

lethal force, as required by international standards. Internal reporting and review processes are important for police departments to self-evaluate and discipline their own. However, independent, external oversight mechanisms are necessary to ensure thorough investigations, achieve true accountability, and secure the public's trust.

Recommendations

LEGALITY Use of force policies must sit within a human rights compliant federal and state legislative framework that properly balances security needs with individual human rights.

1. **The federal government should ensure federal, state and local policing complies with international human rights standards and commitments of the United States.** U.S. Congress should deploy its legislative and spending powers to ensure police use force in a human rights-compliant manner, including requiring that police use of force policies meet the standards of necessity, proportionality and accountability, and that law enforcement officers protect and enable individual human rights.
2. **State legislatures should enact legal limits on police use of force that comply with international human rights and standards of necessity, proportionality and accountability and protect and enable individual human rights.**
3. **In light of extensive evidence of excessive use of force by federal, state and local law enforcement during lawful demonstrations, government at all levels should re-evaluate the presence of armed police during lawful public gatherings.** Alternatives to law enforcement and unarmed and specialized community engagement police units have been shown to be more effective in providing assistance in organized events and public gatherings than armed units in other countries, as documented in *Defending Dissent: Towards State Practices that Protect and Promote the Rights to Protest* (IHRC/INCLO 2018).

NECESSITY All law and policies on police use of force must comply with the necessity requirement and only allow for force when “absolutely necessary” to save the life or prevent serious bodily harm of an officer or civilian as a “last resort” to other alternatives.

4. **U.S. Congress should revise the standard under 42 U.S.C. § 1983 permitting police officers to use force from a “reasonableness” standard to “only as a last resort and when absolutely necessary to prevent death or serious bodily harm.”**
5. **U.S. Congress should legally require all federal law enforcement officers to use identified de-escalation techniques to de-escalate all threats posed to officers and others prior to the use of force and mandate all state and local law enforcement agencies accepting federal funds to require use of such techniques.** De-escalation techniques include communication and verbal engagement, warnings and clear instructions, avoiding taunting or menacing language, evaluating the situation to identify alternative causes for lack of compliance (e.g., mental impairment, intoxication, fear, and language barriers), use of time and distance to create room for the situation to calm down, taking cover or disengaging.
6. **U.S. Congress should eliminate by law the use of “no knock” warrants during all federal law enforcement investigations because they have led to the use of lethal force when it was not necessary or proportional.**
7. **State legislatures and state and local law enforcement agencies should require, by law and in departmental policies, that law enforcement officers use de-escalation techniques to de-escalate all threats posed to officers and others prior to the use of force.** De-escalation techniques include communication and verbal engagement, warnings and clear instructions, avoiding taunting or menacing language, evaluating the situation to identify alternative causes for lack of compliance (e.g., mental impairment, intoxication, fear and language barriers), use of time and distance to create room for the situation to calm down, taking cover or disengaging.
8. **State legislatures and state and local law enforcement agencies should require, by law and in departmental policies, any officer standing by while another officer uses unlawful force on a subject to intervene to stop the use of force.**
9. **State and local law enforcement agencies should remove from their policies any exceptions that permit the use of lethal force when the situation does not present an immediate and particularized threat of lethal force or serious bodily harm, and where the use of lethal force is not absolutely necessary as a last resort.** This includes eliminating all “escaping suspect or fugitive exceptions” and all “blanket self-defense or prevention of crime

exceptions” that allow the use of lethal force to capture a suspect, in self-defense or in response to the commission of a felony of any kind, regardless of the nature of the threat posed by the subject.

PROPORTIONALITY In addition to being necessary, the use of force must always be proportionate to the threat the officer confronts and weighed against the fundamental human rights of the individual, including the rights to life and security of person.

10. U.S. Congress should condition all federal funds for state and local law enforcement agencies on the agencies’ review and elimination of the use of police techniques, tactics and technologies that pose a risk of death or serious bodily harm but that are not necessary or proportional to the threats posed to officers or others, including chokeholds, carotid holds, neck restraints, tear gas and rubber bullets, among others.
11. State legislatures and state and local law enforcement agencies should eliminate, by law and in departmental policies, the use of police techniques, tactics and technologies that pose a risk of death or serious bodily harm but that are not necessary or proportional to the threats posed to officers or others, including chokeholds, carotid holds, neck restraints, tear gas and rubber bullets, among others.
12. State and local law enforcement policies should require that all use of force be strictly proportionate to the threat confronted, removing all exceptions or equivocations.

ACCOUNTABILITY Accountability requires an independent, external review of each use of lethal force by the police as well as departmental transparency of use of force policies and practices.

13. U.S. Congress should require by law that the Department of Justice establish a program to collect, store, analyze and make public, data on police actions, including all incidents involving the use of lethal force, from the 50 U.S. states and territories, and mandate all state and local law enforcement agencies to report periodically with accurate and comprehensive data on police actions to the Department of Justice.
14. U.S. Congress should eliminate by law the doctrine of “qualified immunity” for law enforcement officers prosecuted for violations of the Constitution under 42 U.S.C. § 1983.

15. U.S. Congress should revise 18 U.S.C. § 242 to lower the standard of criminal intent required to convict law enforcement officers of a criminal violation of constitutional rights from “willfully” to “knowingly or with reckless disregard.”
16. U.S. Congress should legally require all uniformed federal officers, at all times, to wear body cameras and use dashboard cameras and mandate state and local law enforcement agencies receiving federal funds to ensure their use by all state and local law enforcement officers.
17. State legislatures and state and local law enforcement agencies should require, by law and departmental policies, all state and local law enforcement officers, at all times, to wear body cameras and use dashboard cameras.
18. State and local law enforcement policies should mandate full reporting to an external, independent civilian oversight body empowered to conduct independent, publicly accessible investigations for every incident involving the use of deadly force, including any time an officer discharges a firearm or uses a technique, tactic or technology capable of causing death or serious bodily harm.

And to strengthen international norms and institutions to ensure policing protects and promotes international human rights, authors recommend:

19. The Secretary-General of the United Nations, Mr. António Guterres, should convene a High-Level Panel on Law Enforcement and Human Rights to address police abuse of human rights around the world comprised of global leaders, eminent experts, people affected by police abuse and law enforcement representatives tasked with, among other things, reviewing and updating the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and developing a set of actionable recommendations to ensure policing is grounded in the protection and promotion of international human rights.
20. The United Nations General Assembly should convene a High-Level Meeting on Law Enforcement and Human Rights to address police abuse of human rights around the world during which Heads of Member States are called upon to review their national policies and practices and commit, through a Political Declaration, to ensuring all policing is grounded in the protection and promotion of international human rights.



International Human Rights Law and Standards

International human rights law provides the primary basis for global standards on police use of lethal force. The Universal Declaration on Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), the two fundamental international instruments protecting human rights, establish the rights to life, equality, liberty and security of person, freedom from torture and cruel, inhuman or degrading treatment and freedom from discrimination.¹⁵ To ensure protection of these rights, experts have developed and U.N. bodies have adopted a set of international standards on police use of force during the past forty years. The Supreme Court of the United States has also developed legal standards for use of force derived from the United States Constitution that align with and support its international commitments.

The international standards used to assess police use of lethal force policies in this report are derived from the three main sources: the U.N. Code of Conduct for Law Enforcement Officials;¹⁶ the U.N Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;¹⁷ and a 2014 report by the U.N. Special Rapporteur on extrajudicial, summary, or arbitrary executions on protection of the right to life during law enforcement.¹⁸ These are the three most important interpretive sources on police use of force in international law.

The sources used to develop the grading mechanism employed in this report are briefly summarized below. The summaries are followed by explanations of the four principles that guide the grading system – necessity, proportionality, legality and accountability.

¹⁵ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948); International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171.

¹⁶ Code of Conduct for Law Enforcement Officials, G.A. Res. 34/169 of 17 (Dec. 17, 1979) [hereinafter UN Code of Conduct].

¹⁷ Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Aug. 27-Sept. 7, 1990, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 112-13, U.N. Doc. A/CONF.144/28/Rev.1 (1991) [hereinafter UN Basic Principles], available at <http://www.ohchr.org/Documents/ProfessionalInterest/firearms.pdf>.

¹⁸ Special Rapporteur on Extrajudicial Summary or Arbitrary Executions, Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, U.N. Doc. A/HRC/26/36 (Apr. 1, 2014) (by Christof Heyns) [hereinafter UNSR Report], available at <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Pages/ListReports.aspx>.

U.N. Code of Conduct for Law Enforcement Officials

In 1979, the U.N. General Assembly adopted the Code of Conduct for Law Enforcement Officials (U.N. Code of Conduct) which was intended to ensure law enforcement officials perform their duties “with dignity and in compliance with the principles of human rights,” but recognized the “potential for abuse ... the exercise of such duties entails.”¹⁹ A Code of Conduct provides the core set of standards for human rights compliant policing practices, concretizing the rights guaranteed through human rights treaties, including the right to life and freedom from torture and cruel, inhumane and degrading treatment and the right to equal treatment. The U.N. Code of Conduct was drafted by the Committee on Crime Prevention and Control and approved by the Commission for Social Development and the Economic and Social Council to “provide[] the citizenry ... with protection of all their rights and interests”²⁰ and ensure law enforcement officials “protect human dignity and maintain and uphold the human rights of all persons” in the performance of their duty.²¹

The U.N. Code of Conduct provides guidance to police departments for directing and constraining police use of force. While it is not binding law, the Code is a highly persuasive authority for how to interpret treaty obligations which are binding on states. Article 3 of the U.N. Code of Conduct specifies: “Law enforcement officials may use force only when *strictly necessary* and to the extent required for the performance of their duty” (emphasis added).²² This principle of *necessity* explained in detail below has become a key international standard limiting police use of lethal force. Commentary on Article 3 introduces the “last resort” element of necessity and the principle of accountability:

“In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.”²³

The commentary also introduces the principle of proportionality and the principle of legality, requiring that restrictions on the use of force be provided in law.²⁴

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

The U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (U.N. Basic Principles) were adopted in 1990 by the Eighth U.N. Congress on the Prevention of Crime and the Treatment of Offenders to clarify aspects of the U.N. Code of Conduct and to provide guidelines Member States are encouraged to implement.²⁵ They aim, in part, to ensure protection of the rights to life, liberty and security of the person, as guaranteed in the UDHR and reaffirmed in the ICCPR, the latter of which the

¹⁹ UN Code of Conduct, *supra* note 16.

²⁰ UN Code of Conduct, *supra* note 16, at preamble.

²¹ UN Code of Conduct, *supra* note 16.

²² UN Code of Conduct, *supra* note 16.

²³ See UN Basic Principles, *supra* note 17.

²⁴ UN Code of Conduct, *supra* note 16, at article 3, commentary (b).

²⁵ See UN Basic Principles, *supra* note 17.

United States ratified in 1992.²⁶ In particular, the U.N. Basic Principles are meant to “assist Member States in their task of ensuring and promoting the proper role of law enforcement officials.”²⁷ While they are not legally binding, the U.N. Basic Principles represent consensus among U.N. member states on rules and regulations based on international human rights law for the use of force by law enforcement agencies.

Report of the U.N. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions

The U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions, formerly Mr. Christof Heyns and currently Ms. Agnès Callamard, is an international human rights expert appointed by the U.N. Human Rights Council, an inter-governmental body of 47 U.N. member states charged with protecting and enforcing human rights. Among other things, the Special Rapporteur’s mandate requires her/him to report to the U.N. Human Rights Council and U.N. General Assembly “on the situation worldwide in regard to extrajudicial, summary or arbitrary executions and [make] recommendations for more effective action to combat this phenomenon.”²⁸ Towards this end, and to support implementation of the U.N. Basic Principles by law enforcement agencies, Mr. Heyns, then the Special Rapporteur, issued a report with a series of recommendations in 2014.²⁹ In a section devoted to the use of lethal force by domestic law enforcement officials, the U.N. Special Rapporteur outlined four requirements for the use of lethal force: sufficient legal basis, necessity, proportionality and provision of accountability.³⁰ Subsequent non-government actors have provided interpretations of the requirements.³¹ These requirements align with and support the four principles used in this report, as defined below.

International Standards on Police Use of Lethal Force: Legality, Necessity, Proportionality and Accountability

Legality

The principle of legality requires authority for the use of lethal force to be provided in a domestic law that complies with international standards. This principle is derived from the U.N. Code of Conduct, the U.N. Basic Principles and the U.N. Special Rapporteur report. The U.N. Code of Conduct notes that national law “ordinarily restricts the use of force by law enforcement officers ...”³² The U.N. Basic Principles call on governments to “adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials.”³³ They further state that governments “shall ensure that

²⁶ International Covenant on Civil and Political Rights, opened for signature Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976; adopted by the United States Sept. 8, 1992).

²⁷ UN Basic Principles, *supra* note 17, at preamble.

²⁸ OHCHR, Overview of the Mandate, at <http://www.ohchr.org/EN/Issues/Executions/Pages/Overview.aspx>.

²⁹ See UNSR Report, *supra* note 18.

³⁰ See UNSR Report, *supra* note 18, at ¶¶ 86-100. More recently, in response to police use of “less-than-lethal weapons” at protests across the United States following the killing of George Floyd by Minneapolis police, Ms. Callamard has stated that their use “must be restricted to situations of necessity and in proportion to the associated risks.” See Agnès Callamard, *Police in the U.S. are abusing tear gas and rubber bullets in possible violations of international law*, The Washington Post (Jun. 1, 2020) <https://www.washingtonpost.com/opinions/2020/06/01/police-us-are-abusing-tear-gas-rubber-bullets-possible-violations-international-law/>.

³¹ See Amnesty International, *Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Amnesty International (Aug. 2015) [hereinafter Amnesty Guidelines].

³² UN Code of Conduct, *supra* note 16, at article 3, commentary (b).

³³ UN Basic Principles, *supra* note 17, at general provisions 1.

arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.”³⁴ The U.N. Special Rapporteur report establishes, more specifically, that in order for use of lethal force not to be arbitrary, it must have a sufficient legal basis provided in a domestic law that itself complies with international human rights law and standards.³⁵

The principle of legality is also reflected in United States domestic law. In *Tennessee v. Garner*, 471 U.S. 1 (1985), the Supreme Court endorsed the principle of legality through its emphasis on state law in determining whether use of lethal force in the case was constitutional. Though the law in question was found constitutionally invalid, the Court’s decision and reasoning were based on the premise that the state statute provided the authority upon which the officer employed lethal force.³⁶

Necessity

The principle of necessity permits use of lethal force only in response to an imminent and particularized threat, and only as a last resort. The U.N. Basic Principles explain that “intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”³⁷ Article 3 of the U.N. Code of Conduct states that law enforcement officials “may use force only when strictly necessary and to the extent required for the performance of their duty” (emphasis added).³⁸ The Code further explains that use of firearms is “an extreme measure” allowed only “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.”³⁹

Necessity, therefore, requires an immediate threat—immediacy; the threat must be particularized—particularized threat; and lethal force must be only used as a last resort—last resort. This report will employ the necessity principle with these three elements.

Immediacy establishes that lethal force is only authorized against a person who presents an immediate or imminent threat. The U.N. Basic Principles state that firearms may only be used “in self-defence or defense of others against the imminent threat of death or serious injury” (emphasis added).⁴⁰ Similarly, the U.N. Special Rapporteur report explains that “force may also only be used in response to an imminent or immediate threat—a matter of seconds, not hours.”⁴¹

In U.S. domestic law, the Supreme Court emphasizes the importance of a similar immediacy requirement in justifying use of force. In *Graham v. Connor*, 490 U.S. 386 (1989), the Court held that an assessment of whether a police officer’s decision to use force is reasonable, and therefore constitutionally valid,

³⁴ UN Basic Principles, *supra* note 17, at general provisions 7.

³⁵ See UNSR Report, *supra* note 18, at ¶¶ 55-56.

³⁶ See, *Tennessee v. Garner*, 471 U.S. 1, 11 (1985) (the Court stated that the “Tennessee statute is unconstitutional insofar as it authorizes the use of deadly force against such fleeing suspects,” implying that authorization for the use of lethal force derives from the state law—constitutionally valid or not).

³⁷ UN Basic Principles, *supra* note 17, at special provision 9.

³⁸ UN Code of Conduct, *supra* note 16.

³⁹ UN Code of Conduct, *supra* note 16, at article 3, commentary (c).

⁴⁰ UN Basic Principles, *supra* note 17, at special provision 9.

⁴¹ UNSR Report, *supra* note 18, at ¶ 59.

“requires careful attention to the facts and circumstances of each particular case, including ... whether the suspect poses an immediate threat to the safety of the officer or others.”⁴²

In accordance with the particularized threat component of necessity, lethal force may only be used in response to a specific heightened risk or threat. The U.N. Basic Principles define a heightened risk as one of “death or serious injury.”⁴³ The U.N. Special Rapporteur further distinguishes force from lethal force by describing the only “legitimate objective” for lethal force as the protection of life or serious injury.⁴⁴ The particularized threat requirement is thus closely related to the principle of proportionality (discussed below). However, particularized threat requires police only to identify a particular, as opposed to a generalized, risk or threat, which in the case of use of lethal force must be of death or serious injury, in line with the principle of proportionality.

Tennessee v. Garner also establishes a particularized threat requirement analogous to the principle of necessity. In *Garner*, the Supreme Court held that lethal force cannot be used unless the officer “has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.”⁴⁵ The Court based its decision on the constitutionality of the use of lethal force in the case, in part, on whether the officer “had an actual basis to think [the suspect] was armed” and thus “posed any physical danger to himself or others.”⁴⁶

The last resort component of necessity prohibits the use of lethal force until after other non-lethal options have been considered or “whenever the lawful use of force and firearms is unavoidable.”⁴⁷ The U.N. Code of Conduct explains that the use of lethal force is only permitted when “less extreme measures are not sufficient.”⁴⁸ The U.N. Basic Principles state that law enforcement officials “shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.”⁴⁹ They further state that police “may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”⁵⁰ The U.N. Special Rapporteur explains that “force should be the last resort ..., and if it is needed, graduated force (the minimum required) should be applied.”⁵¹

Proportionality

The principle of proportionality limits use of lethal force only in response to threats to life or serious bodily harm to the officer or others. The principle requires a balance between the harm done in applying force on one side and the interest protected on the other.⁵² Proportionality applies to all use of force by police, not just lethal force. As applied to *lethal* force, the U.N. Special Rapporteur describes the value

⁴² *Graham v. Connor*, 490 U.S. 386, 396 (1989).

⁴³ UN Basic Principles, *supra* note 17, at special provision 9.

⁴⁴ UNSR Report, *supra* note 18, at ¶ 58.

⁴⁵ *Garner*, *supra* note 36, at 3.

⁴⁶ *Garner*, *supra* note 36, at 20–21.

⁴⁷ UN Basic Principles, *supra* note 17, at principle 5.

⁴⁸ UN Code of Conduct, *supra* note 16, at article 3, commentary (c).

⁴⁹ UN Basic Principles, *supra* note 17, at principle 4.

⁵⁰ *Id.*

⁵¹ UNSR Report, *supra* note 18, at ¶ 59.

⁵² UNSR Report, *supra* note 18, at ¶ 65.

underlying proportionality as the “protect life” precept: “a life may be taken intentionally only to save another life.”⁵³ The U.N. Code of Conduct notes that “national principles of proportionality are to be respected” and that lethal force should only be used when a subject “offers armed resistance or otherwise jeopardizes the lives of others.”⁵⁴ The U.N. Basic Principles expand the principle to allow use of firearms in response to threats of “serious injury,”⁵⁵ which may be referred to as a threat of serious bodily harm.

The Supreme Court affirmed the principle of proportionality in *Tennessee v. Garner*, requiring the subject to pose “a significant threat of death or serious physical injury to the officer or others” for use of lethal force to be constitutional.⁵⁶ *Graham v. Connor* also implies that an officer’s use of force must be proportional, stating that the test for constitutionality “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue.”⁵⁷

Accountability

The principle of accountability requires an effective review process, involvement of an external oversight body and issuance of a report in all instances of the use of lethal force. The U.N. Special Rapporteur describes the primary role of accountability as ensuring that police officers are not above the law when they use force.⁵⁸ The U.N. Code of Conduct establishes that, “in every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.”⁵⁹ The U.N. Basic Principles require “a system of reporting whenever law enforcement officials use firearms in the performance of their duty.”⁶⁰ The Principles further call for an “effective review process,” with “independent administrative or prosecutorial authorities” in a position to exercise jurisdiction, and, in cases of death or serious injury, the submission of a prompt, detailed report to the “authorities responsible for administrative review and judicial control.”⁶¹ The U.N. Special Rapporteur goes even further and requires involvement of an external oversight body with “necessary powers, resources, independence and transparency[,] ... community and political support, and civil society involvement.”⁶²

⁵³ UNSR Report, *supra* note 18, at ¶ 70.

⁵⁴ UN Code of Conduct, *supra* note 16, at article 3, commentary (b) and (c).

⁵⁵ UN Basic Principles, *supra* note 17, at special provision 9.

⁵⁶ *Garner*, *supra* note 26, at 3.

⁵⁷ *Graham*, *supra* note 32, at 396.

⁵⁸ See UNSR Report, *supra* note 18, at ¶ 100.

⁵⁹ UN Code of Conduct, *supra* note 16, at article 3, commentary (c).

⁶⁰ UN Basic Principles, *supra* note 17, at special provision 11(f).

⁶¹ UN Basic Principles, *supra* note 17, at reporting and review procedures 22.

⁶² UNSR Report, *supra* note 18, at ¶ 84.



Evaluation of Police Department Use of Lethal Force Policies in the 20 Largest U.S. Cities

As explained above, police department use of lethal force policies are the primary source of guidance for police officers as to the circumstances and conditions in which use of lethal force is permitted. Policies are produced by the police departments at a management level and generally approved and adopted by police boards.⁶³ Police officers are trained on the content of policies in order to operationalize the rules and principles the policies contain.⁶⁴ Police department policies do not carry the force of law, i.e., officers may not be held legally accountable simply for failing to follow an internal policy; however, policy violations often result in departmental disciplinary measures and may trigger external investigations, including criminal investigations.

In order to evaluate the 2017-2018 use of lethal force policies of the 20 largest U.S. cities, the authors developed a grading system based on the four principles derived from international law and standards presented above—legality, necessity, proportionality and accountability. The system also reflects meaningful differences observed in police policies.

Importantly, the grading system is designed to evaluate the written policies' compliance with the four key international principles. The grading system does not measure how these policies are implemented, or whether effective institutional processes are in place to ensure policies shape practice. It also does not establish an exhaustive list of best practices for police use of lethal force policies. In other words, the grading system developed for this report does not measure whether there exists, for example, effective officer training on de-escalation and human rights compliant use of force strategies, whether officers are provided with less lethal tools to ensure use of deadly force is minimized, whether processes are in place for reporting and reviewing each instance of the use of force, or whether police leadership is committed to promoting effective internal accountability. These practices are vital for proper implementation and operationalization of the written policies and the principles they contain.

⁶³ The authority of police boards and processes for adopting police policies are typically provided for in the relevant municipal codes. See e.g. Municipal Code of Chicago, Chapter 2-84, §010-030; Los Angeles City Charter, §§ 570-576.

⁶⁴ See generally U.S. Commission on Civil Rights, Briefing Report, Police Use of Force: An Examination of Modern Policing Practices (Nov. 2018) Executive Summary; Police Executive Research Forum, *Guiding Principles on Use of Force, Critical Issues in Policing Series* (2016).

Nevertheless, policies matter, especially in a decentralized context in which police officer monitoring and accountability is largely left to city governments and/or individual departments. What police departments put down on paper to instruct police officers on the proper use of lethal force expresses priorities to the individual officers, demonstrates a commitment to modes of operation and establishes the institutional foundation necessary to ensure respect for the human rights of the people they serve.

Use of Lethal Force Policy Grading System and Grade Results

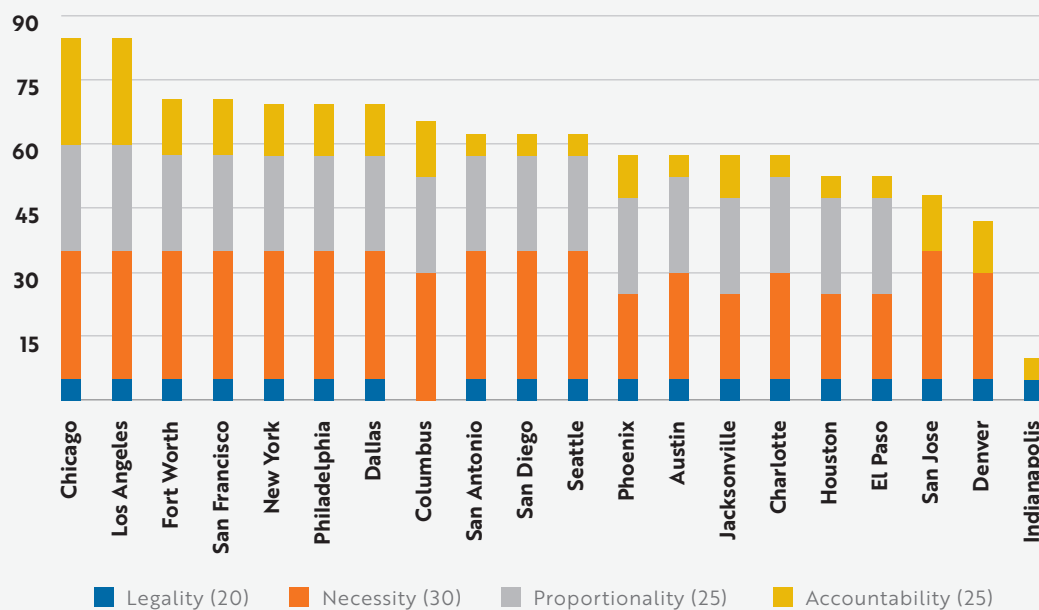
Figure 1

Use of Lethal Force Policy Grades and City Rankings

(1)	Chicago	85
(2)	Los Angeles	85
(3)	Fort Worth	73
(4)	San Francisco	73
(5)	New York	72
(6)	Philadelphia	72
(7)	Dallas	72
(8)	Columbus	68
(9)	San Antonio	65
(10)	San Diego	65
(11)	Seattle	65
(12)	Phoenix	60
(13)	Austin	60
(14)	Jacksonville	60
(15)	Charlotte	60
(16)	Houston	55
(17)	El Paso	55
(18)	San Jose	48
(19)	Denver	42
(20)	Indianapolis	10

Figure 2

Lethal Use Force Policy Grades



As the visuals above illustrate, under the grading system used by this report, a policy that fully complies with international standards could receive a total of 100 points. As described in detail below, each principle was assigned a point value as follows: legality 20 points; necessity 30 points; proportionality 25 points; accountability 25 points. The principle point assignments were developed taking into account the need to create a functional, coherent grading system and the relative substantive value of each principle. In other words, differing point values were assigned to principles to account for important distinctions in the international human rights law and standards from which the principles are derived and observed differences in the policies themselves. The authors disaggregated three principles—legality, necessity and accountability—into constituent elements (1) based on the content of the principle derived from international human rights law and standards and (2) to ensure grades reflected meaningful distinctions observed in the policies. Only policies in full compliance with a principle received the maximum points available.

No city policy satisfied all four international principles and received the full 100 points. In other words, **none of the police use of lethal force policies from the 20 largest U.S. cities during 2017-2018 complied with basic international human rights law and standards.** Every city fell short of the international standard for legality and most failed to fully satisfy accountability. **Los Angeles** and **Chicago** stand out as the only policies that met the international standard for accountability and received the full 25 points for the principle. As a result, Los Angeles and Chicago received the highest overall grade of the 20 cities with 85 points. Seventeen of the 20 cities satisfied proportionality; **San Jose**, **Indianapolis**, and **Denver** are the only cities not to have met the principle to receive its 25 points. **Indianapolis** received the lowest

grade for necessity, at 0 points, with all other cities scoring 20, 25 or 30. As a result, Indianapolis received the lowest overall grade with 10 points.

1. Legality (20 points)

The principle of legality was assigned 20 points in total. The authors assigned legality less total points—20 compared to 25 and 30 for the other principles—because state legislatures, not police departments, draft and enact use of lethal force laws. State legislatures are thus responsible for whether these laws comply with international human rights law and standards. Police departments, however, can and must ensure their policies align with the laws of their state.

Policies received the following grades according to increasing levels of compliance with the principle:

- **Not based on state law (0 points)—policies that were not based on state law granting authorization for use of lethal force;**
- **Based on noncompliant state law (5 points)—policies that were based on a state law authorizing use of lethal force, but for which the law did not comply with international human rights law and standards; and**
- **Based on compliant state law (20 points)—policies based on a state law authorizing use of lethal force that complied with international human rights law and standards.**

The principle of legality is founded, generally, on the principle of the rule of law. The rule of law requires, among other things, that governments and their officials are accountable under clear and just laws that are consistent with human rights norms.⁶⁵ The principle of legality thus has two interrelated components: first, the principle of the rule of law requires police policies to be based on enacted law that authorizes and limits police conduct; second, the substantive component requires that the law upon which the policy is based must comply with international human rights law and standards.

The third element of legality represents the international standard, comprising both interrelated components, and is awarded the full 20 points. The first two elements fall below the international standard and are not assigned the full 20 points available for the principle. Police policies based on an enacted state law—meeting the rule of law component—but for which the law itself did not comply with international human rights law and standards—thus failing to meet the substantive component—received 5 points. Points for the second and third elements—5 and 20 respectively—are awarded independently, rather than added together, because the elements are mutually exclusive.

A police policy was “based” on a state law granting it authorization for use of lethal force if the policy used exact or substantially similar language to the main parts of the state statute. The table in Appendix B displays the textual comparison conducted by the authors to determine whether police use of lethal force policies used exact or substantially similar language to their corresponding state laws.

⁶⁵ See, e.g., Report of the U.N. Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies, U.N. Doc. S/2004/616, at ¶ 6 (August 23, 2004); *World Justice Project, What is the Rule of Law?*, available at <https://worldjusticeproject.org/about-us/overview/what-rule-law>.

Legality Grades Discussion

As noted above, Amnesty International's 2015 report, "Deadly Force: Police Use of Lethal Force in the United States", found that no state law fully complied with international human rights law and standards.⁶⁶ The authors re-examined state statutes as of June 2018 and found that no state law was compliant with international human rights standards. As a result, no police policy received the full 20 points for legality.

One state—Ohio—did not have a law governing police use of force in 2018. **Columbus** therefore received 0 points, because no state law existed to grant authorization for use of lethal force upon which the city policy could be based. The remaining 19 cities' policies were based on state law granting authorization for use of lethal force that did not comply with international human rights law and standards. These 19 cities received 5 points.

For example, **Jacksonville's** policy included multiple examples of exact or substantially similar language from the Florida state law. The Florida law authorized use of lethal force when an officer "reasonably believe[d] [it] to be necessary to defend himself or herself or another from bodily harm while making [an] arrest";⁶⁷ Jacksonville's policy permitted use of lethal force "when the officer reasonably believe[d] such force [was] necessary to prevent imminent death or great bodily harm to themselves or another person."⁶⁸

The Florida law authorized use of lethal force against fleeing felons when, among other things, the officer "reasonably believe[d]" the felon had "committed a crime involving the infliction or threatened infliction of serious physical harm to another person;"⁶⁹ Jacksonville's policy permitted use of lethal force when an officer had "probable cause to believe," among other things, that "the person fleeing committed a violent felony which involved the infliction or threatened infliction of great bodily harm or death ..."⁷⁰

Though not required by international human rights law and standards, it is noteworthy that a number of cities explicitly referenced specific state laws in their policies as the authorization for use of lethal force. For example, **Indianapolis** included a section in its policy in which it presented the text of provisions from the Indiana state code of laws, including for the definitions of "deadly force," "forcible felony" and "serious bodily injury".⁷¹ **Denver** directly quoted the Colorado statute on the use of force.⁷² **San Jose** directed police officers to "follow established authorizations to use force provided by state law (Penal Code Sections 835 and 835a)."⁷³ Most cities did not reference specific state laws, or they did not reference state law as an underlying authorization for the use of lethal force. For example, **Los Angeles** referenced California state law, but only to define "serious bodily injury," not as the statutory authority for the use of lethal force.⁷⁴ **San Antonio** and **Jacksonville** referenced state law generally, indicating that officers must follow state and federal law in their use of force, but they failed to designate specific statutory

⁶⁶ Amnesty International, *Deadly Force: Police Use of Lethal Force in the United States*, 4 Amnesty International (2015).

⁶⁷ Fla. Stat. § 776.05 (1) Law enforcement officers; use of force in making arrest.

⁶⁸ Jacksonville's Sheriff's Office Order Number 551(A)(Ver 2), Response to Resistance, II.C.1 (a).

⁶⁹ Fla. Stat. § 776.05 (3)(a) Law enforcement officers; use of force in making arrest.

⁷⁰ Jacksonville's Sheriff's Office Order Number 551(A)(Ver 2), Response to Resistance, II.C.1 (b).

⁷¹ Indianapolis Metropolitan Police Department, General Order 1.30, Use of Force.

⁷² Operations Manual Denver Police Department 105.00 Use of Force Policy (2) State Statutes.

⁷³ San Jose Police Department, Duty Manual L 2600.

⁷⁴ Los Angeles, Office of the Chief of Police, Special Order No. 5, Policy on the Use of Force-Revised, II. Definitions.