taught. Certification and re-certification/ qualification processes are applied by police agencies around the world as a mechanism to ensure that only those trainees able to demonstrate their suitability to use force are authorised to do it.

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61 Prenzler, Porter, and Alpert, Reducing police use of force: Case studies and prospects, 343-356.
62 Data was obtained from a comparison of the training hours for patrol officer and second lieutenant positions in the Colombian National Police, ongoing assessment by DCAF LAC Unit and a Colombian National Partner.

THE POLICE CERTIFICATION AND RE-CERTIFICATION IN SWITZERLAND, THE CONCEPT GÉNÉRAL DE FORMATION (CGF)

The Police Officer Certificate (Brevet) can be obtained by passing a 'Main Exam' (Professional Exam) corresponding to the basic training required to be able to exercise the police profession in Switzerland. With a large number of schools scattered across the country, police training in Switzerland is a reflection of the Swiss federalism which aims to enable the nearly 330 police forces to provide training tailored to their needs.

The General Training Concept (CGF) 2020 has enabled the Conference of Directors and Directors of Cantonal Justice and Police Departments (CCDJP) to develop a basic and continuing training for the police in order to meet the requirements of a competency-based and practice-oriented model. The Police Officer Certificate is recognised at the federal level and it is required for most of the Swiss police agencies to enter service. It is also an admission requirement to higher police training and certifications. Having the certificate allows (but not entitles) officers to move among police agencies in different cantons and to join the federal police or intelligence service at the national level.

GENEVA POLICE - SPECIFIC TRAINING AND FREQUENT REFRESHER TRAININGS

Each canton is responsible for delivering specific and more specialised training and ensuring trainees meet minimum standards. Should trainees fail to meet those standards, additional training will be required or administrative decisions will follow. Standards become more stringent as permitted levels of forces increase (i.e. the lethality of weapons). Similarly, refresher trainings and re-certification requirements become more frequent. The Geneva Police, for instance, provide refresher trainings on the use of the police baton every 2 years, while refresher training on the use of the standard police gun is provided every year.

Specialist Units dealing with public assembly/crowd control tend to receive more specialized training on the use of force. This is essential as those units are often equipped with more potentially harmful tactical options including tear gas and impact rounds. Specialised training should supplement the standard training on use of force that all police officers receive.

Given the importance of training, particular attention should be placed on trainers and training programmes. Trainers should have technical expertise and operational competence in the subject that they teach. Standardised role profiles and thorough selection processes are practices that help build a solid base of trainers. The importance of values in leadership is particularly high for those charged with the responsibility to develop use of force approaches in newly recruited officers.

TRAINING ON POLICE INTEGRITY AND HUMAN RIGHTS IN NIGER

The National Police School (ENP/FP) has developed a continuing education program on police integrity in order to sensitize police officers to the consequences of unethical

behaviour and its effects on the image of the police institution and the achievement of its public service missions.

In 2020, the Directorate of Public Security of the National Police (DSP) trained more than 700 police officers in Niamey in respect for human rights during law enforcement during the 2020-2021 general elections. This Police Directorate has begun to put in place internal control mechanisms within police services and units to enhance peer control and proximity control by the middle hierarchy.

The Nigerien police also participates in the animation of the sub-regional Police and Human Rights Platform (POLI-DH) which advocates for and shares best practices for training mechanisms that respect human rights in police work.

Emotions and stress management

Police officers are often exposed to conflict and stressful situations. This has a cumulative impact on their judgment, decisions, and the way they interact with their peers and the public. It is an institutional responsibility to provide officers with tools to manage stress and emotions so that they can perform their duties to the highest standards without negatively impacting the enjoyment of their private life.

Police institutions have a responsibility to protect the health and safety of their officers, including their mental health and the provision of adequate support. This might include training in stress management, stress-counselling activities (targeting in particular those involved in use of force events), and periodic assessments to gauge the mental and physical health of officers and their suitability to make complex decisions. This has become even more important in the context of the COVID-19 pandemic, as officers are faced with higher demands and risks.[63]

Equipment

In an earlier section, it was pointed out that it is individual officers who use force, rather than institutions. Similarly, it is individual officers who use equipment. They must only rely on approved equipment and must use it in accordance with the training that they have been exposed to; those are the responsibilities placed on the individual. This section focuses on the organisational obligations to ensure that officers are provided with tactical options and equipment that facilitate their compliance with human rights principles in the use of force.

The 1990 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, is the leading international instrument dedicated to regulating the use of force for law enforcement purposes.

Principle 2 defines the responsibility of both governments and law enforcement agencies to develop a broad range of means to provide proper equipment to law enforcement

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63 ICRC has made recommendations to cope with the emotional stress that police face in times of pandemic. Among others, it highlights the importance of training, staff rotation, and adequate equipment. Comité Internacional de la Cruz Roja, Salud mental y apoyo psicosocial de Fuerzas Armadas y de Seguridad durante COVID-19, 2020.

officials that allows for a differentiated response when it comes to the use of force and firearms. This includes the provision of less lethal weapons to be used only when required and within specific situations. Overall, police institutions should embrace the vision to increasingly restrain the use and application of any means capable of causing injury or death to individuals.   Further, it also states that police institutions should seek to **equip** law enforcement officials with "self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind".[64] In other words, there is an organisational responsibility to provide for a higher level of protection, so as to minimise the requirement for individuals to use force.

Principle 3 calls for the development and deployment of less lethal weapons to be "carefully evaluated in order to minimize the risk of endangering uninvolved persons" and stipulated that their use "should be carefully controlled". In 2020 the UN released a further document Guidance on Less -Lethal Weapons in Law Enforcement. The purpose of this most recent guide was to provide international standards with respect to:
- Design and production of such weapons
- Legal review, testing and procurement
- Monitoring of inventories and their use
- Transparency (including publishing criteria for use and resultant risks)
- Training
- Medical Assistance
- Accountability
- International cooperation

The 2020 guidelines also set out a list of equipment which should be considered unlawful in any circumstances such as spiked batons, lasers, shackles and leg or wrist irons.

While the choice of equipment is conditioned by local context and corresponds to policing needs, police agencies should consider the principles of this guide and utilize the recommendations when considering acquiring new tactical options. This should be done in line with the following principles:[65]
- New law enforcement equipment should be developed and introduced based on clearly defined operational needs and technical requirements (and not just because of its availability on the market), with a view to reducing the amount of force used and the level of harm and injury caused.
- All equipment must be subjected to thorough testing as to whether it meets the required operational needs, technical requirements in terms of accuracy and precision, reliability, life span, the degree of possible harm and suffering it may cause as well as possible unwarranted/unintended effects. Testing should be carried out by an independent body.

64 Basic Principles in the Use of Force and Firearms by Law Enforcement Officials, Article 2.
65 Amnesty International, Guidance for the implementation of the UN Basic Principles on Use of Force and Firearms by Law Enforcement Officials, https://www.amnestyusa.org/files/amnesty_international_guidelines_on_use_of_force-2.pdf.

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

Firearms:

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.**"

This is sometimes referred to as the **protect life principle**, that firearms can only be used by law enforcement to protect life. This principle should be enshrined in law. The use of firearms is therefore an option of last resort for the police and only in the most extreme circumstances. Firearms should therefore never be considered as a tactical option for controlling crowds.

POLICIES ON EQUIPMENT: EMBRACING THE VISION OF RESTRAINT IN THE USE OF FORCE

Colombia (Law 1801 – 2016, Decree 003-2021) and Peru (Decree 1186-2016, Plenary Agreement No. 05-2019/CJ16) recently modified their legal frameworks with the aim of restraining the use of force in the context of public assemblies. Both countries forbid police officers deployed in a public gathering from carrying lethal weapons and restrict their use to those officers who must eventually intervene in cases of public disorder and who belong to specialized groups or units. Although increased efforts on monitoring and evaluation are necessary, the legal reforms are an important step in the reform of use of force practices.

As the most extreme example of the use of force by law enforcement institutions, additional considerations are required for firearms:
- Ensure the provision of adequate and continuous training on the use of firearms to police officers.

- Establish clear protocols for their proper use, and ensure compliance with all protocols, including those that indicate how to act after the use of firearms.
- Establish protocols and clear procedures for detailed reports on the use of firearms.
- Policies, protocols, and guidelines on firearms should include at minimum:
    - Medical aid is to be rendered to all injured persons. This is a critical consideration that should be included during the planning stage.
    - Investigations are to be allowed where requested or required and a full and detailed report of the incident must be accessible.
    - Strict regulations regarding the control, storage and issuing of firearms, including procedures for ensuring that officers are accountable for arms and ammunition issued to them.
    - Prohibitions on the use of weapons and ammunition which cause unwarranted injury, damage, or risk.
    - Periodic, unannounced spot checks on detention facilities, police stations, and substations, and also inspections of weapons and ammunition being carried by police to ensure that they comply with official regulations. When appropriate, sanctions should be imposed on officers who fail to comply with such regulations.
    - Strategies to reduce the risk that officers will be forced to use firearms.

POLICE AGENCIES IN NORWAY AND THE UK PREPARE OFFICERS TO SOLVE INCIDENTS WITHOUT FIREARMS

The police in Norway are usually not armed unless there are indications that the suspect carries a weapon. They are trained to resolve various situations without resorting to weapons. Police usually do have weapons stored in their patrol cars, so that they can arm themselves in emergency situations.[66] In addition, the use of firearms is recorded, and detailed statistics on their use are annually published.[67] The Norwegian Police also informs the public on periods when officers will be routinely armed. This occurred for the period March to April 2021 when terrorist threats from extreme Islamism were intensified according to the Police Threat Assessment.[68]

Police in the UK tend to place a high priority on learning how to resolve incidents without using firearms, because the large majority of constables there are not equipped with firearms.

Only 3% of the officers in Greater Manchester, and 2 percent in Scotland, carry guns.[69] Police in Manchester grasped the importance of making a genuine effort to learn as much as they can about the person, to engage them in conversation, and look for an opening,

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66 Norway National Police Directorate Polietiet: Police rarely shot, https://www.politiet.no/en/aktuelt-tall-og-fakta/aktuelt/information-regarding-todays-incident-in-oslo/2020/06/03/politiet-skyter-sjelden/

67 Norway National Police Directorate Statistical Note Police Threat of Use of Firearms and Use of Firearms 2009-2019,https://www.politiet.no/globalassets/04-aktuelt-tall-og-fakta/politiets-trussel-om-bruk-av-og-bruk-av-skytevapen-2009---2019.pdf

68 Norway National Police Directorate: Temporary Armament, https://www.politiet.no/en/aktuelt-tall-og-fakta/aktuelt/information-regarding-todays-incident-in-oslo/2021/04/30/midlertidig-bevapning/

69 Police Executive Research Forum, Re-Engineering Training on Police Use of Force, 7.

a way to demonstrate empathy, to calm the person down, and to get them to surrender weapons without any use of force so that everyone can go home safely. This approach may also involve bringing in additional resources, such as electronic control weapons, or calling in officers who are specially outfitted with heavy shields, or a special squad of officers who do carry firearms.

Similarly, the majority of the Scottish police officers do not carry firearms; they receive extensive training on how to resolve such incidents without using a firearm.[70]

This is not to say that the same measures can be literally applied in contexts with higher rates of crime and violence. Police agencies are said to be a mirror of society.[71] In those societies with high levels of crime and violence, or a strong culture of gun ownership, such as the US where the most recent estimate of civilian-held firearms is 120.48 per 100 people[72], police equipment may need to include firearms. However, the underlying principle of promoting alternative means to solve conflicts still applies. A number of police departments in the US have undertaken measures to train officers to de-escalate situations involving people who do not carry firearms.

70 Police Executive Research Forum, Guiding Principles on the Use of Force, 2.
71 Erica Marat, The Politics of Police Reform: Society Against the State in Post-Soviet Countries, Chapter 1.
72 Small Arms Survey, 2018; http://www.smallarmssurvey.org/weapons-and-markets/tools/global-firearms-holdings.html

This paper has highlighted that issues relating to the police use of force extend well beyond the behaviour of individual officers. External aspects such as direction from government and the legal framework within which police operate need to adhere to human rights principles as do internal factors such as policy, guidelines and training. Frustration often results from the fact that even when such measures align with international standards, operational practices differ and fall short. A key challenge for police reform programmes is often focused on how to bridge the gap between policy and practice. To do so requires examining what creates this gap.

Developing a culture of accountability

A critical aspect influencing use of force practices within police institutions is the organisational culture. Culture can be understood as a set of shared and defined values and beliefs within a group. Peter Drucker, the Austrian management guru, said "Culture eats strategy for breakfast". By this, he means that even where organisations have the best mission statements, values and ethical frameworks, it is the organisational culture that determines behaviour. George Kelling, one of the key architects of modern community policing has said "the primary determinant of police officer behaviour is likely to be the culture in which they find themselves". Similarly, most active police officers will recognise the anecdote that on arriving at their first posting from the academy, a more experienced officer will quickly tell them to "forget what they taught you in training. We will show you what it's really like".

As a group, police officers are exposed to peer influence due to the shared value system upon which the institution's culture is built.[73] Police cultures often share values such as camaraderie, teamwork, loyalty, and supportiveness.[74] But these values can easily shift from desirable to undesirable attributes. For instance, a common feature in many police cultures is the 'blue wall of silence', where loyalty is valued over integrity[75] This establishes the concealment of officers' actions as the norm allowing for misconduct.[76]

Attitudes can play a vital role in determining the use of force by police and can also be indicators of changes in police use of force. For example, if the norm within a police institution is to reward colleagues for aggressive attitudes and behaviour and punish them for acting with caution, officers will end up internalizing these values and the use of force will become standard practice. This is explained by psychological mechanisms such

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73 Peter Drucker argues that it is the culture of the organisation that determines the way people in that organisation behave. See article Management Centre UK, Culture eats strategy for Breakfast, https://www.managementcentre. co.uk/managementconsultancy/culture-eats-strategy-for-breakfast/
74 See Open Text British Columbia, Ethics in Law Enforcement, Chapter 8.
75 UNODC, Handbook on police accountability, oversight, and integrity. Criminal Justice Handbook Series, 74.
76 According to Alpert and Dunham 1997, as new officers join the police organization, they will be exposed to models of behaviour that will influence their own attitudes and behaviour. And because police officers are exposed to their peers much more often than others, it is likely that the new officers will learn to accept and internalize the values shared by other officers and the rest of the police organization.

as differential association, reinforcement, and initiation.[77] The attitude of police officers toward the use of excessive force is likely to be related to other attitudes, such as those towards police misconduct and violence in general.[78] This requires police institutions to pay particular attention to officers' attitudes which helps to predict behaviour. This also applies to the recruitment stage. However, experience shows that changing people's behaviour in an attempt to change their attitudes is a more effective process than vice versa.[79] George Kelling offers advice on the antidote to a negative culture: "Leadership through values and a combination of internal and external accountability mechanisms". Recognising that the behaviour of those in supervisory and managerial positions has a strong influence on the institutional culture, it is recommended that police institutions emphasize ethical and integrity training of supervisory officers to strengthen leadership. In addition, structures for external oversight (including local communities and robust internal supervisory procedures accompanied by strong control mechanisms) are required to build a culture of accountability.[80]

The practical result of this for frontline police officers is that they become almost unconsciously aware that their behaviour and conduct are always subject to scrutiny, and they adjust accordingly. The omnipresence of smart phones with their ability to audibly and visually record interactions and to share them across the world instantaneously has no doubt added to this sense of accountability. Thinking about how police agencies regulate behaviour through a governance lens helps to ensure that the accountability systems and structures that they implement build progressively towards a culture of accountability. Officers come to recognise that their colleagues might be making a calculation as to how big the risk is to them if they ignore or fail to report an excessive use of force during arrest. Officers who witness such events are making a calculation about the implications for them if they do not report this to a supervisor and another officer does. In this way, mechanisms of accountability have a 'before the fact' or preemptive impact which reduces the likelihood of such transgressions by affecting officers' decision making calculus. In some respects the effect might be described as similar to drivers' behaviour in an area where they know there are many speed cameras. Thus accountability has both a proactive and reactive function.

Accountability is defined as "a system of internal and external checks and balances aimed at ensuring that police carry out their duties properly and are held responsible if they fail to do so". Such a system is meant to uphold police integrity, deter misconduct, and restore or enhance public confidence in policing. Police integrity refers to normative and other safeguards that keep police from misusing their powers and abusing their rights and privileges.[81]

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77 The basic assumption of Social Learning Theory (SLT) is that the same learning process which is used to learn socially acceptable behaviour is also utilized when people learn criminal/deviant behaviour. Initiation is also known as 'modelling behaviour' which occurs when a person observes and then emulates the behaviour of others. See Maskaly and Donner 2014, A Theoretical Integration of Social Learning Theory with Terror Management Theory: Towards an Explanation of Police Shootings of Unarmed Suspects.
78 Lester, Officer Attitudes Toward Police Use of Force. And Justice for all: Understanding and Controlling Police Abuse of Force in And justice for all: understanding and controlling police abuse of force.
79 As with the case of racial issues in the United States. Idem.
80 George Kelling – the primary determinant of police officers' behaviour is likely to be the environment that they find themselves in. See Kelling and Stewart, Neighbourhoods and the Police: The Maintenance of Civil Authority.
81 UNODC. Handbook on Police Accountability, Oversight, and Integrity, iv.

Accountability is a complex system which involves different actors performing functions of oversight and control, including the police themselves, state institutions, oversight bodies and civil society, all of whom play different but complementary roles to ensure that police functions are delivered with responsibility and responsiveness. Depending on the scope and the actors involved, there may be a distinction between internal and external accountability (and in turn formal and informal), but each element of the framework should work to strengthen legitimacy and public confidence.

Internal Accountability Mechanisms

Internal accountability is concerned with a functional, effective, and efficient chain of command, robust reporting mechanisms, and a consistent disciplinary system. These three areas of internal accountability, embedded into the organisational culture, are highly relevant for governing the use of force. They materialise through formal and informal mechanisms including supervision, peer control, reporting and levels of tolerance to different behaviours.

Command

While the primary responsibility for justifying the use of force against the key principles, including necessity and proportionality, lies with the officers who makes those decisions, accountability also applies to supervisors who give direction and prepare officers for their duties and the agency as a whole. Misconduct is seldom restricted to one individual; supervisors need to be aware of the conduct of those under their command.

Police forces are normally hierarchically structured and organised by rank. With regard to the use of force, the requirement for a clear and consistent chain of command goes further, and specific responsibilities must be defined and delineated to different levels of the command structure. This might include setting authorisation levels for the issuance of equipment capable of more lethal levels of force (tear gas/impact rounds) or the imposition of tactical parameters on plans for high profile operations. Although force is used by front line officers, international jurisprudence recognises the importance of command systems and planning for events which are likely to involve the use of force.[82]

Reporting Mechanisms

An adage often used in policing is that 'if it is not written down it didn't happen'. Although record keeping and audit trails of decisions can appear bureaucratic, it has enormous import for legitimacy and securing public confidence, especially when high profile events are subject to retrospective investigation. Detailed records kept of all key planning and tactical decisions relating to the use of force not only serve as an important accountability mechanism and a basis for lessons learned but can also safeguard police officers against unfair judgment. Recording decisions and the rationale on which they are made ensures that the actions will be fairly judged and with appropriate context. Decision making logs,

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82 See See McCann and others v. United Kingdom, Judgment para. 194, European Court of Human Rights, 27 September 1995; and Simsek vs Turkey, 13 November 2018, European Court of Human Rights.

video recording of police tactics, and audio recording of radio communications (including warnings) can all play an important role in managing the use of force. As a minimum requirement, frontline officers must be required to make a report of all instances of the use of force to supervisors, and when that use of force involves specialist tactics such as tear gas or impact rounds, the reporting requirement might also include any external bodies which oversee the police (see section on external accountability).

SYSTEMIC REPORTING: MONITORING OF USE OF FORCE INCIDENTS IN THE UK

Since April 2017, all police forces in the UK are required to record and report on the different types of force used and the context in which it occurs. The purpose of this data collection is to provide the public with greater information and will help underpin future work by the National Police Chiefs' Council (NPCC) and College of Policing to enhance tactics, training and equipment. The statistics on use of force can be broken down by variables including location, demography, type of force (tactic) used, rationale, and outcome.[83] Systematically tracking use of force incidents offers important insights into trends and gaps which allow them to be addressed more efficiently and effectively. In addition, it helps to increase police officers' confidence in reporting cases involving assaults on themselves.[84]

The requirement for detailed record keeping extends beyond the operational considerations mentioned above. Simple but robust audit-type measures relating to the issue of specific equipment to individual officers are required to be in place. This might include serial numbers on batons or the regular inspection and weighing of pepper spray cannisters to detect non-reported usage.

PUBLIC REPORTING ON CASES OF ASSAULT, DEATHS AND COMPLAINTS AGAINST THE POLICE IN SOUTH AFRICA

The South African Independent Police Investigative Directorate has published in its annual reports statistics of cases of deaths caused by police actions, alleged cases of torture, and other complaints against the police by the public. Granting public access to even basic data and statistics in a context of extremely high prevalence of civilian deaths or torture during police operations has been key for encouraging public policy debate on the use of force in South Africa. The discussions have included proposals to implement changes in the legal framework and in police training, and have facilitated tracking of the deteriorating trends from year to year.[85]

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83 See UK Government User Guide: Police Use of Force Statistics, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945436/user-guide-policeuse-of-force-dec20.pdf
84 See UK Government section on Policing: Crime, Justice and Law - Collection: Police use of force statistics. https://www.gov.uk/government/collections/police-use-of-force-statistics
85 2020 Country Reports on Human Rights Practices: South Africa, https://www.state.gov/reports/2020-country-reports-on-humanrights-practices/south-africa/

Individual identification of officers is a key accountability measure. The requirement for officers to wear name badges is best practice; although in some contexts, security considerations might prevent this. However, there does not appear to be any justification for personal identification (through a unique number) to not be prominently displayed on an officers' uniform. This is particularly important when deployed in protective public order equipment with helmets that ensure all officers look the same.

A continuum of accountability

Not all police use of force requires equipment, however it is likely that the more serious and potentially injurious uses of force will. There should therefore be a direct relationship between the potential level of harm and the amount of internal scrutiny and accountability with respect to such tactics. Similar consideration should be given to the amount and frequency of training. Officers who are equipped with higher levels-of-force tactics should also undertake advanced and more frequent training.

The figure below illustrates the concept:

Figure 3. Continuum of accountability

Firearms

Impact Rounds
Tear Gas
Water Cannon

Defensive
Equipment
Restraints
Patrol Equipment

Use of Force
Ascending level of force

Training requirement

Associated levels of accountability

Immediate report to external oversight body

Immediate report to supervisor

All equipment personally issued and regularly checked
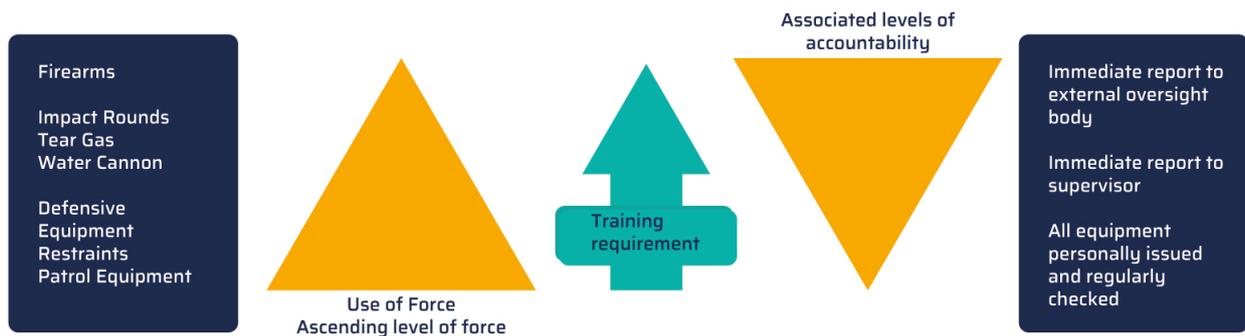
Source: Prepared by the authors

Consistent disciplinary system

High standards of police behaviour should be expected and encouraged. Codes of ethics or codes of conduct should be written in positive language to promote professional behaviour, but they should also clearly identify and delineate unacceptable practice. It is important to highlight that the disciplinary system is also linked to the human resources management system which also may include reward schemes designed to encourage positive actions and behaviours in accordance with specific context and culture. Inadequate systems may hinder the objectives of the police work. In this regard, research suggests that external incentives for police performance may increase the effectiveness when coupled with an integral internal disciplinary and reward system. It is essential that these standards are enforced by supervisors and command ranks.[86]

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86 Police Effectiveness: Measurement and Incentives, 26-28.

The role of internal supervision bodies such as internal affairs departments should be well-known and clearly understood by all members of the police institution as they are key for an effective disciplinary system. A written policy of internal affairs functions should be available and accessible at all times, and changes to such policy must be announced well in advance. Allegations of police misconduct, abuse, or excessive use of force must be investigated in a prompt, objective, and thorough manner, notifying all parties involved of any developments and maintaining all records relevant to the case. When the outcome of the investigation requires a sanction, it should be properly addressed in line with the stipulations of domestic laws and international treaties. Any case of arbitrary or abusive use of force, including use of firearms by law enforcement officials, should be treated as a criminal offence.[87] In addition, consideration might also be given to the proactive tracking and trending of complaints related to the use of force in order to identify officers, particular units, individual police stations, and locations, areas, or communities that require additional management attention. Collected information related to the use of force supports evidence-based policing models and should be used to inform training, planning, and procurement and tactical decisions.

Internal accountability mechanisms help the police, like any other large organization, to ensure individual compliance with organizational values, systems and guidelines; however, the nature of policing requires much more than internal governance. The perceived legitimacy of the police largely determines the relationship between the institution and the public. While internal governance measures help to ensure professional standards, these on their own are not sufficient to secure public confidence. External mechanisms of accountability complement and strengthen their impact.

INTERNAL AND EXTERNAL ACCOUNTABILITY MECHANISMS IN NIGER

In the event of non-compliance, the police of Niger hand files over to the General Inspectorate of Security Services (IGSS) which conducts investigations that can result in administrative or judiciary records. The Ombudsman of the Republic has developed a mapping of appeal options in cases of abuse by the police which aims to enhance citizens' knowledge of internal and external oversight mechanisms.

In April 2017, a student demonstration to demand better conditions turned into a clash between students and police on the university campus in Niamey. Shortly after the violence, a video showing a group of police officers beating a student in the back of a truck had been posted on social networks. The video shows an unarmed young man lying down, surrounded by several officers who beat him with batons and forced him to shout, "long live the police". The impact of the video on public opinion led to an internal investigation and to the formal arrest of three police officers involved in the violence.

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87 United Nations, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Article 7.

THE SIGNIFICANCE OF ESTABLISHING POLICE COMPLAINT AUTHORITIES: PAKISTAN, INDIA, AND MALAYSIA

In India, in response to a lack of police accountability and widespread complaints against police, a 2006 Supreme Court judgement led to the establishment of state- and district-level Police Complaints Authorities (PCAs) throughout the country. Among India's 29 states, 17 states have established PCAs through state legislation and 10 have done so through executive orders. In the capital Delhi, the PCA became functional in February 2019. While in most states determinations and recommendations of PCAs are binding, the PCAs are typically weakened by a lack investigative capabilities and a lack of authority to penalise police officers found to be involved in serious misconduct. In Pakistan, the legislative Police Order of 2002 established, inter alia, Public Safety Commissions (PSCs) and the Police Complaints Authorities (PCAs) at federal and provincial levels, comprising independent non-political members selected by the relevant public service commissions. The PSCs and PCAs were intended to enhance police accountability through public participation and community input. A federal PCA addresses serious complaints against federal police, including excessive use of force, violation of rights and other forms of misconduct.[88] Similar measures have been initiated in Malaysia through the submission of a bill to Parliament in August 2020 which seeks to create an Independent Police Conduct Commission (IPCC) that would address allegation of police corruption and excessive use of force by the Malaysian police service.[89]

External Accountability Mechanisms

Police governance involves actors across multiple layers of any democratic system including executive, judicial and legislative actors, and independent oversight bodies. As with internal measures, the strength of a system often lies in the overlap and interplay between different actors and processes. Transparency is a key governance principle, and while the police might have statutory responsibilities to report to an ombudsperson or parliamentary committee, a positive and open engagement with the media can equally contribute to enhancing legitimacy and building confidence.

EFFECTIVENESS OF NATIONAL HUMAN RIGHT COMMISSIONS AND OMBUDS INSTITUTIONS IN OVERSEEING USE OF FORCE IN THE ASIA-PACIFIC REGION

There are numerous examples of national human rights commissions and ombuds institutions providing oversight of use of force by security services. In Malaysia, the national Human Rights Commission (SUHAKAM) has undertaken public inquiries into allegations of excessive use of force,[90] and in 2019 provided recommendations on draft legislation to establish an independent commission into police complaints and misconduct.[91] In Fiji, the Human Rights and Anti-Discrimination Commission has undertaken independent

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88 External police accountability: Dream or reality?, 1-67
89 Malaysia Proposed law reverses police reforms: Complaints commission needs real investigatory disciplinary powers; https://www.hrw.org/news/2020/08/28/malaysia-proposed-law-reverses-police-reforms

investigations into allegations of human rights violations, violations of personal liberty, brutality and professional misconduct of police and corrections officers, and violations of the rights of arrested and detained persons.[92] In India, the National Human Rights Commission (NHRC) has investigated underlined encounter deaths (i.e. deaths during arrest by police) and human rights in prisons[93] and has developed guidelines for arrest procedures and broader recommendations for police reform.[94] In Indonesia, the National Commission on Human Rights (Komnas HAM), since established by Presidential Decree in 1993, has monitored and investigated the implementation of human rights by the security forces. It is important to state that effective oversight of security institutions by national human rights commissions and ombuds institutions can only function well in an environment where its independence and effectiveness are not undermined. It is rare that an NHRC can be more effective or stronger than the governance structure or environment in which it operates.

As a government funded body, the police are likely to be subject to external oversight from a range of governance processes that help to ensure the effective and efficient running of any large organisation. These might include bodies focused on audit, health and safety, equality and non-discrimination. While less obvious, they make an important contribution to the framework of accountability.

The unique position of the police in a democracy with their ability to use force and enforce the law requires additional mechanisms of control and scrutiny which may include, among others, parliamentary committees, policing boards, and independent bodies for the investigation of complaints.

EXTERNAL ACCOUNTABILITY BODIES: THE STATE POLICE ACCOUNTABILITY COMMISSION IN ASSAM, INDIA

There are different examples of external oversight bodies around the world such as the Police Integrity Commission in New South Wales; the Crime and Misconduct Commission of Queensland (Australia); the Office of the Police Commissioner in British Columbia, Canada; the Commission nationale de déontologie de la sécurité in France; the Ghanaian Police Council in Ghana; the Independent Police Complaints Council in Hong Kong; the Police Complaints Authority in Lesotho; the Enforcement Agency Integrity Commission in Malaysia; the Police Integrity Commission in the Maldives; the Independent Police Conduct Authority in New Zealand; the People's Law Enforcement Board in the Philippines; and the Independent Police Auditor in San Jose, California, USA. Each institution has its own

90 Suara Ryakat Malasya, http://www.suhakam.org.my/wp-content/uploads/2013/11/Report-Of-Suaram-Observations-On-The-Public-Inquiry.pdf
91 Independent Police Complaints of Misconduct Commission (IPCMC) Bill 2019, https://www.parlimen.gov.my/images/webuser/IPCMC/Memorandum/No.%2031%20-%20Kertas%20Cadangan%20SUHAKAM%20Recommendations%20IPCMC%20Bill%202019%20oleh%20Dr.%20Cheah%20Swee%20Neo%20-%20Setiausaha%20SUHAKAM.pdf
92 Human Rights and Anti-Discrimination Commission, Neither Greater nor Lesser but EQUAL: Dignity, Equality and Freedom for all in Fiji, Annual Report 2018
93 National Human Rights Commission India, SOP Guidelines, https://nhrc.nic.in/acts-%26-rules/guidelines-1?page=1
94 National Human Rights Commission India, NHRC's recommendations on police reforms in the country, https://nhrc.nic.in/press-release/nhrc%E2%80%99s-recommendations-police-reforms-country

mandate, although the majority are focused only on receiving and dealing with complaints.[95] In 2008, the State Police of Assam, India instituted an autonomous accountability commission, aiming to enhance the accountability of the police towards society. Citizens can submit complaints of alleged misconduct by any police officer, as defined in Sec. 78 of the Assam Police Act of 2007. The commission has all the powers of a civil court under the Code of Civil Procedure (1908) and it is granted with the faculties to investigate, request public records from any office, summon and enforce the attendance of witnesses, and examine them under oath, among others. It can initiate departmental action based on its findings, and it provides an annual report including case statistics and reports.[96]

MULTI-LAYERED EXTERNAL ACCOUNTABILITY MECHANISMS IN THE UK[97]

In the UK, depending on region, there may be a combination of external accountability layers which include:
- Parliamentary Justice Committee: Cross party committee to 'assist and advise' as Minister of Justice on issues relating to the functioning of the Justice System (including the Police). It holds a scrutiny, policy development, and consultation role with regard to the functioning of legislation.
- Police/Crime Commissioner: Directly elected by public vote. The office holder sets the strategic direction and key objectives for the police and holds them to account for performance.
- Policing Authority/Policing Board: Often involves political representatives and independent members. Holds statutory authority for oversight and accountability of the police organisation. Provides direction to the Police on key strategic priorities and will often be involved in the appointment of senior officers.
- Inspectorate of Constabulary: Provides independent assessment of the effectiveness and efficiency of police forces.
- Independent Authority of the Investigation of Police Complaints: Body created and empowered to 'investigate the police'. Examples range from organisations that deal with all complaints against the police from members of the public to those which focus on matters of significant concern (including, for example, death in police custody)
- Local Community Policing/Community Safety Partnerships: Often associated with and funded by local government. These more local entities perform a similar role to policing authorities but for a more localised area.
- Lay visitors Schemes: These are mechanisms often organised through one of the aforementioned entities whereby individual members are empowered to make unannounced inspection visits to police stations (normally associated with prisoner welfare).

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95 UNODC Handbook on police accountability, oversight and integrity , 63-63
96 Government of Assam – State Police Accountability Commission, https://spac.assam.gov.in/frontimpotentdata/general-guidelines-directions
97 The inclusion of these UK examples is intended to illustrate that that external accountability mechanisms can be multi-layered. Often similar constructs are in place in other countries.

Other actors such as national human rights institutions, ombuds institutions, non-governmental organizations, civil society, academia, community policing forums, the media, independent monitors and observers have a role in external accountability. Police institutions can benefit from building partnerships and collaborating closely with these actors. External accountability enhances and strengthens the confidence and trust from the community as it is usually perceived as a non-biased and transparent source of information which enhances the legitimacy of the police institution. It is highly important that external accountability bodies are endowed with the means and independence required to fulfil their mission and stave off impunity.

MEASURE OF IMPUNITY IN POLICE SERVICE AND ITS EFFECT ON POLICE LEGITIMACY: MYANMAR, PHILIPPINES, AND NEPAL

Systems that support impunity of police may undermine legitimacy of police forces. In Myanmar, the Police Force Maintenance of Discipline Law (1995) provides for the establishment by the Myanmar Police Force (MPF) of its own courts to review the actions of its officers including for actions that may constitute criminal acts under the Penal Code. This enables police officers to avoid criminal prosecution for crimes committed during service. Investigation and prosecution of police under the Police Force Maintenance of Discipline Law potentially applied in instances of human rights violations, is neither independent nor impartial and thus undermines accountability.[98] In the Philippines the wave of drug-related extrajudicial deaths has been associated with unprecedented impunity and unaccountability of the police forces[99] which has fuelled widespread questioning of the legitimacy of police services and led to diminishing public trust. In Nepal, in October 2020, the National Human Rights Commission (NHRC) published a list of 286 suspects in serious crimes that included 98 police officers. Few of the alleged abusers have been prosecuted.[100]Entrenched resistance to address past abuses in Nepal continues to undermine the rule of law and efforts for security sector reform by eroding community confidence and trust in police and security services.

Good governance as the basis of organisational and operational models of use of force

This document has consistently highlighted that issues relating to the use of force are part of a system. While certain aspects of the system might appear remote and unconnected, they are likely to have an impact on the overall outcome. In general, 'operational models of use of force' could be seen as either prescriptive (where officers followed a type of continuum of force) or reflective (more focused on decision making by the individual

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98 Achieving Justice for Gross Human Rights Violations in Myanmar, Baseline Study, January 2018, ICJ Global Redress and Accountability Initiative; link https://www.icj.org/wp-content/uploads/2018/01/Myanmar-GRA-Baseline-Study-Publications-Reports-Thematic-reports-2018-ENG.pdf

99 Amnesty International, Philippines: UN must intensify pressure to end killings as impunity reigns,https://www.amnesty.org/en/latest/news/2020/09/philippines-un-pressure-end-killings/

100 Human Rights Watch, Nepal: Carry Out Rights Panel's Recommendations, https://www.hrw.org/news/2020/11/03/nepal-carry-out-rights-panels-recommendations

officer). The purpose of the graphic below is to reflect that any such approach exists within a wider organisational model that requires strong governance both before and after the fact. The three governance pillars described above – rule of law, human resources, and accountability – encompass a series of elements that interact in a cyclical way and reinforce each other. Strengthening these elements will allow law enforcement institutions to ensure compliance of operational practice with fit-for-purpose policy on the use of force.

Figure 4. Basic good governance requirements of organisational and operational models of use of force

Organisational Model: Use of force

Before — After

Operational Model - Use of force

Legal Framework
Policy Guidelines
Recruitment / Selection
Welfare and support
Trining
Equipment

Directive | Reflective

External Oversight Bodies
Transparency
(Media / Civil Society)
Lessons Learned Process
Command Responsibility
Individual Identification
Equipament Marketing
Record Keeping

Source: Prepared by the authors

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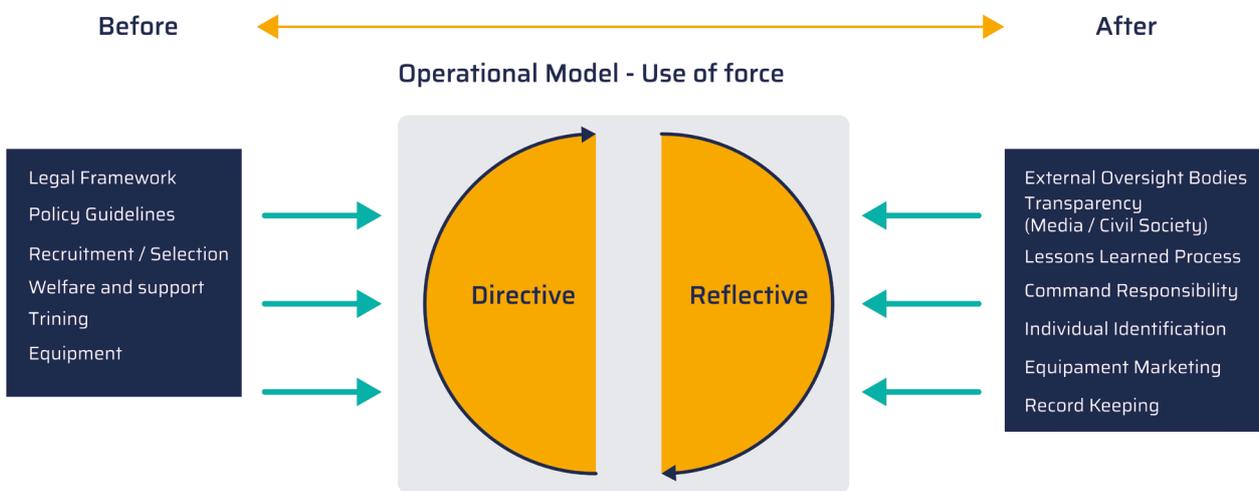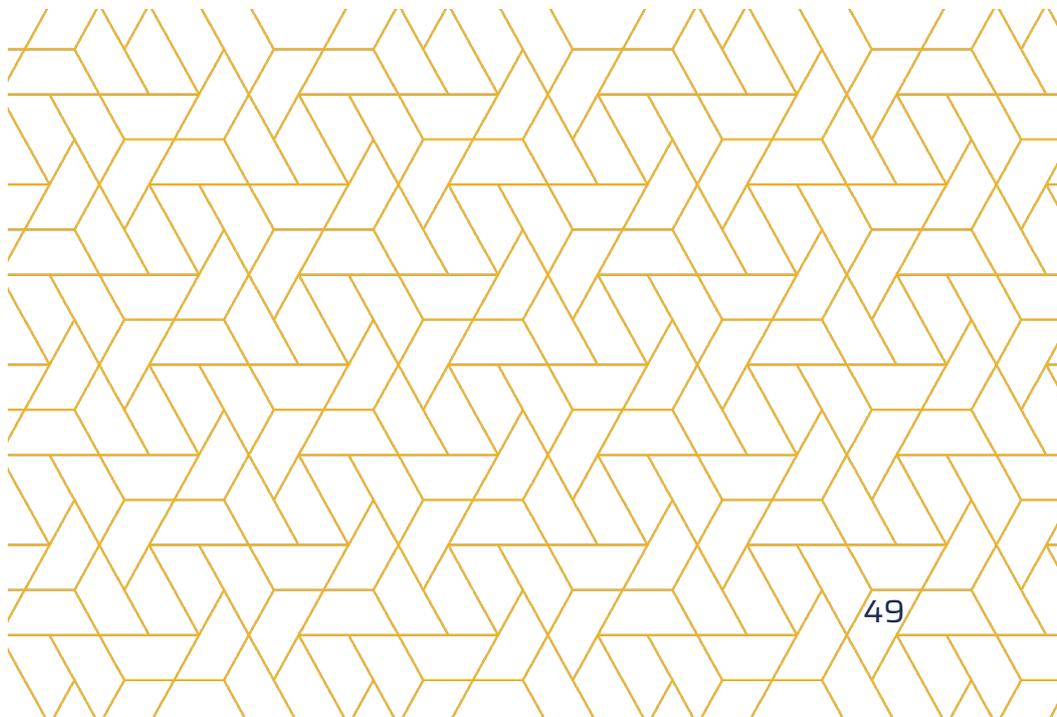
Conclusions and Recommendations

Society invests in its police service the unique authority to use force. With that authority comes a responsibility to use force in a way that is compliant with legislative frameworks and best practices. It should only be used when deemed necessary and when achieving a lawful aim is not otherwise possible. Even then, police are required to use only such force that is proportionate to the aim that they seek to achieve and is reasonable given the circumstances.

Ensuring compliance with such a responsibility goes beyond increasing the number of hours of training on human rights or adjusting public order protocols. While such measures contribute to improving existing practices on use of force, it is recommended developing an organisational model that incorporates measures to shape attitudes and to regulate behaviour with regard to the use of force by both teams and individuals. Poor policy will lead to poor operational practice. Operational guidelines need to be gender sensitive and reflect the protections set out in international norms and national legislative frameworks. The police officers who are called upon to use force should be properly prepared for such encounters through the provision of high quality training and fit-for-purpose tactical options.

While a sound organisational model for the use of force is necessary to deliver a human rights compliant outcome, it alone is insufficient. The concept of 'police culture' is complex. As members of their societies, officers reflect the values of the society that they belong to. Each police agency develops an organisational culture that is central in determining the use of force. On one hand, a healthy police culture encourages positive characteristics such as camaraderie, teamwork and a can-do attitude.[101] On the other hand, negative traits such as toxic masculinity, prejudice, aggression, and the 'blue wall of silence' can be a key causal factor in the misuse of force.

The way to counteract such culture is by ethical leadership within the organisation and by strong mechanisms of both internal and external accountability. Developing a culture of accountability within policing, especially with regard to the use of force, will strengthen organisational legitimacy and is conducive to effective policing. The routine everyday actions of police officers have a strategic reputational impact and should therefore be guided by the highest possible standards.

This document has focused primarily on the police, but the police are simply the ones who apply force and their work is only one part of a system extending from the executive government, through the legislative, and including judicial structures. This system unfolds in very specific and often challenging social and cultural contexts. This paper also makes reference to other stakeholder agencies including but not limited to those that provide oversight for the police. In this complex chain, shortcomings or distortions in one element will most likely have negative implications on the final outcome – i.e. how

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101 See Open Text British Columbia, Ethics in Law Enforcement, Chapter 8.

force is used. In the absence of a responsive government, fair and transparent laws, and impartial courts, it is unlikely that the police will be recognised as a legitimate protector of rights, effective in their mission, and therefore deserving of public confidence.

The focus on good governance in policing, for which this paper advocates, is applicable to other elements in a national framework for ensuring only necessary, proportionate and non-discriminatory uses of force.

RECOMMENDATIONS

This paper has highlighted that police use of force does not simply refer to the physical actions of an individual officer. Use of force happens at the end of a closely interrelated system and as a result of a complex set of processes. Achieving a positive impact on police use of force practices requires a holistic approach that considers each element of the system and integrates the multitude of stakeholders who play a role.

The analysis focused on three main dimensions of the use of force:
- **Rule of Law:** Defining how the police should use force
- **Human Resources:** Selecting, preparing and providing proper tools to those who will use force
- **Accountability:** Strengthening control and oversight mechanisms ('checks and balances') to ensure compliance with rules and laws.

The following recommendations have emerged from this study and represent the framework around which DCAF builds its understanding of how to ensure good governance of the use of force by the police.

RULE OF LAW

Government Direction:
- Police executive leadership must be empowered with sufficient autonomy for decision making while adhering to the legal framework. This is often referred to as 'operational independence'.
- Police forces should have a distinctly civilian ethos and be subject to civilian oversight authorities such as a Ministry of the Interior/Ministry of Justice rather than military authorities.
- Oversight of the police should incorporate the principles of participation, transparency, and inclusiveness and be multi-functional, involving different actors rather than a single entity to avoid capture by specific interests.

Legislative Framework:
- Laws should be clear, complete, unambiguous, and enforceable.
- An assessment of existing domestic legal frameworks should be conducted to ensure: (a) Compliance with internationally recognised norms, especially that force can only be used with the aim of achieving a legitimate law

enforcement objective. (b) That the <u>key principles</u> of Precaution, Legality, Necessity, Proportionality, Non-Discrimination, and Accountability are clearly defined within statutes.

- Legislation should be clearly defined and widely published to be accessible to everyone (including in minority languages/alternative formats).
- National legislation should impose limitations on the type of less-lethal tactical options that law enforcement agencies can acquire (see equipment below).

Internal Policy and Practice Guidelines:
- Police agencies should have compliant policies and standard operating procedures.
- Independent review of internal police policy and standard operating procedures should be taken to assess compatibility with international norms and the domestic legal framework.
- A statutory requirement for a collaborative approach to internal policy development which involves consultation with stakeholders and those potentially impacted by such policy should be included to enhance transparency and build trust.

HUMAN RESOURCES

- Police should be reflective of the community being served.
- Gender mainstreaming should be incorporated.
- Recruitment policies should promote and ensure diversity and non-discrimination.
- Potential candidates must meet a minimum threshold against standard entrance competency tests. Likewise, certificate-based schemes should govern career progression and clearance to use force.
- Merit-based promotion and career progression should take cognizance of an officer's prior record on instances of the misuse of force.

Training
- All police officers must receive proper training on the use of force consistent with domestic legislation and international human rights, and incorporate the key principles for the use of force.
- Continuous and ongoing training must be provided to:
    - Officers who are assigned to specialist units for dealing with Public Order.
    - Officers who are selected to carry equipment capable of higher levels of force including certain firearms.
- Use of force training should extend beyond technical ability to include:
    - Communication skills
    - Gender sensitivity

- - Techniques to minimise conflict
  - De-escalation
  - Integrity
  - Stress management
- Training in the use of force should include scenario-based engagement and judgemental decision-making assessments.

Welfare and support
- Police agencies should provide welfare and support services to officers (particularly those involved in use of force incidents) as part of their duty of care responsibilities.
- States need to ensure a sufficient quality and quantity of police officers through provision of adequate remuneration and working conditions to attract and retain suitable candidates.
- Rewards schemes (as part of holistic human resource management systems) along with adequate accountability mechanisms should support organisational cultural shifts towards compliance with legal principles and also discourage the use of force.
- Police organisations should ensure officers' human rights are protected.

Equipment
Police agencies should be required to review existing equipment to ensure compliance with the following principles:
- Invest in defensive equipment (shields, helmets, ballistic vests) which will reduce the requirement for the recourse to use force.
- Police officers should be equipped with a broad range of equipment to ensure that they are capable of responding with differentiated force to operational challenges.
- Police agencies should realign internal processes of equipment, identification, and procurement to comply with the requirements of the UN Guidance on Less-lethal Weapons (2020)

ACCOUNTABILITY

This is an interdependent process in which different actors share responsibility to build a culture of accountability

Internal accountability
Police organisations should develop a code of ethics as well as disciplinary codes and procedures. These are positive statements to encourage appropriate behaviour but also form the basis of a code of discipline.
- The code of ethics should include specific responsibilities for supervisors and command ranks.

- Individual accountability mechanisms such as detailed record keeping should apply to all use of force equipment; however, in a 'continuum of accountability' approach, additional approval and recording requirements should apply to equipment with higher degrees of lethality.

External Accountability
- An external and independent body capable of investigation (or supervision) of complaints against police should be created. To be effective, such entities need to be sufficiently resourced and empowered.
- External oversight should be free of political influence.
- A multi-layered system of external accountability oversight endowed with adequate means and independence is important to ensure the implementation of the legal framework on use of force and to reduce impunity.
- All instances of death or serious injury in police custody must be referred to an external body capable of investigating or supervising an investigation into the circumstances.
- To ensure transparency, police should be required to record and publish use of force statistics and explanatory information in the public domain.
- Information collected on the use of force should be used to support evidence-based policing models. It should inform training, planning, as well as procurement and tactical decisions.

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