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SPECIFIC HUMAN RIGHTS ISSUES

**Progress report submitted by Ms. Barbara Frey, Special Rapporteur
on the prevention of human rights violations committed with small
arms and light weapons***

Addendum

**Draft principles on the prevention of human rights violations
committed with small arms and commentary thereto**

Bearing in mind the primacy of international human rights law as codified in the International Bill of Human Rights,

Recognizing that the right to life, liberty and security of the person is guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights,

Acknowledging that State officials, especially law enforcement agents, play a vital role in the protection of the right to life, liberty and security of the person,

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

* In accordance with the General Assembly resolution 53/208 B, paragraph 8, this document is submitted late so as to include the most up-to-date information possible.

Recalling also the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted in 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling further that the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 14, emphasized that the use of force and firearms by law enforcement agents should be commensurate with due respect for human rights,

Recalling that the Economic and Social Council, in its resolution 1986/10 of 21 May 1986, section IX, invited Member States to pay particular attention in the implementation of the Code of Conduct for Law Enforcement Officials to the use of force and firearms by law enforcement officials, and that the General Assembly, in its resolution 41/149 of 4 December 1986, welcomed the Council's recommendation,

Acknowledging that article 2 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions requires the strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and small arms,

Solemnly proclaims the basic human rights principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper action by State officials, especially law enforcement agents, with respect to their unequivocal role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights, and which should be taken into account by Governments, and urges that every effort be made so that they become generally known and respected:

1. Governments and State officials, especially law enforcement officials, shall not use small arms to violate human rights. All State officials have the obligation to uphold and affirm human rights including the right to life, liberty and security of the person, as guaranteed in the International Bill of Human Rights.

Commentary:

(a) This paragraph represents the fundamental basis of these human rights principles that Governments and State officials shall not use small arms to violate human rights and that State officials have the obligation to uphold and affirm the right to life, liberty and security of the person;

(b) This obligation on the part of Governments and State officials includes an affirmative responsibility to use due diligence to ensure that right to life, liberty and security of the person is not violated;

(c) The right to life, liberty and security of the person is guaranteed in the Universal Declaration of Human Rights and is reaffirmed in the International Covenant on Civil and Political Rights, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Code of Conduct for Law Enforcement Officials and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

2. Governments and State agencies shall adopt and implement rules and regulations on the use of force and small arms against persons by State officials, especially law enforcement officials.

Commentary:

(a) In developing such rules and regulations, the discourse of human rights should be built into the organizational culture of the appropriate State agencies;

(b) Governments and State officials shall keep the ethical issues associated with the use of force and firearms constantly under review;

(c) In accordance with principle 1 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and small arms against persons by State officials.

3. In order to prevent the violation of human rights by small arms, Governments and State officials shall ensure strict enforcement of the rules and regulations they adopt, including a clear chain of command over all officials authorized by law to use force and, in particular, small arms. Governments shall ensure that arbitrary or abusive use of force carried out with small arms, including but not limited to force used by any State official or person acting at the instigation of or with the consent or acquiescence of a public official, is punished as a criminal offence.

Commentary:

(a) This declaration of strict enforcement is also affirmed by the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Governments shall ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms;

(b) As stated in principles 22 and 23 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process.

4. In order to further prevent the violation of human rights by small arms, Governments and State officials shall maintain clear procedures for the proper storage and management of small arms, particularly ammunition.

Commentary:

(a) The importance of effective regulation and control of small arms and ammunition cannot be underestimated. Effective accountability depends on rigorous documentation concerning the control of small arms, including to whom and when guns and ammunition are issued. Secure storage is also essential to prevent the risk of small arms being stolen;

(b) Small arms under the control of State officials must be stored in a secure manner when not in use. Systems for recording the issuing of small arms and ammunition shall be standardized and regularly audited.

5. Governments and State agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training on the acceptable conditions for the use of force set out in these principles. Those State officials who are permitted to carry firearms should be authorized to do so only upon completion of special training regarding the limitations on their use. The compliance of State officials with rules and regulations on the use of force and small arms shall be subject to regular review.

Commentary:

(a) This principle is also affirmed in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

6. In the training of State officials, especially law enforcement agents, Governments and State agencies shall give special attention to the promotion and protection of human rights as a primary duty of all State officials. Governments shall design training programmes to emphasize alternatives to the use of force and small arms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the misuse of force and small arms.

Commentary:

(a) Though training on the mechanical skills of safe handling and proper maintenance are important, human rights concepts of proportionality and necessity are equally paramount during every stage of weapons training;

(b) While theoretical classroom study is useful in developing technical skills, just this form of exercise alone would not provide the necessary experience in applying human rights standards to “real” situations. Therefore, emphasis must be placed on practical implementation including the development of scenario-based training to develop skills in assessing proportionality and necessity with respect to procedures for arrest, crisis management, crowd control and detention;

(c) Such training shall be compulsory for both new recruits and existing law enforcement officials and shall continue throughout their entire careers;

(d) Monitoring and evaluation of training programmes shall be introduced as soon as possible. The criteria for evaluating the success of training programmes, including the evaluation of trainees’ understanding of and commitment to human rights standards, shall be established at the start of the training to ensure that lessons are learnt from previous training and that those lessons are incorporated into future training initiatives;

(e) This principle is also declared in principle 20 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials: In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms.

7. For specific operations and tactical situations, Governments and State agencies shall require prior planning to include alternative means of settlement without recourse to force and small arms.

Commentary:

(a) In doing so, Governments and State officials should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include: the development of humane non-lethal incapacitating weapons for use in appropriate situations and the development of 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;

(b) Governments and State officials shall recognize that even humane non-lethal incapacitating weapons pose a risk of endangering uninvolved persons. The deployment of such weapons should be carefully evaluated and the use of such weapons should be carefully controlled;

(c) This principle is likewise affirmed in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

8. In honouring the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights, the intentional lethal use of small arms may *only* be made when strictly unavoidable in order to protect life. State officials, including law enforcement and other

security officials, shall not use small arms 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.

Commentary:

(a) The right to life, liberty and security of the person is guaranteed in the Universal Declaration of Human Rights and is reaffirmed in the International Covenant on Civil and Political Rights, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Code of Conduct for Law Enforcement Officials and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions;

(b) State officials, especially law enforcement officials, shall recognize that the use of small arms is an extreme measure. Every effort should be made to exclude the use of small arms, especially against children. In general, small arms shall not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender;

(c) When the use of force is unavoidable, State officials shall identify themselves as such and give a clear warning, either verbal or visual, before resorting to the use of force. However, warning shots - i.e. shots in the air, shots in legs - must be prohibited because stray bullets may cause serious injury to uninvolved persons;

(d) Affirming this principle is article 3 of the Code of Conduct for Law Enforcement Officials, stating that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty;

(e) Consistent with principle 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, State officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

9. Governments and State agencies shall establish effective reporting and investigative procedures to ensure that all incidents involving the misuse of small arms by State officials, including law enforcement and other security officials, are reviewed by independent and competent authorities. There shall be thorough, prompt and impartial investigation of all cases of death, torture or injury involving small arms. In addition to determining the cause, manner and time of death, torture or injury, and the person responsible, all investigations should identify the type of weapon(s) used in the incident.

Commentary:

(a) An independent civilian oversight mechanism for law enforcement should be established to investigate incidents involving alleged violations of human rights committed with

small arms. It should have powers to receive complaints, investigate incidents on its own volition and carry out research into issues related to policing. It should have authority to refer complaints for prosecution where criminal actions are suspected. Mechanisms should also be established to ensure that its recommendations on other issues are acted upon;

(b) This principle is affirmed by the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Code of Conduct for Law Enforcement Officials and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.
