

SPECIAL ISSUE: POLICE DISCRETION & PROTECTING HUMAN RIGHTS

GLOBAL IMPUNITY: HOW POLICE LAWS & POLICIES IN THE WORLD’S WEALTHIEST COUNTRIES FAIL INTERNATIONAL HUMAN RIGHTS STANDARDS

*Claudia Flores, Brian Citro, Nino Guruli, Mariana Olaizola Rosenblat,
Chelsea Kehrler, and Hannah Abrahams**

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*Claudia Flores is a clinical professor of law at the University of Chicago Law School and Director of its Global Human Rights Clinic. Brian Citro is an independent researcher and legal consultant. Nino Guruli is clinical faculty at the UIC John Marshall Law School and a staff attorney in the International Human Rights Clinic. Mariana Olaizola Rosenblat is a lecturer at the University of Chicago Law School and fellow in the Global Human Rights Clinic. Chelsea Kehrler and Hannah Abrahams are students at the University of Chicago Law School. This article also benefited from substantial research by Ran Xu (University of Chicago Law School, LL.M. 2020) and Keila Mayberry (J.D. student, University of Chicago Law School) and editing from Elizabeth Lindberg and Simone Gewirth, legal assistants at the University of Chicago Law School.

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I. INTRODUCTION

Every year, tens of thousands of people die at the hands of law enforcement worldwide.¹ George Floyd (United States), Daniel Chibuike (Nigeria), Agatha Felix (Brazil), João Pedro (Brazil), Breonna Taylor (United States), Anderson Arboleda (Colombia), Laquan McDonald (United States), Eric Garner (United States), Regis Korchinski-Paquet (Canada), Silvia Maldonado (Argentina), Diego Cagliero (Argentina), Yair López (Mexico), Cédric Chouviat (France), Kumanjaya Walker (Australia)—the ever-growing list of lives lost to law enforcement reveals a dysfunction in the nature of policing that is global in scale.² In the

¹ *Police Killings by Country 2021*, WORLD POPULATION REV., <https://worldpopulationreview.com/country-rankings/police-killings-by-country> (last visited June 6, 2021).

² Evan Hill et al., *How George Floyd was Killed in Police Custody*, N.Y. TIMES (May 31, 2020), <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html>; Deji Lambo, *Angry Youth Protest as Cop Shoots Rivers Musician Dead*, PUNCH (Sept. 22, 2020), <https://punchng.com/angry-youths-protest-as-cop-shoots-rivers-musician-dead/>; Dom Phillips, *Brazilians Blame Rio Governor's Shoot-To-Kill Policy for Death of Girl*, GUARDIAN (Sept. 22, 2019), <https://www.theguardian.com/world/2019/sep/22/brazilians-blame-rio-governors-shoot-to-kill-policy-for-death-of-agatha-felix-girl-8>; Tom Phillips, *Black Lives Shattered: Outrage as Boy, 14, is Brazil Police's Latest Victim*, GUARDIAN (June 3, 2020), <https://www.theguardian.com/world/2020/jun/03/brazil-black-lives-police-teenager>; Richard A. Oppel Jr. et al., *What to Know About Breonna Taylor's Death*, N.Y. TIMES (Apr. 26, 2021), <https://www.nytimes.com/article/breonna-taylor-police.html>; Ana Luisa Gonzáles, *How Afro-Colombians are Standing Up Against Racial Violence*, REMEZCLA (June 19, 2020), <https://remezcla.com/features/culture/colombia-protests-black-lives-matter-racial-violence-in-country/>; Nausheen Husain, *Laquan McDonald Timeline: The Shooting, the Video, the Verdict and the Sentencing*, CHI. TRIB. (Jan. 18, 2019), <https://www.chicagotribune.com/news/laquan-mcdonald/ct-graphics-laquan-mcdonald-officers-fired-timeline-htmlstory.html>; Al Baker et al., *Beyond the Chokehold: The Path to Eric Garner's Death*, N.Y. TIMES (June 13, 2015), <https://www.nytimes.com/2015/06/14/nyregion/eric-garner-police-chokehold-staten-island.html>; Mary Maillard, *Regis Korchinski-Paquet (1990–2020)*, BLACKPAST (Mar. 28, 2021), <https://www.blackpast.org/global-african-history/people-global-african-history/regis-korchinski-paquet-1990-2020/>; Julio Rodríguez, *Tenia 17 años: Murió Silvia Maldonado, la adolescente que recibió un disparo policial en Santiago del Estero*, POLICIALES (June 18, 2019), https://www.clarin.com/policiales/murio-silvia-maldonado-adolescente-recibio-disparo-policial-santiago-estero_0_HDLdKWbDd.html; Mauricio Centurion, *Violencia policial*, CENTRO DE ESTUDIOS LEGALES Y SOCIALES, <https://violenciapolicial.org.ar/> (last visited June 17, 2021); *Mexico: Overhaul Police Forces*, HUMAN RTS. WATCH (July 24, 2020), <https://www.hrw.org/news/2020/07/24/mexico-overhaul-police-forces#>; Cédric Chouviat, *French Police Charged Over Death of Delivery Driver*, BBC NEWS (July 16, 2020), <https://www.bbc.com/news/world-europe-53439655>; Lorena Allam et al., *NT Police Officer Zachary Rolfe Shot Kumanjaya Walker Twice at 'Very Close' Range, Court Told*, GUARDIAN (Sept. 2, 2020), <https://www.theguardian.com/australia-news/2020/sep/02/nt-police-officer-zachary-rolfe-shot-kumanjaya-walker-twice-at-very-close-range-court-told>.

last year, demonstrators have gathered in cities—from New York to Tokyo, Lagos to Sydney, Cape Town to Paris—demanding reforms to the way police use and abuse force against the communities they serve.³

In recognition of the global dimension and relevance of this problem and prompted by an appeal from family members of victims of police killings, the U.N. Human Rights Council (HRC) held an Urgent Debate in June 2020 on “racially inspired human rights violations, systemic racism, police brutality and violence against peaceful protests.”⁴ Testifying before the HRC, U.N. Special Rapporteur on All Forms of Racism, E. Tendayi Achiume, called attention to patterns of “militarization of the police, and the violent crackdown against peaceful protesters and journalists, in the United States,” with parallels in many parts of the world, as evidenced by “[t]he massive transnational public outcry” and mobilization.⁵ The debate resulted in an HRC resolution deploring the “recent incidents of excessive use of force and other human rights violations by law enforcement officers against peaceful demonstrators defending the rights of Africans and of people of African descent” and calling on countries to “look into their manuals and guidelines used for training law enforcement officers with a view to identifying the proportionality of measures in the handling of suspects and other persons in custody”⁶

³ Damien Cave et al., *Huge Crowds Around the Globe March in Solidarity Against Police Brutality*, N.Y. TIMES (June 9, 2020), <https://www.nytimes.com/2020/06/06/world/george-floyd-global-protests.html>; *How the End Sars Protests Have Changed Nigeria Forever*, BBC NEWS (Oct. 23, 2020), <https://www.bbc.com/news/world-africa-54662986>; see also Thisanka Siripala, *Japan Holds Anti-Racism Rally, Protesting Homegrown Police Brutality in Solidarity with Black Lives Matter*, DIPLOMAT (June 8, 2020), <https://thediplomat.com/2020/06/japan-holds-anti-racism-rally-protesting-homegrown-police-brutality-in-solidarity-with-black-lives-matter/>.

⁴ Press Release, U.N. Office of the High Commissioner for Human Rights, Human Rights Council Holds an Urgent Debate on Current Racially Inspired Human Rights Violations, Systemic Racism, Police Brutality and Violence Against Peaceful Protests, U.N. Press Release (June 17, 2020).

⁵ E. Tendayi Achiume (Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance) et al., Statement at the Urgent Debate of the Human Rights Council on “The Current Racially Inspired Human Rights Violations, Systemic Racism, Police Brutality and the Violence Against Peaceful Protest” (June 17, 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25969&LangID=E>.

⁶ Human Rights Council Res. 43/1, U.N. Doc. A/HRC/43/1 (June 30, 2020). As a follow up to this HRC Resolution, in June 2021 the U.N. Office of the High Commissioner for Human Rights issued a Report stating that “States should reform laws, policies, procedures and practices to restrict the use of force by law enforcement officials in compliance with international principles on the use of force and firearms, particularly the principles of legality, precaution, necessity, proportionality, accountability and non-discrimination.” See Promotion and Protection of the Human Rights and Fundamental Freedoms of Africans and of People of African Decent Against Excessive Use of Force and Other Human Rights Violations by Law Enforcement Officers, ¶ 41, U.N. Doc. A/HRC/47/53 (June 1, 2021), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/122/03/PD>

Prior to the establishment of the international human rights system, the way States engaged in law enforcement in their own territories was understood as an entirely internal matter. The human rights system, however, was instituted to establish global standards on States' treatment of their own citizens, thus ensuring minimum safeguards for every human being regardless of the government they happen to live under.⁷ The use of force by State agents against civilian populations is now understood to fall squarely within the constraints set by the human rights system, as expressed in its foundational agreement, the Universal Declaration of Human Rights, and enshrined in the International Covenant on Civil and Political Rights as well as regional human rights treaties.⁸ These rights include the right to life, freedom from torture and cruel, inhuman, and degrading treatment, the right to assembly and association, and the freedom from racial discrimination.⁹

To enable and protect these rights, standards have emerged from the international human rights system aimed at constraining how and when police may use lethal force against their own civilian populations. International sources, expounded in greater detail in Part III, establish that police may use lethal force only when it is (1) absolutely *necessary* as a last resort and in response to an immediate, particularized threat; (2) *proportional* to the threat or resistance faced, which in the case of lethal force must be a threat to life or serious bodily injury; (3) sanctioned by *law*; and (4) held meaningfully *accountable* through independent oversight and publicly accessible, transparent record-keeping. A State must satisfy all four principles, in addition to the general principle of non-discrimination, to meet the minimal human rights standard for the regulation of lethal force by its police bodies.

This study aims to assess whether States' law enforcement bodies comply with this basic human rights standard by examining the written directives provided by the State to police officers. The study examines these directives, contained in laws and policies, in the largest cities of the twenty-nine wealthiest countries. Through a review of use of lethal force directives in the world's most well-resourced countries, the study aims to shed light on the state of global policing and long-standing concerns about State abuses of power.

F/G2112203.pdf?OpenElement.

⁷ WALTER KÄLIN & JÖRG KÜNZLI, *THE LAW OF INTERNATIONAL HUMAN RIGHTS PROTECTION* 3–146 (2d ed. 2019).

⁸ Relevant regional human rights treaties include the American Convention on Human Rights, the African Charter on Human and Peoples' Rights, and the European Convention on Human Rights. *See* Organization of American States, American Convention of Human Rights, "Pact of San Jose, Costa Rica," Nov. 22, 1969, 1144 U.N.T.S. 144; African Charter on Human and Peoples' Rights, "Banjul Charter," June 27, 1981, 1520 U.N.T.S. 218; Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221.

⁹ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948); *see also* International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

The paper proceeds as follows: Part II provides a brief background on modern policing; Part III sets forth the framework developed by researchers to assess whether the written directives reviewed comply with international human rights standards; Part IV details the analysis conducted and findings; and Part V contextualizes these findings vis-à-vis policing more generally, highlighting that while reform of written directives is a necessary starting point, it is only one component of broader institutional reform.

II. BACKGROUND

As an arm of the State tasked with maintaining safety, welfare, and social order, law enforcement bodies around the world hold a monopoly on the lawful use of lethal force against civilians, including lethal and non-lethal force.¹⁰ Law enforcement's license to use force is often wide-reaching, extending from public spaces to the private sphere.¹¹ Over time, the tools and techniques by which law enforcement bodies employ force have expanded and evolved—from batons and firearms, to chemical agents, semi-automatic pistols, and emerging surveillance technologies.

Law enforcement's monopoly on the lawful use of lethal force against civilians is a relatively modern phenomenon. Prior to the development of contemporary forms of policing in many parts of the world, decentralized and hyper-localized bodies generally enforced social order.¹² Although military bodies sometimes assisted in arrests or detentions, crime prevention and control were largely left to the citizens themselves and centered around norm enforcement.¹³

¹⁰ Max Weber, *Politics as a Vocation*, in MAX WEBER'S COMPLETE WRITINGS ON ACADEMIC AND POLITICAL VOCATIONS 155–57 (John Dreijmanis ed., Gordon C. Wells trans., 2008).

¹¹ Some countries have recently narrowed the role of police in providing forms of social services instead of law enforcement for certain situations. For instance, in 2015, Sweden began employing mental health professionals to replace police officers. Finland has invested resources in social services for homeless people such as housing, work placement, and addiction counseling. Karla Adam & Rick Noack, *Defund the Police? Other Countries Have Narrowed Their Role and Boosted Other Services*, WASH. POST (June 14, 2020), https://www.washingtonpost.com/world/europe/police-protests-countries-reforms/2020/06/13/596eab16-abf2-11ea-a43b-be9f6494a87d_story.html.

¹² While other administrative bodies existed to collect taxes, protect borders, and control the military, law enforcement consisted of social order outside of these specialist administrative bodies and dealt more with organizing day-to-day interactions among the citizenry. Gerhard Sälter, *Early Modern Police and Policing*, in ENCYCLOPEDIA OF CRIMINOLOGY AND CRIMINAL JUSTICE 1243, 1243 (Gerben Bruinsma & David Weisburd eds., 2014).

¹³ *Id.*

Many modern-day policing practices, the structure of law enforcement bodies, and even the language of certain laws and policies that regulate policing have roots in the institutions of colonialism and slavery.¹⁴ In the United States, slave patrols and practices of settler colonialism were precursors to contemporary policing structures and practices.¹⁵ The legacy of these institutions manifests in highly contentious contemporary debates surrounding policing worldwide and situates contemporary efforts to understand how and when force is used by law enforcement and in what ways this power is abused.¹⁶

Today, while all States enlist their government agencies to engage in law enforcement, the structure of law enforcement varies significantly. Police forces in Australia, China, and France, among others, are centralized in a national police force.¹⁷ In contrast, in Nigeria, for example, national forces are organized and controlled at the subnational level.¹⁸ In other States, such as the United States, police forces are further decentralized and governed by localities. Additionally, most States have supplemental, specialized police forces with authority to act in specific situations such as during riots or protests and in the protection of

¹⁴ See, e.g., Uladzimir Dzenisevich & Maja Daruwala, *The Police We Have and Where it Came From: An Analysis*, COMMONWEALTH HUM. RTS. INITIATIVE, <https://www.humanrightsinitiative.org/blog/the-police-we-have-and-where-it-came-from-an-analysis> (last visited Apr. 1, 2020) (“Indian police laws are based on a British model created 155 years ago and have changed little. India’s current police law came into force some four years after an uprising against its colonial masters in 1857 that was brutally repressed. It was designed for foreign conquerors to rule over a native population.”).

¹⁵ See, e.g., CAROL A. ARCHIBOLD, *THE History of the Police, Section I*, in POLICING: A TEXT/READER 2 (2012), https://www.sagepub.com/sites/default/files/upm-binaries/50819_ch_1.pdf (last visited June 6, 2021).

¹⁶ See, e.g., Larry H. Spruill, *Slave Patrols, “Packs of Negro Dogs” and Policing Black Communities*, 53 PHYLON 42 (2016).

¹⁷ A centralized police force contains a hierarchical police structure that aims to ensure national policy is executed at the national, state, and local level. See Christian Mouhanna, *Local Governance in the Centralized French System of Policing: From Co-production to Conflict of Legitimacy*, 16:5 EUR. J. CRIMINOLOGY 534 (June 2019). Australia, China, and France are three examples of countries that rely on a national police force. The Australian Federal Police (AFP) is Australia’s national police force responsible for investigating federal offenses; state and territorial police forces, such as the New South Wales Police Force (NSWPF), enforce state and territory criminal law alongside the AFP. See, e.g., Kelly Buchanan, *Police Weapons: Australia*, LIBR. CONG. (2014), <https://www.loc.gov/law/help/police-weapons/australia.php>. The Public Security Police, the main police authority in China, operates under the Ministry of Public Security and is highly centralized. See, e.g., Richard H. Ward, *The Police in China*, 2 JUST. Q. 111 (1985). France relies primarily on two national police forces: the National Police for urban areas and the Gendarmerie Nationale for rural areas and small towns. See Jean-Paul Brodeur, *Police: National Police Organizations*, BRITANNICA, <https://www.britannica.com/topic/police/Police-and-counterterrorism> (last visited Mar. 10, 2020) (“France . . . exemplif[ies] the model of high centralization with a small number of national police forces.”).

¹⁸ In some countries, such as Nigeria, national police forces are primarily created and managed by subnational government authorities. See, e.g., A.A. Egunjobi, *The Nigerian Federal Practice and the Call for State Police*, 2 INT’L J. ADVANCED ACAD. RES. 1, 2 (2016).

government buildings. These forces can be organized at the national or local level and assist police officers to varying degrees.¹⁹

Regardless of their differing structures, contexts, and practices, the use of force as a form of coercion is a common denominator in law enforcement around the world. As a former law enforcement official-turned-use of force researcher described it, law enforcement officers are the “conduit of [S]tate power,” “the mechanism through which that power is expressed.”²⁰ Governments around the world allow law enforcement officers to deploy this power as a form of coercion against individuals in the service of State interests and in compliance with the law.²¹ However, as this study demonstrates, the limits and contours of this authority vary widely.

¹⁹ For example, Spain’s two national police forces—Policia Nacional and Guardia Civil—perform wholly separate functions from the municipal police but can assist during protests or riots. See *Funciones: Guardia Civil*, MINISTERIO DE INTERIOR, <https://www.guardiacivil.es/es/institucional/Conocenos/especialidades/index.html> (last visited Mar. 30, 2021). In other cases, multiple local forces exist. For example, in São Paulo, Brazil, everyday policing is governed at the state level and is shared between the Civil Police (investigators) and the Military Police (foot patrol officers); however, some localities have municipal forces, called Guardas Civis, which carry firearms and whose powers have become increasingly aligned with those of the Military Police. See *In São Paulo, GCM Increasingly Assumes the Role of the Military Police*, CARTACAPITAL (May 29, 2017), <https://www.cartacapital.com.br/sociedade/em-sao-paulo-a-gcm-assume-cada-vez-mais-o-papel-de-pm/>.

²⁰ Anna Sale, *Death, Sex & Money: I Killed Someone. Now I Study Police Violence*, WNYC STUDIOS (Nov. 18, 2020), <https://www.wnycstudios.org/podcasts/deathsexmoney/episodes/police-shooting-death-sex-money>.

²¹ See Robert J. Friedrich, *Police Use of Force: Individuals, Situations, and Organizations*, 452 ANNALS AM. ACAD. POL. & SOC. SCI. 82, 83 (1980) (citing ALBERT J. REISS, JR., *THE POLICE AND THE PUBLIC* 154 (New Haven, CT: Yale University Press, 1971) (the state possesses a “monopoly on the legitimate use of force over civilians”)); see also Sébastien Cojean et al., *Psychological and Sociological Factors Influencing Police Officers’ Decisions to Use Force: A Systematic Literature Review*, 70 INT’L J. L. & PSYCHIATRY 1 (2020) (“The police must . . . be allowed to use force, within the limits laid down by the law, in order to maintain the safety of citizens.”). In fact, many laws that regulate the police focus specifically on use of force or firearms rather than crime prevention and detection. See, e.g., Ley Nacional Sobre el Uso de La Fuerza [LNUF] [National Law on the Use of Force], Diario Oficial de la Federación [DOF] 27-05-2019 (Mex.) [hereinafter National Law on the use of Force (Mex.)]; see also Gesetz über den unmittelbaren Zwang bei Ausübung öffentlicher Gewalt durch Vollzugsbeamte des Bundes [UZwG] [Law on Immediate Coercion in the Exercise of Official Authority by Federal Law Enforcement Officers], Mar. 10, 1961, BGBl. (Ger.), <https://www.gesetze-im-internet.de/uzwg/BJNR001650961.html>.

III. INTERNATIONAL HUMAN RIGHTS FRAMEWORK AND METHODOLOGY

Limits on the authority to use lethal force are articulated in use of lethal force directives. These directives are often codified in legislation²² or established by jurisprudence,²³ and in some cases are included in a country's constitution.²⁴ More detailed grounds and guidance for police use of force are also frequently found in executive decrees, administrative regulations and ordinances, and individual police department policies.²⁵ Departmental policies tend to provide the most practical guidance to police officers on how and to what extent police may use force.²⁶

This study grades a global selection of use of lethal force directives in terms of their conformity with an international human rights framework articulated in more detail below.²⁷ Specifically, the study looks at police use of force laws and

²² Some States have a general policing law, such as Turkey's Law on the Duties and Powers of the Police. *Polis Vasife ve Salâhiyet Kanunu* [Law No. 2559], April 7, 1943, art. 16 (Turk.) [hereinafter Turkish Police Duty and Situation Law].

²³ For example, States that are members of the European Convention on Human Rights are bound by the rulings of the European Court of Human Rights in addition to their own State law regarding police use of force. In most cases, the European Court of Human Rights case law is more restrictive regarding police use of lethal force than individual State law. *See* *Toubache v. France*, App. No. 19510/15 (June 9, 2018), <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%22003-6108815-7881303%22%5D%7D>; *see generally* Jim Murdoch & Ralph Roche, *European Convention on Human Rights and Policing: A Handbook for Police Officers and Other Law Enforcement Officials* (2015), COUNCIL EUROPE, <https://book.coe.int/en/human-rights-and-democracy/6839-the-european-convention-on-human-rights-and-policing.html>.

²⁴ *See e.g.*, *Türkiye Cumhuriyeti Anayasası* [Constitution of the Republic of Turkey] 1982, art. 17 (Turk.).

²⁵ *See e.g.*, N.Y. Police Dep't, Patrol Guide Procedure No: 221-04(20); Acuerdo 90/2017 Por el Que se Expide Protocolo de Actuación Policial de la Secretaría de Seguridad Pública de la Ciudad de Mexico en materia de Justicia Civica [Agreement 90/2017 Police Action Protocol of the Ministry of Public Security in matters of Civil Justice], *Gaceta Oficial de la Ciudad de Mexico* [GO], 18-12-2017 (Mex.).

²⁶ For example, national legislation in the United Kingdom provides general principles for police use of force, but the main guidance on when a London officer may use his or her firearm or other forms of lethal force is contained in various national policies published by the College of Policing and the Metropolitan Police Service Police Officer Professional Standards policy. *See* COLL. OF POLICING, CODE OF PRACTICE ON ARMED POLICING AND POLICE USE OF LESS LETHAL WEAPONS (2020); *see also* METRO. POLICE SERV., POLICE OFFICER PROFESSIONAL STANDARDS (2011).

²⁷ "Deadly force" or "lethal force" in this study refers to physical force (the use of body irritants, instruments, special equipment, or firearms) to potentially or intentionally inflict

policies²⁸ in the largest cities by population of the twenty-nine wealthiest countries in the world.²⁹ This sample comprises the wealthiest nations by gross domestic product (GDP)—the United States, China, Japan, Germany, India, the United Kingdom, France, Brazil, Italy, Canada, Russia, South Korea, Australia, Spain, Mexico, Indonesia, Turkey, the Netherlands, Saudi Arabia, Switzerland, Argentina, Sweden, Poland, Belgium, Thailand, Iran, Austria, Norway, and Nigeria. The United Arab Emirates is ranked by *Worldometer* twenty-ninth among countries with the largest GDPs and was included in the original data set for this study.³⁰ However, it was eliminated due to the lack of publicly available information on the relevant laws and policies.

Each city's (or, where applicable, country's) set of laws and policies was then graded on a 100-point scale using the framework discussed below, composed of four international human rights principles on police use of force: legality, necessity, proportionality, and accountability.³¹ The elements for each principle were derived primarily from three authoritative international sources—the U.N. Code

serious bodily injury or death. In addition, this study presupposes that “deadly force” is present whenever a firearm is discharged, regardless of the outcome or whether the shooter intended to inflict a lethal injury on the subject. Accordingly, the researchers considered both laws and policies that govern the use of firearms and those that govern deadly force more broadly as policies governing the use of deadly force.

²⁸ For each country, the researchers first looked at the Law on Police Use of Force Worldwide database for an overview of the applicable police use of force laws and policies. The researchers then used various sources to gain an understanding of the structure of the police forces in each country, including government websites, academic articles, the U.S. Library of Congress, and country experts. Next, the researchers identified the use of lethal force directives for the police forces operating in each country's most populous city, as determined by World Population Review (based on data collected by the United Nations). The use of lethal force directives included legislative acts, policies, codes, manuals, decrees, operational guidance, regulations, circulars, standard operating procedures, executive orders, public orders, and other documents issued by the relevant ministry or directorate at national and city levels. Where the directives were in English, French, Spanish, Mandarin, or Cantonese, researchers reviewed them in their original languages. Where directives were in other languages, researchers relied on official and unofficial translations. To ensure the right laws and policies were identified and correctly interpreted, researchers communicated with attorneys, academics, or policing experts in each country, as needed.

²⁹ *GDP by Country*, WORLDOMETER (2017), <https://www.worldometers.info/gdp/gdp-by-country/>.

³⁰ *Id.*

³¹ Each jurisdiction received a cumulative grade based on its rules on police use of force, whether these rules derived solely from law, solely from policy, or from a combination of the two. Where a country had regulations or policies providing more detailed guidance for police on the use of deadly force, these documents were used as the basis of the country's grade. The majority of the countries reviewed fell into this category. In limited circumstances, where a country only had legislation governing police use of deadly force, the country was allocated a grade based on that legislation. In rarer instances, when a country had legislation that provided partial guidance to police officers and policies that completed that guidance, the researchers took both instruments into account.

of Conduct for Law Enforcement Officials,³² the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,³³ and the 2014 Annual Report of the U.N. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions.³⁴ This framework and its component principles were used to determine whether the largest cities in each state meet the basic standards set by the international human rights system.

A. The Principles

Legality: Under the legality principle, police use of lethal force policies *must be based on a law that authorizes but clearly limits police use of deadly force in accordance with international human rights standards*. As stated in the U.N. Special Rapporteur's 2014 report:

For the use of lethal force not to be arbitrary there must, in the first place, be a sufficient legal basis. This requirement is not met if lethal force is used without the authority being provided for in domestic law, or if it is based on a domestic law that does not comply with international standards.³⁵

The existence of legislation authorizing police to use deadly force confers legitimacy on other written directives and facilitates accountability by clarifying

³² The United Nations Code of Conduct for Law Enforcement Officials is a United Nations General Assembly resolution that was adopted in December of 1979. G.A. Res. 34/169, Code of Conduct for Law Enforcement Officials (Dec. 17, 1979) [hereinafter Code of Conduct].

³³ The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the U.N. Congress on the Prevention of Crime and the Treatment of Offenders and acknowledged by the U.N. General Assembly in resolution 45/166 in 1990, elaborate on and clarify the standards set forth in the Code of Conduct. Eighth Congress on the Prevention of Crime and the Treatment of Offenders, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, ¶ 4 (Sept. 7, 1990), <https://www.un.org/ruleoflaw/blog/document/basic-principles-on-the-use-of-force-and-firearms-by-law-enforcement-officials/> [hereinafter Basic Principles].

³⁴ The 2014 Annual Report of the U.N. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions to the Human Rights Council expounds on the content of the four standards in light of broader human rights principles, including the right to life and the right to peaceful assembly. This report draws from international treaties and judicial decisions to clarify standards related to oversight and accountability. Christof Heyns (Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions), Rep. of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, U.N. Doc. A/HRC/26/36 (Apr. 1, 2014), <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Pages/ListReports.aspx> [hereinafter 2014 UNSR Report].

³⁵ See *id.* ¶ 56.

when the use of force violates legislatively imposed limits. An appropriate legal framework must clearly define and limit the circumstances in which police officers may use lethal force, limiting discretion to circumstances where force is absolutely necessary to protect life. A law that sets unclear or broad standards risks allowing arbitrary and disproportionate use of force.

Necessity: In order to preserve the right to life, the ability to use lethal force is narrowly confined to defensive situations in which lethal force is the only method available, and therefore necessary, to avoid an imminent threat of death or serious injury to the officer or a third person. Accordingly, the principle of necessity permits the use of lethal force *only in response to an imminent and particularized threat, and only as a last resort*.³⁶

The first element of necessity—immediacy—derives from the U.N. Basic Principles³⁷ and is further elaborated in the U.N. Special Rapporteur's 2014 report, which states that “force may also only be used in response to an imminent or immediate threat—a matter of seconds, not hours.”³⁸ The second element—particularized threat—underscores that lethal force may only be used in response to a specific, not simply a generalized, heightened risk or threat.³⁹ The U.N. Basic Principles define a heightened risk as one of “death or serious injury,” which implies that the threat must be to persons and not objects.⁴⁰ The third element of the necessity principle—last resort—stipulates that lethal force must not be used until after other non-lethal options have been considered or “whenever the lawful use of force and firearms is unavoidable.”⁴¹

Proportionality: The principle of proportionality applies to all use of force by police, not just lethal force.⁴² As applied to lethal force, the U.N. Special

³⁶ Article 3 of the U.N. Code of Conduct provides that law enforcement officials “may use force only when strictly necessary and to the extent required for the performance of their duty.” Code of Conduct, *supra* note 32, at art. 3. The Basic Principles, at special provision 9, further explain that “intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.” Basic Principles, *supra* note 33, at ¶ 9.

³⁷ The Basic Principles, at special provision 9, provide that firearms may only be used “in self-defence or defence of others against the imminent threat of death or serious injury” Basic Principles, *supra* note 33, at ¶ 9.

³⁸ 2014 UNSR Report, *supra* note 34, at ¶ 59.

³⁹ See UNIV. CHI. LAW SCH., GLOB. HUM. RTS. CLINIC, DEADLY DISCRETION: THE FAILURE OF POLICE USE OF FORCE POLICIES TO MEET FUNDAMENTAL INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS (2020), <https://chicagounbound.uchicago.edu/ihrcl/14> [hereinafter DEADLY DISCRETION]; see also Code of Conduct, *supra* note 32, at art. 3, cmt. (c); Basic Principles, *supra* note 33, at ¶ 9.

⁴⁰ Basic Principles, *supra* note 33, at ¶ 9.

⁴¹ *Id.* at ¶ 5; see Code of Conduct, *supra* note 32, at art. 3, cmt. (c); see also Basic Principles, *supra* note 33, at ¶ 4 (police “may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result”). The 2014 UNSR Report explains that “force should be the last resort . . . , and if it is needed, graduated force (the minimum required) should be applied.” 2014 UNSR Report, *supra* note 34, at ¶ 59.

⁴² 2014 UNSR Report, *supra* note 34, at ¶ 70.

Rapporteur's 2014 report describes the value underlying proportionality as the "protect life" precept: "a life may be taken intentionally only to save another life."⁴³ The U.N. Code of Conduct, at Article 3, commentary (c), notes that lethal force should only be used when a subject "offers armed resistance or otherwise jeopardizes the lives of others."⁴⁴ The U.N. Basic Principles, at special provision 9, expand the principle to allow use of firearms in response to threats of "serious injury," which may be referred to as a threat of serious bodily harm.⁴⁵ Taking these sources together, the principle of proportionality permits use of lethal force by police *only when they are facing a threat of death or serious bodily harm to themselves or a third person*.

Accountability: Compliance with the accountability principle ensures that police officers are not above the law and are held responsible for any transgressions of use of force policies.⁴⁶ The U.N. Code of Conduct establishes that, "[i]n every instance in which a firearm is discharged, a report should be made promptly to the competent authorities."⁴⁷ The U.N. Basic Principles require "a system of reporting whenever law enforcement officials use firearms in the performance of their duty."⁴⁸ 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."⁴⁹ The U.N. Special Rapporteur goes further and requires involvement of an external oversight body with "necessary powers, resources, independence, transparency[,], . . . community and political support, and civil society involvement."⁵⁰ As these sources clearly indicate, meaningful accountability is key. Thus, the principle of accountability applied in this study requires *reporting and an investigation each time lethal force is used, regardless of the outcome, and oversight by an external independent mechanism*.

Non-discrimination: A fifth principle, non-discrimination, requires each State and its law enforcement sector to ensure every person equal enjoyment of all rights, including life and security.⁵¹ As with other human rights protections,

⁴³ *Id.*

⁴⁴ *See, e.g.*, Code of Conduct, *supra* note 32, at art. 3, cmt. (c).

⁴⁵ Basic Principles, *supra* note 33, at ¶ 9.

⁴⁶ *See* 2014 UNSR Report, *supra* note 34, at ¶ 100.

⁴⁷ Code of Conduct, *supra* note 32, at art. 3, cmt. (c).

⁴⁸ Basic Principles, *supra* note 33, at ¶ 11(f).

⁴⁹ *Id.* at ¶ 22.

⁵⁰ 2014 UNSR Report, *supra* note 34, at ¶ 84.

⁵¹ The non-discrimination principle has been consistently articulated as foundational in all instruments that provide guidance on the human rights standards on use of lethal force by law enforcement. 2014 UNSR Report, *supra* note 34, at ¶ 74 ("[P]olice exercise higher levels of violence against certain groups of people, based on institutionalized racism or ethnic discrimination. Discrimination on these, and other, grounds also impacts on patterns of accountability. States must instead adopt both a reactive and a proactive stance, encompassing all available

non-discrimination provides context for the four principles on lethal use of force.⁵² Equal treatment is one of the core reasons States must limit police discretion and ensure effective accountability processes. However, the principle of non-discrimination was not included in this study's grading framework because our analysis is limited to use of lethal force directives. Non-discrimination requirements are not articulated in lethal force directives, but rather, primarily, in constitutions and often in more broad-based legislation. In accordance with these constitutional and legislative imperatives, police departments should explicitly articulate and implement nondiscriminatory policing in their policies and training.

*B. Grading Scale*⁵³

The grading system in this study assesses the language in the use of lethal force directives applicable to each city (referred to as jurisdiction) for its compliance with the principles of proportionality, necessity, legality, and accountability. As noted above, the applicable directives to a particular city vary by State. Depending on the city, the directives that apply to law enforcement could be local or national in scope and contained in legislation, administrative regulations, or internal departmental policy. The points awarded to these directives are referenced below.

Legality (twenty points): The legality principle requires States to provide a legal foundation for any use of lethal force directives.⁵⁴ The jurisdictions in this study that fully complied with the legality principle were awarded twenty points. The legality principle was awarded fewer points than the other principles because, while a legislative foundation is important, it is often supplemented with other written directives. Thus, the point value reflects the reality that human rights-compliant instructions can be delivered to the police through various legitimate means.

means, to combat racially motivated and other similar violence within law enforcement operations.”); Code of Conduct, *supra* note 32, at article 2.

⁵² See generally Terry D. Johnson, *Unbridled Discretion and Color Consciousness: Violating International Human Rights in the United States Criminal Justice System*, 56 RUTGERS L. REV. 231 (2003); see also 2014 UNSR Report, *supra* note 34, at ¶ 74; Code of Conduct, *supra* note 32, at art. 2, cmt. (a).

⁵³ The grading scale was adapted from the methodology used to evaluate U.S. cities in a report created by the Global Human Rights Clinic at the University of Chicago Law School. The researchers used the same grading system to analyze the compliance with international human rights standards of police department lethal use of force policies in the twenty largest cities by population in the United States. See DEADLY DISCRETION, *supra* note 39.

⁵⁴ See DEADLY DISCRETION, *supra* note 39, at page 13; see also Code of Conduct, *supra* note 32, at art. 3, cmt. (b).

The researchers adjusted the grading applied in *Deadly Discretion* to account for variation in legal and policy frameworks in different countries based on the following scale:

- If there was no law limiting the use of force, the jurisdiction received zero points.
- Where a policy existed but was not based on a law, the jurisdiction received zero points.
- Where a policy existed and was based on a law but the law was not compliant with international human rights standards, the jurisdiction received five points.
- Where a policy existed and was based on law that was compliant with international human rights standards, the jurisdiction received the full twenty points.
- Where a national or subnational law was the sole instrument regulating police use of lethal force, and no separate policy existed, a jurisdiction received five points if the law was not compliant with international human rights standards; the jurisdiction received the full twenty points if its law was compliant with international standards.⁵⁵

Necessity (thirty points): Necessity permits the use of lethal force only as a last resort in response to an immediate and particularized threat.⁵⁶ All three elements of necessity must have been present for a jurisdiction to receive all thirty points. Points were awarded if either the law or the policy, or both, complied with the necessity elements. Necessity was assigned thirty points because it (1) represents a set of explicit limitations on police use of lethal force; and (2) includes three distinct, but equally important, sub-elements deriving from the international human rights standard:

- ***Immediacy (ten points):*** A law or policy that allowed use of deadly force only when a subject presents an immediate or imminent threat satisfied the immediacy element and received the full ten points. A law or policy that generally required immediacy for the use of deadly force, but which contained an exception that allows the use of deadly force in certain circumstances, such as against a fleeing felon or fleeing suspect, without requiring that the threat posed by the subject be immediate or imminent, received five points.

⁵⁵ This represents an adjustment to the grading applied in *DEADLY DISCRETION* to account for variation in legal and policy frameworks in different countries.

⁵⁶ See *DEADLY DISCRETION*, *supra* note 39, at page 14; see also Code of Conduct, *supra* note 32, at art. 3, cmt. (c); Basic Principles, *supra* note 33, at ¶ 9.

- *Particularized Threat* (ten points): A law or policy that allowed the use of deadly force only in response to a specific and heightened risk or threat satisfied the particularized threat element and received ten points. To satisfy this principle, the specific and heightened risk or threat must be to people rather than property.⁵⁷
- *Last Resort* (ten points): A law or policy that allowed the use of deadly force only after non-deadly options had been considered or where the use of force was otherwise unavoidable, satisfied the last resort element and received all ten points. If a law or policy used the term “last resort” or equivalent phrasing, the element was satisfied. If a law or policy set out a continuum of force and required de-escalation or the use of other non-violent methods before the use of deadly force, the last resort element was satisfied. Where a policy or law only required that a warning shot be fired prior to direct use of deadly force, the last resort element was not satisfied because it failed to require sufficient efforts of de-escalation.

Proportionality (twenty-five points): A law or policy that allowed the use of deadly force *only* in response to an equal threat of death or serious bodily injury to the officer or other people satisfied the proportionality principle and received all twenty-five points. Mere reference to a requirement that the use of lethal force be “proportional” was insufficient; the relevant law or policy must have clearly established that only a threat of death or serious bodily injury justified police use of lethal force.

Accountability (twenty-five points): A law or policy that required law enforcement to issue a full report to an independent, external oversight body for each instance lethal force is used—*regardless* of the outcome—received the full twenty-five points. A jurisdiction was awarded points if either the law or the policy, or both, complied with the accountability sub-elements. The accountability principle is organized into five sub-elements to provide increasing and aggregative points based on the international standards and to reflect observed differences in the policies studied. These sub-elements derive from two distinctions: (1) internal versus external contact or reporting procedures;⁵⁸ and (2) procedures triggered for all instances of the use of deadly force—i.e., each time an officer discharges a firearm, regardless of the outcome—versus those triggered only for

⁵⁷ The Basic Principles, at special provision 9, define a heightened risk as one of “death or serious injury.” Basic Principles, *supra* note 33, at ¶ 9.

⁵⁸ “Contact” comprises notification procedures whereby law enforcement makes contact and notifies an external body when an officer has used deadly force without providing substantial information about the incident. “Reporting,” on the other hand, requires law enforcement to issue a full report detailing what happened during the incident involving the use of deadly force to an external body. See DEADLY DISCRETION, *supra* note 39, at page 32.

instances that result in death or serious bodily injury. The five accountability sub-elements that were aggregated in the total score awarded are as follows:

- *Mandatory internal reporting when death or injury occurs:* A law or policy that required internal reporting only when death or injury results from the use of deadly force received zero points. Similarly, where a law or policy made vague reference to reporting obligations to “competent authorities,” without specifying whether those authorities are internal or external to the police force, it received zero points.
- *Mandatory internal reporting for all instances of deadly force:* A law or policy that required internal reporting for all instances of the use of deadly force, regardless of the outcome, received five points.
- *Mandatory external contact when death or injury occurs:* A law or policy that required external contact only when death or injury results from the use of deadly force received five points.
- *Mandatory external contact for all instances of deadly force:* A law or policy that mandated external contact for all instances of the use of deadly force, regardless of the outcome, received seven points.
- *Mandatory external reporting when death or injury occurs:* A law or policy that required external reporting only when death or injury results from police use of deadly force received eight points.
- *Mandatory external reporting for all instances of deadly force:* A law or policy that mandated external reporting for all instances of the use of deadly force, regardless of the outcome, received twenty-five points.

IV. ANALYSIS OF USE OF FORCE LAWS AND POLICIES

A. Applying the Human Rights Framework

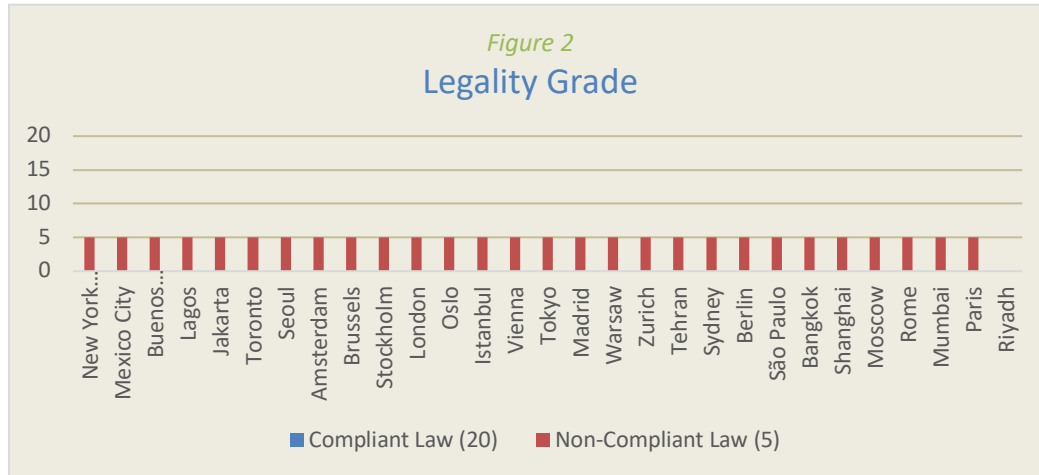
Our analysis shows that not one jurisdiction analyzed complied fully with the four principles of legality, necessity, proportionality, and accountability. As the subsequent sections will detail, every jurisdiction fell short on the principle of legality by failing to provide a proper legal foundation for use of force directives. Nineteen out of the twenty-nine jurisdictions analyzed failed the three other principles—necessity, proportionality, and accountability. Amsterdam, Brussels, and Stockholm, for example, were the only jurisdictions to satisfy the accountability principle by requiring external independent reporting for every use of lethal force by a police officer. Rome, Mumbai, and Paris received zero points for necessity,

proportionality, and accountability and only partially satisfied the principle of legality. Riyadh was unique for receiving zero points under each principle, failing entirely to comply with basic human rights standards on the use of lethal force by police.

City (State)	Grade
New York City (United States)	72
Mexico City (Mexico)	70
Buenos Aires (Argentina)	70
Lagos (Nigeria)	65
Jakarta (Indonesia)	65
Toronto (Canada)	63
Seoul (South Korea)	45
Amsterdam (Netherlands)	40
Brussels (Belgium)	40
Stockholm (Sweden)	40
London (United Kingdom)	38
Oslo (Norway)	33
Istanbul (Turkey)	30
Vienna (Austria)	28
Tokyo (Japan)	25
Madrid (Spain)	25
Warsaw (Poland)	25
Zurich (Switzerland)	23
Tehran (Iran)	23
Sydney (Australia)	20
Berlin (Germany)	20
São Paulo (Brazil)	20
Bangkok (Thailand)	20
Shanghai (China)	15
Moscow (Russia)	15
Rome (Italy)	5
Mumbai (India)	5
Paris (France)	5
Riyadh (Saudi Arabia)	0

Figure 1: Final overall grade by city (country)

i. Legality



The principle of legality requires that legislation define and limit the circumstances in which police officers may use lethal force. Failing to establish these limits in domestic legislation opens the door to abuse of discretion and frustrates accountability for such abuses.⁵⁹ As explained by the United Nations Office on Drugs and Crime (UNODC) in its ‘Handbook on police accountability, oversight and integrity,’ policies must be “based on the legislation that reflect both the spirit and the letter of the law.”⁶⁰ When limits on use of lethal force do not have the force of law, efforts to hold police officers accountable for abuses of discretion are undermined.

None of the jurisdictions evaluated satisfied the principle of legality. In other words, none of the twenty-nine wealthiest countries in the world have a law that sets human rights compliant limits on when police may use lethal force. Twenty-

⁵⁹ As the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions wrote in his report to the Human Rights Council,

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

2014 UNSR Report, *supra* note 34, at ¶ 56.

⁶⁰ U.N. OFF. ON DRUGS & CRIME, HANDBOOK ON POLICE ACCOUNTABILITY, OVERSIGHT AND INTEGRITY, at iv, U.N. Sales No. E.11.IV.5 (2011), https://www.unodc.org/pdf/criminal_justice/Handbook_on_police_Accountability_Oversight_and_Integrity.pdf.

eight jurisdictions received five points for having laws that were non-compliant. Riyadh, Saudi Arabia, was the only jurisdiction to receive zero points for legality. The law governing police in Riyadh fails to set any standards on use of force⁶¹ and there are no policies in Riyadh that supplement and reference an existing legal framework.⁶²

For example, Berlin has a law governing police that sets out standards for the use of force, including specific rules for the use of firearms.⁶³ The law provides that “[a] law enforcement officer may shoot at individuals in order to prevent them from the imminent execution or continuation of an illegal act which, under the circumstances, turns out to be (a) a crime or (b) an offense involving the use or carrying of firearms or explosives.”⁶⁴ Policy implementing the law and further directing police behavior mirrors the legislative language.⁶⁵ The law and policy fail to satisfy the necessity and proportionality principles, both of which require lethal force only be used in response to an immediate threat of death or serious bodily harm (rather than the commission of any crime). Therefore, Berlin received five points for having a policy that mirrored a non-compliant law.

Like Berlin, where the legally-grounded policy failed to satisfy one or more of the other principles of the grading framework, the other twenty-eight jurisdictions reviewed did not fully satisfy the principle of legality.⁶⁶ Law 5688 Integral

⁶¹ Law of Criminal Procedure, Royal Decree No. M/39 (Oct. 16, 2001) (Saudi Arabia); Basic Law of Governance, Royal Decree No. A/90 (Mar. 1, 1992) (Saudi Arabia).

⁶² See, e.g., *Saudi Arabia*, LAW ON POLICE USE FORCE WORLDWIDE, <https://www.policinglaw.info/country/saudi-arabia> (last visited Mar. 10, 2021).

⁶³ Gesetz über die Anwendung unmittelbaren Zwanges bei der Ausübung öffentlicher Gewalt durch Vollzugsbeamte des Landes Berlin (UZwG Bln) [Law on the Application of Immediate Coercion in the Exercise of Official Authority by Law Enforcement Officers of the State of Berlin], June 22, 1970, BERLIN GESETZ- UND VERORDNUNGSBLATT [BER GVBL] (Berlin) (Ger.).

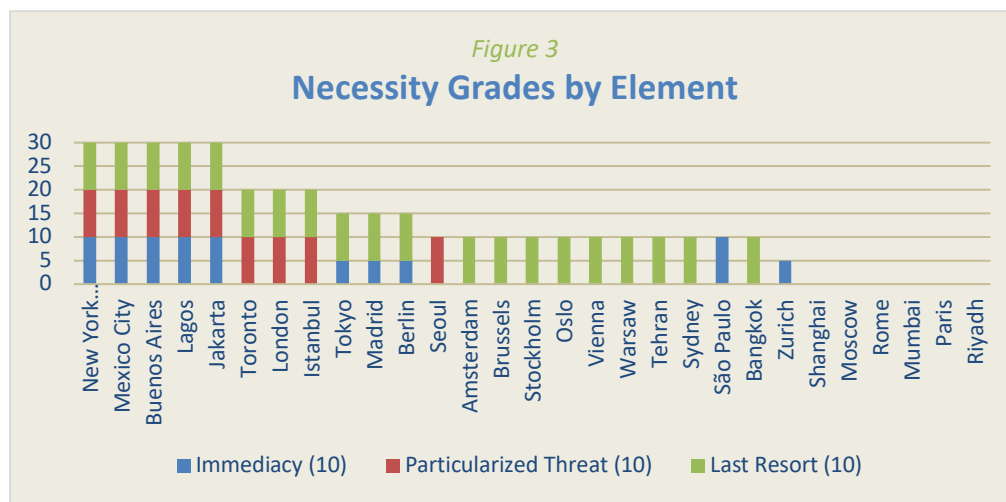
⁶⁴ *Id.* § 11.

⁶⁵ Ausführungsvorschriften für Vollzugsdienstkräfte der Polizeibehörde zum UZwG Bln [AV Pol UZwG Bln] [Implementing Regulations for Enforcement Officers of the Police Authority to the UZwG Bln], June 20, 2016 (Ger.).

⁶⁶ See *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) pt 18 (Austl.) [hereinafter Austl. Act] (using broad and vague standards); GESAMTE RECHTSVORSCHRIFT FÜR WAFFENGEBRUCHSGESETZ (WAFFENGEBRAUCHSEGETZ) [WEAPON USE ACT] [hereinafter AUSTRIA WEAPONS USE ACT], Mar. 27, 1969, BUNDESGESETZBLATT [BGBl] No. 149/1969 (Austria), as amended, <https://www.ris.bka.gv.at/>; Loi sur la fonction de police [Law on the police function], Aug. 5, 1992, Interieur Fonction Publique Justice, Dec. 12, 1992, 27124, art. 37–38 (Belg.); Law on the Use of Weapons by Armed Forces Officers in Necessary Cases of 18 October 1994 (Iran) [hereinafter Iran Weapons Law]; C.p. 25 agosto 2017, n.103, arts. 52–53, G.U. Oct. 26, 1930, n.251 (It.); USTAWA O ŚRODKACH PRZYMUSU BEZPOŚREDNIEGO I BRONI PALNEJ [LAW ON MEASURES OF DIRECT COERCION AND FIREARMS] 201 Pos. 628 (Pol.); Federal’nyy Zakon O Politsii [Federal Law about the Police] [SZ RF] [2011 Police Law] 2011, No. 3-FZ, chs. 1 & 5 (Russ.); Organic Law 2/1986, of March 13, on Security Forces and Bodies (B.O.E. 1986, 63) (Spain); Law 4/1992, of July 8, on the Coordination of Local Police (B.O.E. 1992, 172) (Spain); 10 § POLISLAG (Polislag 1984:387) (Swed.) [hereinafter SWEDISH

System of Public Security of Buenos Aires, for example, failed to comply with the accountability principle.⁶⁷ Article 96 requires that “reports be issued when someone is killed or injured as a result of an officer’s use of a firearm.”⁶⁸ The accountability principle requires external independent reporting with each use of lethal force, regardless of whether someone is killed or injured. In these and many other examples, the jurisdictions failed to provide clear, legally-mandated limits on police discretion in accordance with human rights principles.

ii. *Necessity*



Only five jurisdictions (Buenos Aires, Jakarta, Lagos, Mexico City, and New York City) met all three elements of the necessity principle—immediacy, particularized threat, and last resort. This means twenty-four jurisdictions—more than 80% of those studied—failed to restrict police use of deadly force to situations where it is necessary, as a last resort, to avoid an imminent and particularized threat of death or serious bodily injury to the officer or another person.⁶⁹ Such

POLICE ACT]; POLIZEIGESSETZ [POLG] Apr. 23, 2007, S.G.S 550.1 (Switz.) [hereinafter Swiss Police Act]; Politiewet 2012, Stb. 2012, 315 at art. 7 (Neth.); Turkish Police Duty and Situation Law, *supra* note 22; Criminal Law Act 1967, ch. 58, § 3, (Eng.); N.Y. PENAL § 35.30 (McKinney 2004).

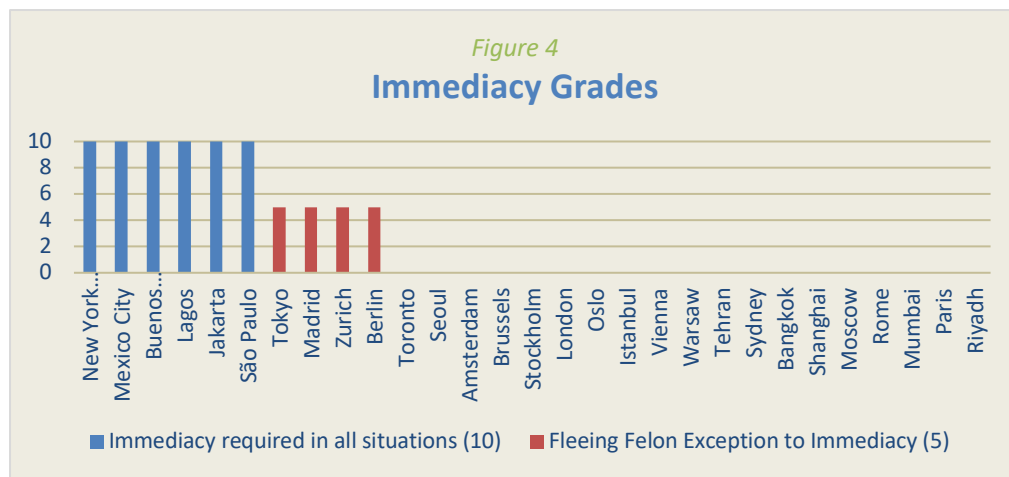
⁶⁷ See also National Law on the use of Force (Mex.), *supra* note 21.

⁶⁸ Law No. 5688, Nov. 17, 2016, 5030 B.O. 50, art. 96 (Arg.).

⁶⁹ See *supra* Figure 3. The twenty-four jurisdictions are: Amsterdam, Bangkok, Berlin, Brussels, Istanbul, London, Madrid, Moscow, Mumbai, Oslo, Paris, Riyadh, Rome, São Paulo, Seoul, Shanghai, Stockholm, Sydney, Tehran, Tokyo, Toronto, Vienna, Warsaw, and Zurich.

restrictions are critical to provide explicit limitations on when police may use lethal force and to ensure protection for the right to life during law enforcement. Three jurisdictions (Istanbul, London, and Toronto) failed to satisfy the full necessity principle, but met two of the three elements. Fourteen jurisdictions only met one element or one element plus part of immediacy, as explained below.⁷⁰ One jurisdiction, Zurich, only met part of immediacy. Six jurisdictions (Mumbai, Moscow, Paris, Riyadh, Rome, and Shanghai)—more than 20% of the jurisdictions studied—failed to meet all three of the necessity elements.

a. Immediacy



Jurisdictions that satisfied the immediacy requirement and received ten points had directives that clearly restricted police use of deadly force to situations where there was *an immediate or imminent threat to life or serious bodily injury*. For example, Mexico City’s policy limits deadly force to situations where a subject poses “real, actual, or imminent aggression without regard to life.”⁷¹ Similarly, the Nigeria Police Force Order 237, which regulates the use of firearms and other deadly force throughout Nigeria, including in Lagos,⁷² enumerates five scenarios

⁷⁰ See *supra* Figure 3. The fourteen jurisdictions are: Amsterdam, Bangkok, Berlin, Brussels, Madrid, Oslo, São Paulo, Seoul, Stockholm, Sydney, Tehran, Tokyo, Vienna, and Warsaw.

⁷¹ Administración Pública de la Ciudad de México, [Mexico City Agreement 3/2016 on Arrests] [GO], 5 de Abril de 2016, art. 5.2 (Mex.).

⁷² Nigeria Police Force Order 237 (rev.), Manual of Guidance on the Use of Force & Firearms by Police Officers (2019) (Nigeria) [hereinafter Nigeria Police Order].

in which the police may use firearms, other lethal force, or potentially lethal force: in self-defense, in defense of another person, to disperse violent assemblies, to catch someone escaping custody, or to catch someone escaping arrest.⁷³ The Order further requires that each scenario involve an imminent threat of death or serious injury to the officer or others.⁷⁴ The Order also provides a detailed definition of “imminent threat” to comprise “threatened actions or outcomes . . . which could reasonably be expected to cause death or serious bodily harm immediately or before the imminence of such a threat can be eliminated by the police . . .”⁷⁵ Finally, the Order clarifies, in line with the 2014 Special Rapporteur report,⁷⁶ that the actual length of time involved depends on the circumstances of each particular situation, but must involve “some degree of immediacy, i.e., a matter of seconds, not hours.”⁷⁷ Together, these provisions satisfied the immediacy element of the necessity principle.

The directives in four jurisdictions (Berlin, Tokyo, Madrid, and Zurich) allowed police to use deadly force to prevent an escape without regard to whether the threat posed by the fleeing suspect or felon was imminent.⁷⁸ These jurisdictions received only five points because, although their policies generally required immediacy, they contained “fleeing felons” exceptions that expanded police discretion impermissibly. For example, among other situations, the police in Zurich may use a firearm without any consideration for whether the threat they confront is imminent “if a person has committed a serious crime or a serious offence or is strongly suspected of such a crime or offence and wants to flee.”⁷⁹ By contrast, the policies governing police use of deadly force in both Jakarta and New York City, like in Nigeria, required immediacy in all situations, including provisions that explicitly required fleeing subjects to pose an imminent threat to life or of serious bodily injury.⁸⁰

⁷³ *Id.* § 2(K)(2.1).

⁷⁴ *Id.*

⁷⁵ *Id.* § 1(B)(1.13).

⁷⁶ See 2014 UNSR Report, *supra* note 34, at ¶ 59 (establishing that “force may also only be used in response to an imminent or immediate threat—a matter of seconds, not hours”).

⁷⁷ Nigeria Police Order, *supra* note 72, § 1(B)(1.13).

⁷⁸ See Swiss Police Act, *supra* note 66; *Principios Básicos de Actuación Policial. Especial Referencia al Uso del Arma de Fuero por la Policía.*, SEGURIDAD PUBLICA (Oct. 1, 2010), <https://seguridadpublica.es/2010/10/01/principios-basicos-de-actuacion-policial-especial-referencia-al-uso-del-arma-de-fuero-por-la-policia/> (Spain); The Police Duties Execution Act, Law No. 136 of 1948 (Japan); Law on Immediate Coercion in the Exercise of Official Authority by Federal Law Enforcement Officers, *supra* note 21.

⁷⁹ Polizeigesetz (PolG) [Police Act], Apr. 23, 2007, SR 550.1, art. 3, § 17(b) (Switz.).

⁸⁰ Peraturan Kepolisian Negara Republik Indonesia Nomor 1 [Regulation of the Chief of the Indonesian National Police Number 1], The Use of Force in Police Action, art. 8 (2009) (Indon.). In Jakarta, the police are permitted to use a firearm or other deadly force when a “perpetrator or suspect can act immediately causing serious injury or death” or to prevent the subject from escaping when their escape “constitutes an immediate threat to the life of members of the National Police or Public.” *Id.*; NEW YORK, NY, CITY OF NEW YORK PATROL GUIDE

Nineteen jurisdictions—more than 60% of those studied—received zero points because they allow police to use deadly force without concern for whether the threat they face is immediate or imminent.⁸¹ Without an immediacy requirement, police may use lethal force where non-lethal force could effectively neutralize the threat posed, thus threatening the right to life. For example, the policy governing police use of lethal force in Paris does not require officers to consider whether the threat they face is imminent.⁸² In Sydney, law and policy provide a great deal of discretion for police use of lethal force, without any reference to the immediacy of the threat confronted.⁸³ The police in Sydney may generally use force that is “reasonable and appropriate based upon the level of resistance met or the threat presented,”⁸⁴ with further instruction “to use such force as is reasonably necessary to exercise the function.”⁸⁵ This language, again, provides the police broad discretion without a temporal requirement for the threat faced.

203–12, “DEADLY PHYSICAL FORCE” (Aug. 1, 2013) [hereinafter NYC FORCE PATROL GUIDE]. In New York City, police officers “shall not discharge their firearms to subdue a fleeing felon who presents no threat of imminent death or serious physical injury to themselves or another person present.” *Id.*

⁸¹ See *supra* Figure 4. The nineteen jurisdictions are: Amsterdam, Bangkok, Brussels, Istanbul, London, Moscow, Mumbai, Oslo, Paris, Riyadh, Rome, Seoul, Shanghai, Stockholm, Sydney, Tehran, Toronto, Vienna, and Warsaw.

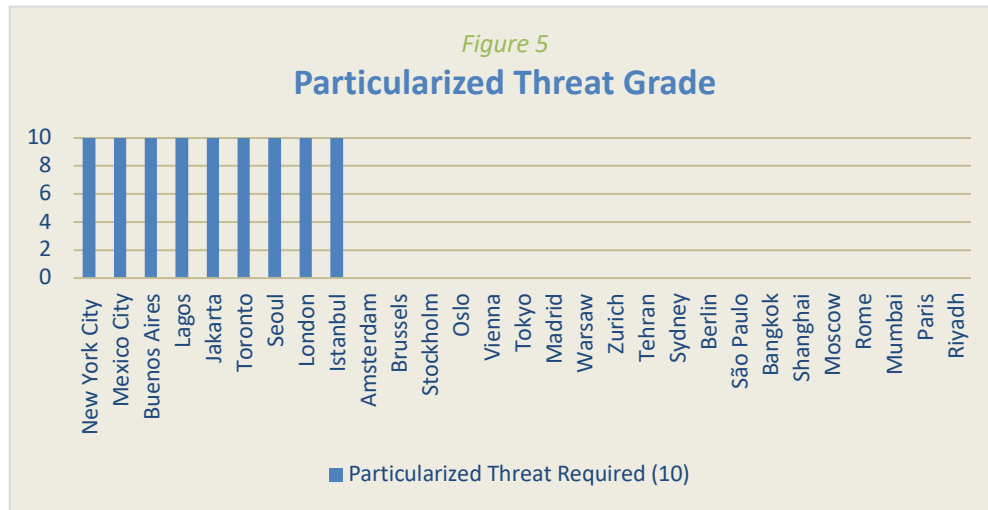
⁸² CODE DE LA SECURITE INTERIEURE [CSI] [INTERNAL SECURITY CODE] art. L435-1 (V) (Fr.) [hereinafter FRENCH SECURITY CODE].

⁸³ Austl. Act, *supra* note 66; *New South Wales Police Force Handbook 2015* (updated July 23, 2020) (Austl.) [hereinafter NSWPF Handbook].

⁸⁴ NSWPF Handbook, *supra* note 83.

⁸⁵ Austl. Act, *supra* note 66, at § 230.

b. Particularized Threat



Only nine jurisdictions met the particularized threat element of necessity,⁸⁶ meaning twenty-one jurisdictions—more than 70% of those studied—failed to meet this element.⁸⁷ To satisfy the particularized threat element, law or policy must restrict police use of deadly force to situations involving a specific and heightened risk or threat to people, *not* property.⁸⁸ In requiring the presence of a specific and particularized threat, as opposed to a more generalized risk of harm, this element of necessity reduces the amount of discretion police are granted to use lethal force, in close connection with the proportionality principle.⁸⁹ For example, the policy governing the Metropolitan Police in London identifies a heightened and specific risk by providing that police may consider using firearms “only where there is a serious risk to public or police safety.”⁹⁰ By contrast, the law in Vienna authorizes police use of deadly force to arrest or prevent the escape

⁸⁶ See *supra* Figure 5. The nine jurisdictions are: Buenos Aires, Istanbul, Jakarta, Lagos, London, Mexico City, New York, Seoul, and Toronto.

⁸⁷ See *supra* Figure 5. The twenty-one jurisdictions are: Amsterdam, Bangkok, Berlin, Brussels, Madrid, Moscow, Mumbai, Oslo, Paris, Riyadh, Rome, São Paulo, Shanghai, Stockholm, Sydney, Tehran, Toronto, Tokyo, Vienna, Warsaw, and Zurich.

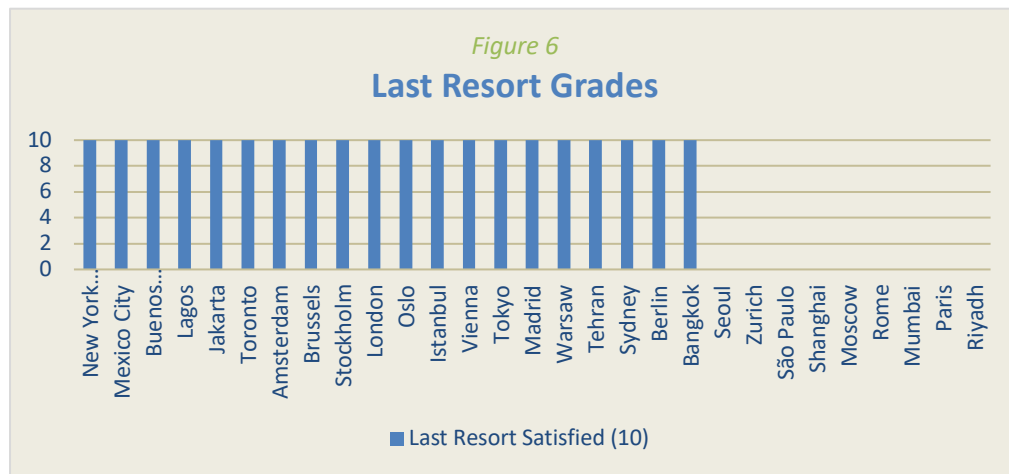
⁸⁸ See Basic Principles *supra* note 33, at Special Provision 9. See also 2014 UNSR Report *supra* note 34, at ¶58.

⁸⁹ See DEADLY DISCRETION, *supra* note 39, at 15.

⁹⁰ CODE OF PRACTICE ON ARMED POLICING AND POLICE USE OF LESS LETHAL WEAPONS, COLL. OF POLICING, art. 1.3.1 (Jan. 2020) (UK), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/857702/CCS207_CCS0120853800-001_Code-of-Practice-on-Armed-Policing_Print__17_.pdf.

of a subject “who is generally dangerous to the security of the state, person or property.”⁹¹ Directives that do not require a particularized threat grant the police excessive discretion to use lethal force in situations where the threat posed to the officer or others is not truly heightened or serious enough in a specific, rather than a generalized, way.

c. Last Resort



Twenty jurisdictions—almost 70% of those studied—met the last resort element of necessity,⁹² meaning nine jurisdictions failed to satisfy this element.⁹³ Requiring that lethal force only be used as a last resort is critical to protect the right to life. To meet the last resort element, the law or policy must only authorize police use of deadly force after non-lethal options have been tried unsuccessfully or will be otherwise ineffective to prevent death or serious bodily harm. For example, police in Oslo may only use firearms “when absolutely necessary and where more lenient means have been tried in vain or will obviously not

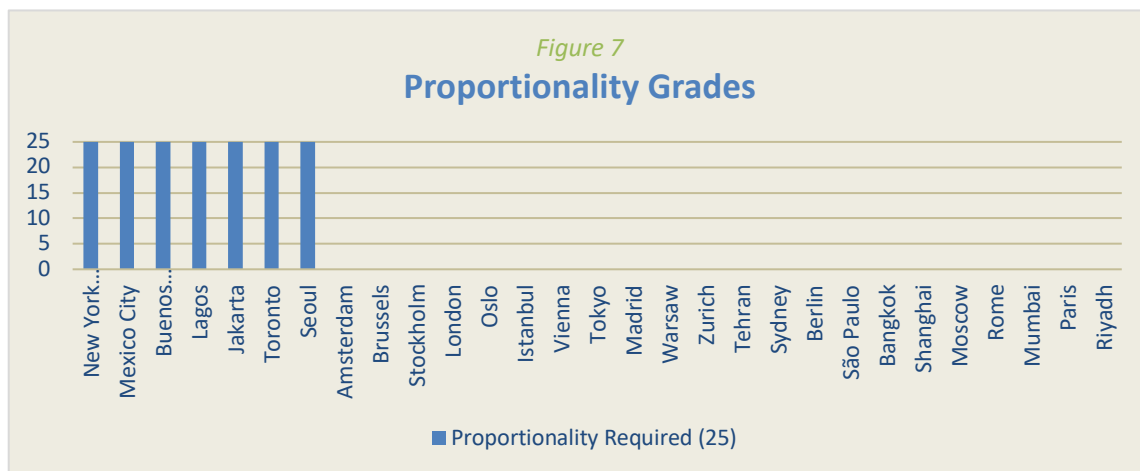
⁹¹ GESAMTE RECHTSVORSCHRIFT FÜR WAFFENGEBRAUCHSGESETZ 1969 [WAFFENGEBRAUCHSGESETZ 1969] [FEDERAL ACT ON THE USE OF WEAPONS BY ORGANS OF THE FEDERAL POLICE AND MUNICIPAL GUARDS] BUNDESGESETZBLATT [BGBl.] No. 149/1969, as amended, art. 7(3) (Austria).

⁹² See *supra* Figure 6. The twenty jurisdictions are: Amsterdam, Bangkok, Berlin, Brussels, Buenos Aires, Istanbul, Jakarta, Lagos, London, Madrid, Mexico City, New York, Oslo, Stockholm, Sydney, Tehran, Tokyo, Toronto, Vienna, and Warsaw.

⁹³ See *supra* Figure 6. The nine jurisdictions are: Moscow, Mumbai, Paris, Riyadh, Rome, São Paulo, Seoul, Shanghai, and Zurich.

succeed.”⁹⁴ The policy also establishes a firearms procedure that requires police officers to announce they are acting as police, encourage the subject to comply with their orders, assess the dangers of using a weapon, clearly warn people in the area that a weapon will be used, and, if possible, fire a warning shot.⁹⁵ The policy in New York City states that “[r]espect for human life requires that, in all cases, firearms be used as a *last resort*, and then only to protect life.”⁹⁶ By contrast, in Paris, law and policy do not clearly restrict police use of deadly force only as a last resort. Instead, among other situations, police may use firearms “[w]hen, after two summonses made aloud, they cannot otherwise defend the places they occupy or the persons entrusted to them.”⁹⁷

iii. Proportionality



Only seven jurisdictions (Buenos Aires, Jakarta, Lagos, Mexico City, New York City, Seoul and Toronto) satisfied the proportionality principle. This means that twenty-two jurisdictions—almost 80% of the those studied—allow police officers to use deadly force in situations that do *not* involve a proportionate threat

⁹⁴ Våpeninstruks for Politiet [Police Weapons Instructions], Jan. 2, 2020, § 4-3 (Nor.) [hereinafter Nor. Police Instructions].

⁹⁵ *Id.* § 4-2.

⁹⁶ NYC FORCE PATROL GUIDE, *supra* note 80 (emphasis my own).

⁹⁷ FRENCH SECURITY CODE, *supra* note 82; *see also* Loi 2017-258 du 28 février 2017 relative à la sécurité publique (1) [Law 2017-258 of February 28, 2017 on Public Security (1)], JOURNAL OFFICIEL DE LA REPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Mar. 1, 2017.

to life or serious bodily injury to the officer or other people.⁹⁸ Proportionality provides the proper balance for the protection of life: it allows the police to use lethal force to protect against threats to life, and prohibits them from using such force where life or serious bodily harm are *not* at stake.

Jurisdictions that met the proportionality requirement provided clear rules requiring police use of deadly force to be proportional to the threat posed by the subject—i.e., only in response to a threat to life or serious bodily injury. For example, the policy in Seoul restricts police use of “high risk physical force,” including firearms, to incidents in which a subject presents a risk of “imminent and serious harm to the life or body of a police officer or a third party.”⁹⁹ In Toronto, the police “shall not draw a handgun, point a firearm at a person or discharge a firearm unless he or she believes, on reasonable grounds, that to do so is necessary to protect against loss of life or serious bodily harm.”¹⁰⁰ Regulations in Jakarta state that “[t]he use of firearms shall be allowed only if strictly necessary to preserve human life.”¹⁰¹ The regulations further establish that police officers may only use firearms “when facing extraordinary circumstances,” for self-defense or in defense of another against a threat of death or serious injury, or to prevent a crime or other actions that threaten the life of others “where more persuasive measures are inadequate.”¹⁰²

By contrast, jurisdictions that fail to meet the proportionality requirement do so for several reasons. Some policies do not describe the nature of the threat posed by a subject in sufficient detail, or the threat is not elevated or serious enough to present a risk of death or serious bodily harm. For example, in Bangkok, the police may use firearms, among other situations, “when the perpetrator or suspect uses weapons to hinder an arrest.”¹⁰³ In Tehran, the police may use firearms to “defend themselves against one or more people who attack without weapons, but the situation is such that without the use of weapons personal

⁹⁸ See *supra* Figure 7. The twenty-two jurisdictions are: Amsterdam, Bangkok, Berlin, Brussels, Istanbul, London, Madrid, Moscow, Mumbai, Oslo, Paris, Riyadh, Rome, São Paulo, Shanghai, Stockholm, Sydney, Tehran, Tokyo, Vienna, Warsaw, and Zurich.

⁹⁹ Gyeongchal Mullilyeog Haengsaui Gijungwa Bangbeob-e Gwanhan Gyuchig [Rules on the Standards and Methods of Exercising Police Force] National Police Agency Regulation No. 550, Jul. 18, 2019, § 2.2.5 (S. Kor.) [hereinafter South Korean Rules on the Standards of Exercising Police Force].

¹⁰⁰ Police Services Act, Equipment and Use of Force, R.R.O., 1990-926, § 9 (Can.) [hereinafter Canadian Police Services Act].

¹⁰¹ Peraturan Kepolisian Negara Republik Indonesia Nomor 1 [Regulation of the Chief of the Indonesian National Police Number 1], The Use of Force in Police Action, art. 47 (2009) [hereinafter Indonesian Regulation].

¹⁰² *Id.* art. 47(2).

¹⁰³ K.Tr.Wā dwy pramwl criythrm læa crrā br rñ khxng tārwc ph.5.2551 [Police Rules on the Code of Ethics and Code of Conduct (No.2), B.E. 2553], art. 18 (Thai.) [hereinafter Thai Rules].

defense is not possible.”¹⁰⁴ In Mumbai, the police may use a firearm to arrest someone when they “have reason to suppose that crimes of particular gravity have been committed[,]” noting that the police “are punishable if they fail to do so.”¹⁰⁵

Law and policy in other jurisdictions completely fail to describe the nature of the threat posed by a subject for which police may employ lethal force. For example, in Tokyo, police regulations provide that

[w]hen shooting a pistol at an opponent, it is sufficient for a police officer to believe that there is no other means, considering the necessity of using a pistol, the balance of legal benefits, the mode of counterattack, etc. You can shoot a pistol at your opponent only for good reason.¹⁰⁶

In Stockholm, the police may use firearms to arrest a person suspected of committing any crime included in a long list, such as arson or robbery, without reference to the whether the suspect poses a threat of any kind at the time of the arrest.¹⁰⁷

Other jurisdictions that fail the proportionality requirement authorize police use of deadly force to protect property or other non-human interests. For example, in Brussels, the police may use firearms “when, in the event of absolute necessity, the police officers . . . cannot defend otherwise . . . posts, transport of dangerous goods or places entrusted to their protection.”¹⁰⁸ In Moscow, the police may use firearms “to repel a group or armed attack on buildings, premises, structures and other objects of state and municipal bodies”¹⁰⁹ The police in Tehran may use firearms to “protect classified places, especially vital and sensitive places against . . . destruction, fire, [and] looting of documents and property”¹¹⁰ And in Oslo, the police are permitted to use firearms against “persons who . . . are considered particularly dangerous to . . . Norway’s independence” or who “seriously threaten fundamental national interests.”¹¹¹ Policies that allow

¹⁰⁴ Iran Weapons Law, *supra* note 66, art. 3.

¹⁰⁵ Bombay Police Manual, Vol. III, §189 Use of Firearms in Making an Arrest, at 184 (8th ed. 1959).

¹⁰⁶ Keishichō keisatsukan kenjū shiyō oyobi toriatsukai kitei [Metropolitan Police Department Police Officer Handgun Usage and Handling Regulations], Law No. 13 of 2002, art. 10 (Japan).

¹⁰⁷ 24 ch. 2 § KUNGÖRELSE OM POLISENS ANVÄNDNING AV SKJUTVAPEN (Svensk författningssamling [SFS] 1969:84) (Swed.) [hereinafter SWEDISH PROCLAMATION].

¹⁰⁸ Loi sur la fonction de police [Law on the police function], Aug. 5, 1992, Interieur Fonction Publique Justice, Dec. 12, 1992, 27124, art. 38 (Belg.).

¹⁰⁹ Federal’nyy Zakon O Politsii [Federal Law on the Police], ROSSIISKAIA GAZETA [ROS. GAZ.] Jan. 28, 2011, art. 23(6) (Russ.).

¹¹⁰ Iran Weapons Law, *supra* note 66, art. 3(8).

¹¹¹ Nor. Police Instructions, *supra* note 94, § 4-3(1)(b).

police to use lethal force to protect property or other non-human interests fail proportionality in failing to restrict the use of lethal force only to prevent death or serious bodily harm.

iv. Accountability

<u>City</u>	<u>Mandatory Internal Reporting</u>	<u>Mandatory External Contact for Death or Injury</u>	<u>Mandatory External Contact for All Instances</u>	<u>Mandatory External Reporting for death or injury</u>	<u>Mandatory Reporting for All Instances</u>	<u>Total Accountability Grade</u>
Amsterdam	0	0	0	0	25	25
Brussels	5	0	7	0	25	25
Stockholm	5	0	0	0	25	25
Oslo	5	5	0	8	0	18
Toronto	5	0	0	8	0	13
London	5	0	0	8	0	13
Vienna	5	0	0	8	0	13
Zurich	5	0	0	8	0	13
New York City	5	0	7	0	0	12
Mexico City	5	5	0	0	0	10
Buenos Aires	5	5	0	0	0	10
Warsaw	5	5	0	0	0	10
Shanghai	5	5	0	0	0	10
Moscow	5	5	0	0	0	10
Tehran	0	0	0	8	0	8
Lagos	5	0	0	0	0	5
Jakarta	5	0	0	0	0	5
Seoul	5	0	0	0	0	5
Istanbul	5	0	0	0	0	5
Tokyo	5	0	0	0	0	5
Madrid	5	0	0	0	0	5
Sydney	5	0	0	0	0	5
São Paulo	0	5	0	0	0	5
Bangkok	5	0	0	0	0	5
Berlin	0	0	0	0	0	0
Rome	0	0	0	0	0	0
Mumbai	0	0	0	0	0	0
Paris	0	0	0	0	0	0
Riyadh	0	0	0	0	0	0

Figure 8: Accountability grades by city

The principle of accountability requires an effective review process involving full reporting to or investigation by an independent external oversight body for all instances of lethal use of force.¹¹² Effective accountability ensures that police officers are not above the law.¹¹³ The principle of accountability works with the principle of legality to give effect to the substantive requirements of necessity and proportionality.

Only three jurisdictions (Amsterdam, Brussels, and Stockholm)—about 10% of those studied—satisfied the principle of accountability and received the full twenty-five points. Law governing local and federal police in Brussels, for

¹¹² See 2014 UNSR Report, *supra* note 34, ¶ 100; Code of Conduct, *supra* note 32, art. 3, cmt. (c); Basic Principles, *supra* note 33, special provision 11(f) and reporting and review procedures 22.

¹¹³ See *McCann v. United Kingdom*, App No. 18984/91, 21 Eur. H.R. Rep. 97, ¶ 161 (1995) (holding that “a general legal prohibition of arbitrary killing by the agents of the State would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the use of lethal force by State authorities”).

example, requires reporting to the General Inspectorate of Federal Police and the Local Police, an independent body, for every “shooting incident.”¹¹⁴ In the Netherlands, according to the ‘Official instruction for the police, the Royal Netherlands Marechaussee and other investigating officers,’ use of force by police must be reported to the assistant public prosecutor.¹¹⁵

The laws and policies applicable to twenty-one of the twenty-nine jurisdictions—more than 70% of those studied—require internal reporting or an investigation for lethal use of force. Eight of those jurisdictions—Bangkok, Istanbul, Jakarta, Lagos, Madrid, Seoul, Sydney, and Tokyo—require internal reporting only with no external notification or reporting requirements.¹¹⁶ Internal investigations alone are an inadequate response to uses of lethal force.¹¹⁷ While a rigorous internal review and reporting process is vital for effective oversight through the chain of command, there is also a clear conflict of interest that can lead to real and perceived failures to hold fellow officers accountable. Police Force Order 237 for officers in Nigeria, for example, requires each officer to “report any discharge of a weapon” within the department but does not require an unbiased, independent entity to evaluate the report.¹¹⁸ Without external oversight, police departments serve as the judge of their own compliance with the law.

A smaller number of laws and policies require notifying an external body whenever death or serious injury results from the use of force. In Toronto, regulations require a full internal investigation anytime a weapon is discharged, as well as external reporting and an independent investigation for any use of force that results in death or serious injury.¹¹⁹ In Tehran, executive regulations require

¹¹⁴ Omzendbrief GPI 62 betreffende de bewapening van de geïntegreerde politie, gestructureerd op twee niveaus [Circular GPI 62 Relating to the Arming of the Integrated Police, Structured at Two Levels] of Feb. 14, 2008, B.S., Feb. 29, 2008, 12615 (Belg.).

¹¹⁵ Besluit van 8 april 1994, Stb. 1994, art. 17.3 (Neth.).

¹¹⁶ See Nigeria Police Order, *supra* note 72; Indonesian Regulation, *supra* note 101, at art. 49; South Korean Rules on the Standards of Exercising Police Force, *supra* note 99; Turkish Police Duty and Situation Law, *supra* note 22; Zhāohé sānshíqī nián guójiā gōng’ān wěiyuán huì guīzé dì qī hào, Keisatsukan-tō kenjū shiyō oyobi toriatsukai kihan [National Public Safety Commission, handgun usage and handling rules for police officers], Rule No. 7 of 1957, ch. 2, art. 10 (Japan); Reglamento para el Cuerpo de Policía Municipal (B.O.C.M. 1995, 6) (Spain); *Law Enforcement Conduct Commission Act 2016* (NSW) s 113 (Austl.); Thai Rules, *supra* note 103.

¹¹⁷ U.N. OFF. ON DRUGS & CRIME, *supra* note 60.

¹¹⁸ Nigeria Police Order, *supra* note 72.

¹¹⁹ Canadian Police Services Act, *supra* note 100; TORONTO POLICE SERV., CORPORATE RISK MANAGEMENT ANNUAL REPORT 2018 20 (2018), <http://www.torontopolice.on.ca/publications/files/reports/crm2018annualreport.pdf> (“The Ontario Special Investigations Unit (S.I.U.) is a civilian law enforcement agency, independent of the police, with a mandate to maintain confidence in Ontario’s police services by assuring the public that police actions resulting in serious injury, death, or allegations of sexual assault are subjected to rigorous,

the police to submit a full report to the “investigating judicial authority” whenever death or injury results from police use of force.¹²⁰ New York law, however, only requires notifying the District Attorney’s Office “in all shooting cases” but does not require full reporting or an independent investigation.¹²¹ Russian federal law requires notifying the prosecutor when death or injury results, but not full reporting every time lethal force is used.¹²²

Five jurisdictions, Berlin, Rome, Mumbai, Paris, and Riyadh—about 17% of those studied—failed to meet any of the sub-elements of the accountability principle and received zero points. Mumbai Police Manuals require officers to report use of force when dispersing a riot, but there is no broader reporting requirement for use of lethal force. Legislation is silent on accountability.¹²³ In 2014, through the Maharashtra Police (Amendment and Continuance) Act, Maharashtra established Police Complaint Authorities (PCAs), independent bodies required to investigate public complaints against police personnel.¹²⁴ However, the law did not contain any mandatory reporting requirements for the police.

independent investigations. Any incident which may reasonably fall within the mandate of the S.I.U. must be reported to the S.I.U. by the police service involved.”).

¹²⁰ Executive Regulations of 30 April 2002 (Law on the Use of Weapons by Armed Forces Officers in Necessary Cases) n.5, art. 3 (Iran) (“In all cases when one or more armed officers, while carrying out their mission, shoot at an individual and result in his death or injury, whether the complaint is raised through the respective unit or by a private plaintiff, the relevant organization shall submit a comprehensive report on the action of the officer or officers and sent it to the investigating judicial authority, along with an expert opinion obtained from a panel consisting of representatives of the information security, the inspection, the legal office, and the respective armed unit. The expert panel should, with due diligence, give its opinion on whether the use of the weapon by the officer or officers complied with the relevant regulations or not.”).

¹²¹ CITY N.Y. POLICE DEP’T, PATROL GUIDE 221-04, § 25 “Force Investigation Division Supervisor” (Sept. 13, 2020), https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide3.pdf [hereinafter NYC INVESTIGATION PATROL GUIDE].

¹²² Federal’nyy zakon ot 3 iyulya 2016 g. N 226-FZ “O voyskakh natsional’noy gvardii Rossiyskoy Federatsii” [Federal Law of July 3, 2016 N 226-FZ “On the Troops of the National Guard of the Russian Federation”] Chapter 3, Article 18.8 (“Each case of injury to a citizen or death of a citizen as a result of the use of physical force, special means, weapons, military and special equipment by a soldier (employee) of the National Guard troops as soon as possible, but no later than 24 hours, shall be notified to the prosecutor.”); Federal’nyi Zakon RF o federal’noy sluzhbe bezopasnosti [Federal Law of Russian on the Federal Security Service], Yevropeyskaya kimissiya za demokratiyu cherez parvo (Venetsianskaya komissiya) [European Commission for Democracy Through Law (Venice Commission)], 1995, No. 40-FZ, art. 14.2 (“The prosecutor shall be notified of each case of injury to a citizen or the occurrence of his death as a result of the use of weapons, special means or physical force by military personnel of the federal security service as soon as possible, but no later than 24 hours.”).

¹²³ See Maharashtra State Security Corporation Act, No. 6 of 2010 (India); Code of Criminal Procedure, Act No. 2 of 1974, §46 (1973) (India); Bombay State Reserve Police Force Act, No. 38 of 1951, as amended 1959 (India).

¹²⁴ Maharashtra Police (Amendment and Continuance) Act, No. 24 of 2014 (India).

For the law enforcement in Berlin, the General Security and Order Act, ASOG Bln, establishes general obligations for supervision by superiors and reporting but does not explicitly set out processes for external investigation of use of lethal force by police officers.¹²⁵ Our analysis focused on use of force legislation and policies, not the broader legal and constitutional framework in which police operate. German police can, for example, be prosecuted for violating the criminal law and using disproportionate force.¹²⁶ However, the close cooperation between prosecutors and police raises serious concerns about the neutrality and independence of prosecutors for effective accountability, especially where police are not required to report every instance of use of lethal force to the prosecutor.¹²⁷ The number of prosecutions and convictions of police officers for violations of law in Germany is significantly lower than the number of alleged cases of misconduct.¹²⁸ Where there is no explicit requirement in law and policy directing an officer to report each use of lethal force, followed by an independent investigation, accountability is incomplete.

B. Failure to Safeguard Life: Common Shortcomings of Use of Lethal Force Directives

As the analysis above indicates, there is a global failure to meet a basic standard of respect for and protection of human rights in law enforcement. The world's most resourced countries have failed to put in place laws and policies that provide clear and tangible directives to law enforcement about when and whether

¹²⁵ Allgemeines Sicherheits- und Ordnungsgesetz [ASOG Bln] [General Safety and Order Act], Oct. 11, 2006, GVBL (Ger.); *see also* Ausführungsvorschriften für Vollzugsdienstkräfte der Polizeibehörde zum UZwG Bln [AV Pol UzwG Bln] [Implementing Regulations for Enforcement Officers of the Police Authority to the UzwG Bln], June 20, 2016, GVBL (Ger.); Gesetz über den unmittelbaren Zwang bei Ausübung öffentlicher Gewalt durch Vollzugsbeamte des Bundes [UZwG] [Law on Immediate Coercion in the Exercise of Official Authority by Federal Law Enforcement Officers], Mar. 10, 1961, BGBLI at 1328 (Ger.), <https://www.gesetze-im-internet.de/uzwg/BJNR001650961.html>. Germany has federal police and state police (landespolizei) that operate in each of its sixteen federal states (länder). Each länder has its own state law governing the landespolizei's use of firearms that generally mirrors the federal law on police use of lethal force, the "Law on direct coercion in the exercise of official authority by federal law enforcement officers" (UZwG). In Berlin, which is both a city and a länder, the Berlin police force is governed by state laws and ordinances, in addition to the national UZwG law.

¹²⁶ Hartmut Aden, *Germany*, in *THE ROLE OF PARLIAMENT IN POLICE GOVERNANCE: LESSONS LEARNED FROM ASIA AND EUROPE* 121 (Mario Aguja & Hans Born eds., 2017).

¹²⁷ Kate Levine, *Who Shouldn't Prosecute the Police*, 101 IOWA L. REV. 1447 (2016).

¹²⁸ *See id.*; *see also* *Unknown Assailant: Insufficient Investigation into Alleged Ill-Treatment by Police in Germany*, AMNESTY INT'L (July 2010), <https://www.amnesty.org/download/Documents/36000/eur230022010en.pdf>.

they may use lethal force against the people they serve. This reality, coupled with global reports of abuses by law enforcement, is cause for concern. Moreover, the analysis reveals some trends and common themes that shed light on the state of modern policing and its failure to adequately safeguard human life. It also provides some direction for future reform.

i. Outdated and Anachronistic Laws and Policies

A significant number of police departments around the world are governed by outdated and anachronistic laws and policies developed decades ago. Unsurprisingly, these outdated directives are out of touch with today's human rights standards and established best practices. In fact, the laws and policies governing police use of deadly force in almost 20% of the jurisdictions in this study are antiquated—Lagos, Mumbai, Rome, Stockholm and Tokyo. The age of these laws and policies may reflect weak political will to regulate police use of deadly force, and they contain problematic and anachronistic content that fails to meet the proportionality and necessity principles.

In Mumbai, for example, the law and policy regulating police use of deadly force was promulgated in 1951 and 1959.¹²⁹ Mumbai's overall grade of five reflects these antiquated legal and policy rules.¹³⁰ The Bombay Police Manual (named after the previous name of the city) uses vague language, grants broad discretion for the use of firearms,¹³¹ and refers to old technologies.¹³² In doing so, the Manual fails to meet the proportionality and necessity principles.

In Nigeria, the Police Act of 1943 is a colonial law that has not been updated in more than seventy-five years.¹³³ Despite a newly proposed law and a recent order on police use of deadly force,¹³⁴ the legislative basis for the police force is

¹²⁹ Bombay State Reserve Police Force Act, *supra* note 123; Bombay Police Manual, Vols. I, II, III (8th ed. 1959).

¹³⁰ See figure 9 on page 293 for an overview of Mumbai's grade for each principle.

¹³¹ Volume III of the Bombay Police Manual appears to promote police use of firearms during an arrest. The Manual provides that the police "cannot desist upon a mere show of resistance, they are bound to redouble their efforts, even at the risk of their lives, if opposed; and the law protects them from any consequences which the resistance entails." Bombay Police Manual, Vol. III, *supra* note 105, § 189.

¹³² Volume III of the Bombay Police Manual grants police the authority to use firearms to disperse an unlawful assembly, providing that "[f]iring even by .410 muskets has to be . . . a last resort while dealing with crowds or mobs. Whenever firing becomes unavoidable to disperse unruly mobs; it could be ensured that the aim is kept low and directed against the most threatening part of the crowd." *Id.* § 60(2).

¹³³ Police Act (1943) Cap. (19) (Nigeria) [hereinafter Nigeria Police Act].

¹³⁴ Police Act (2020) Cap. (P19), (Repeal & Enact) Bill, 2020 (S.B.181); Nigeria Police Order, *supra* note 72.

a colonial vestige, and is a reminder that the National Assembly of Nigeria has not yet modernized. Notably, Nigeria's high overall grade of sixty-five reflects the quality of the recent police order, not the content of the Act.¹³⁵ Among other things, the Act does not appear to explicitly permit the police to use lethal force¹³⁶ and uses antiquated gender roles, establishing that a "woman police officer shall not be called upon to drill under arms or to take part in any baton or riot exercise."¹³⁷

In Japan, the national law governing the police was enacted in 1948 and the national rule on the use of firearms by the police was promulgated in 1957.¹³⁸ Like the Indian and Nigerian laws and policies, the Japanese law and regulation are outdated, referring only to "pistols" and "handguns,"¹³⁹ using vague language, and granting broad discretion to the police to use firearms. The law, for example, permits the police to use deadly force "for suppression of resistance to the execution of his or her official duty . . . within the limits judged reasonably necessary in the situation."¹⁴⁰

In Sweden, the national law governing the police was enacted in 1984 and the rule regulating police use of firearms was adopted in 1969.¹⁴¹ The law and regulation embody an antiquated approach to authorizing deadly force, based on the nature of the suspected crime involved in a particular incident, rather than the threat posed by the subject. These directives fail to satisfy both the proportionality principle and the three elements of necessity. The law allows the police to use force and firearms to prevent a "punishable act," without reference to the nature of the threat actually posed by the subject at the time of incident.¹⁴² The law further authorizes the use of lethal force in response to threats to "valuable property or to extensive damage to the environment."¹⁴³

These decades old laws and policies authorizing police use of lethal force, including one pre-independence, colonial law, provide an inadequate framework for modern law enforcement in these jurisdictions. As the examples above demonstrate, the failure to modernize these directives contributes to their inability to meet international human rights standards.

¹³⁵ See figure 9 on page 293 for an overview of Nigeria's grade for each principle.

¹³⁶ Nigeria Police Act, *supra* note 133, § 414.

¹³⁷ Nigeria Police Act, *supra* note 133, § 123.

¹³⁸ Keisatsukan gimu shikkō-hō [The Police Duties Execution Act], Law No. 136 of 1948 (Japan); National Public Safety Commission, Handgun Usage and Handling Rules for Police Officers, *supra* note 116.

¹³⁹ Metropolitan Police Department Police Officer Handgun Usage and Handling Regulations, *supra* note 106, arts. 6–9.

¹⁴⁰ *Id.* art. 7.

¹⁴¹ SWEDISH POLICE ACT, *supra* note 66; SWEDISH PROCLAMATION, *supra* note 107.

¹⁴² SWEDISH POLICE ACT, *supra* note 66, § 10(3).

¹⁴³ *Id.*

ii. Overly Broad Discretion

The use of lethal force directives in the majority of jurisdictions reviewed by this study provide broad discretion to police officers through vague, imprecise, and arbitrary, substantive standards. Human rights law dictates that lethal force only be authorized when police confront an imminent threat of death or serious injury. Where the standard is broader, the law fails to meet the necessity and proportionality principles. Our analysis of policies and laws revealed three distinct ways in which these directives grant broad discretion to police to use lethal force causing them to fail to comply with the human rights standard.

First, a number of States authorize the use of lethal force on the suspicion of a crime having been committed instead of limiting the use of lethal force to circumstances when there is an imminent threat of death or serious injury. When police officers are authorized to use suspicion of past criminal behavior as the standard for when they may use lethal force, it makes every law enforcement officer the judge, jury, and executioner. In some circumstances, there may be an overlap between a crime being committed and a threat of death or serious injury. If an individual is caught during or immediately after they committed a murder and then threatens the officer(s) or another person with imminent violence, the use of lethal force may be justified. However, when the legal framework authorizes the use of lethal force with no requirement that there be a current or imminent threat of death or serious injury, the police are given overly broad discretion to equate suspected past behavior, however distant in time or uncorroborated, with current dangerousness. Such authority violates the principles of necessity and proportionality.¹⁴⁴

For example, for Mumbai Police in India, the use of deadly force is tied to the nature of the crime for which a subject is “accused,” not the nature of the threat the subject poses at the time lethal force is used.¹⁴⁵ Similarly, in Stockholm, Sweden, the focus for when deadly force may be used is on the particular kind of offense the subject is suspected of, rather than the threat the subject poses.¹⁴⁶ Similar standards appear in legislation and policy governing police forces in

¹⁴⁴ 2014 UNSR Report, *supra* note 34.

¹⁴⁵ Code of Criminal Procedure, *supra* note 123; Bombay Police Manual, Vol. III, *supra* note 105, at 183.

¹⁴⁶ SWEDISH PROCLAMATION, *supra* note 107.

Vienna,¹⁴⁷ Berlin,¹⁴⁸ Tokyo,¹⁴⁹ Oslo,¹⁵⁰ Warsaw,¹⁵¹ Seoul,¹⁵² Zurich,¹⁵³ and Amsterdam.¹⁵⁴

Second, some laws and policies expand police discretion by providing a list of instances where lethal force is authorized that include threats to places or to imprecise and vague interests like public order or national security.¹⁵⁵ For example, Austrian law permits the use of a firearm “to suppress a rebellion or riot.”¹⁵⁶ The Netherlands similarly authorizes the use of firearms to “curb riots or other

¹⁴⁷ See Austria Weapons Use Act, *supra* note 66 (“3. [T]o enforce the arrest or prevention of the escape of a person who is referred to a judicially criminal act, which can only be committed intentionally and is threatened with a prison sentence of more than one year, or who is urgently suspected, alone or in connection with their behavior in the event of arrest or escape, identifies them as someone who is generally dangerous to the security of the state, person or property”).

¹⁴⁸ Gesetz über die Anwendung unmittelbaren Zwanges bei der Ausübung öffentlicher Gewalt durch Vollzugsbeamte des Landes Berlin [UZwG Bln] [Law on the Application of Immediate Coercion in the Exercise of Official Authority by Law Enforcement Officers of the State of Berlin], June 22, 1970, BERLIN GESETZ- UND VERORDNUNGSBLATT [BER GVBL] §11 (Ger.). (“Use of firearms to prevent illegal acts: A law enforcement officer may shoot at individuals in order to prevent them from the imminent execution or continuation of an illegal act which, under the circumstances, turns out to be a) a crime or b) an offense involving the use or carrying of firearms or explosives represents.”).

¹⁴⁹ The Police Duties Execution Act, *supra* note 138.

¹⁵⁰ Nor. Police Instructions, *supra* note 94, § 4-3 (“§ 4-3. Terms of use of firearms (1) Firearms may be used only when absolutely necessary and where more lenient means have been tried in vain or will obviously not succeed, in situations where a) the officer himself or others are threatened or subjected to a serious act of violence or other gross violation of integrity, and the use of weapons appears necessary to prevent loss of life or serious injury, or b) it is considered necessary to arrest or stop a person who is convicted or with a high degree of security suspected of murder, other serious acts of violence or attempted crimes of violence, or of persons who for other reasons are considered particularly dangerous to human life or health, Norway’s independence, or that’s seriously threatens fundamental national interests.”).

¹⁵¹ USTAWA O ŚRODKACH PRZYMUSU BEZPOŚREDNIEGO I BRONI PALNEJ [LAW ON MEASURES OF DIRECT COERCION AND FIREARMS], art. 45(3)(b) (Pol.).

¹⁵² Gyeongchalgwon jigmujibhaengbeob [Act on the Performance of Duties by Police Officers], Act No. 14839, Jul. 26, 2017, art. 10-4(1)(2)(a) (S. Kor.).

¹⁵³ POLIZEIGESETZ [POLG] [POLICE ACT] Apr. 23, 2007, LS 550.1, § 17(b) (Switz.). (“The use of a firearm may be justified in particular . . . if a person has committed a serious crime or a serious offence or is strongly suspected of such a crime or offence and wants to flee”).

¹⁵⁴ Besluit van 8 april 1994, art. 7(b) (Neth.).

¹⁵⁵ See, e.g., SWEDISH PROCLAMATION, *supra* note 107; Nor. Police Instructions, *supra* note 94, § 4-3.

¹⁵⁶ See Austria Weapons Use Act, *supra* note 66 (“Article 7: The use of a weapon against people with a risk to life is only permitted: 1. in the case of just self-defense in defense of a person; 2. to suppress a rebellion or riot; 3. to enforce the arrest or prevention of the escape of a person who is referred to a judicially criminal act, which can only be committed intentionally and is threatened with a prison sentence of more than one year, or who is urgently suspected, alone or in connection with their behavior in the event of arrest or escape, identifies them as someone who is generally dangerous to the security of the state, person or property.”).

serious disorder” without requiring that there be a threat of imminent violence that may result in death or serious injury.¹⁵⁷ One Chinese regulation authorizes the use of force and crowd control weapons if a group is “ganging together in affrays, beating other persons, creating disturbances, insulting women or conducting other indecent activities” or “illegally holding an assembly.”¹⁵⁸

Authorizing lethal force to safeguard property or an imprecise interest like national security, violates the principles of necessity and proportionality. Another regulation in China authorizes use of lethal force to “prevent and stop serious violent crimes, avoid casualties, and property losses.”¹⁵⁹ French law authorizes the use of firearms by police to defend places, without further explanation of the kind of threat they must be defending from and whether threats to property alone can justify defense through lethal means.¹⁶⁰ Russian legislation contains similar language authorizing the use of firearms to “repel a group or armed attack on objects . . . buildings . . . [or] structures.”¹⁶¹ While an attack or a threat against a place or structure could involve a threat to life, the language in these laws and policies fail to make that clear, thereby granting excessive discretion to law enforcement.

Finally, many States adopt legislation or policy on the use of firearms specifically instead of regulating use of lethal force more broadly. While we did not

¹⁵⁷ Besluit van 8 april 1994, art. 7(c) (Neth.).

¹⁵⁸ Zhōnghuá rénmin gònghéguó rénmin jǐngchá shǐyòng jīng xiè hé wǔqì tiáoli (中华人民共和国人民警察使用警械和武器条例) [Regulations of the People's Republic of China on Use of Police Implements and Arms by the People's Police] (promulgated by Order No. 191 of the State Council, Jan. 16, 1996), 1 Zhonghua Renmin Gongheguo Guowuyuan Gongbao [PRC State Council Gazette], art. 7 (China).

¹⁵⁹ Gōng'ān jīguān rénmin jǐngchá pèidài shǐyòng qiāngzhī guīfàn de tōngzhī (公安机关人民警察佩带使用枪支 规范) 的通知 [Regulations on the Carry and Use of Guns by the People's Police of Public Security Organs] (promulgated by the Ministry of Public Security, Jan. 16, 2015, effective May 1, 2015), ST. COUNCIL GAZ., art. 5 (China). The People's Policemen of the People's Republic of China, the police force in China, consists of the Public Security Police, the State Security Police, the Prison Police, and the Judicial Police. The principal police and security authority for China is the Public Security Police, which is a centralized police system that operates under the Ministry of Public Security. The Public Security Police's use of force activities are mainly governed by administrative regulations.

¹⁶⁰ FRENCH SECURITY CODE, *supra* note 82 (“In the performance of their duties and wearing their uniform or external insignia and apparent from their quality, the agents of the national police and the soldiers of the national gendarmerie can, in addition to the cases mentioned in article L. 211-9, use their weapons in the event of absolute necessity and in a strictly proportionate manner: 1. When attacks on life or physical integrity are brought against them or against others or when armed persons threaten their life or their physical well-being or those of others; 2. When, after two summons made aloud, they cannot otherwise defend the places they occupy or the persons entrusted to them.”).

¹⁶¹ Federal'nyi Zakon RF o federal'noy sluzhbe bezopasnosti [Federal Law of Russian on the Federal Security Service], Yevropeyskaya kimissiya za demokratiyu cherez parvo (Venetianskaya komissiya) [European Commission for Democracy Through Law (Venice Commission)], 1995, No. 40-FZ, art. 143(f).

penalize laws and use of force policies for focusing on firearms, the practice is problematic because it results in lack of regulation of other law enforcement tactics that can also be lethal.¹⁶² For instance, the tragic killing of George Floyd in the United States and the murder of Cédric Chouviat in France demonstrate the lethality of neck restraints.¹⁶³ Numerous crowd control and other “less” lethal weapons—including kinetic impact projectiles, chemical irritants, and disorientation devices—have proved deadly as well.¹⁶⁴ By limiting regulations to firearms, States fail to regulate other equipment or methods that should be deployed with great care and only in circumstances when the officer is confronting a threat of death or grave injury.

For example, legislation governing police in Sweden provides instruction on when force is authorized and, through a separate law, specifies when a firearm may be used. By having two instruments setting out different directives, the legal framework in Sweden fails to clarify when force may be considered lethal without the use of a firearm and what standard should apply in those circumstances.¹⁶⁵ The Netherlands similarly limits its instructions on lethal use of force to different kinds of firearms and selected crowd control equipment.¹⁶⁶ Regulating firearms is an important practice,¹⁶⁷ but directives must regulate lethal force more broadly.

¹⁶² See Human Rights Comm., General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life, ¶ 14, U.N. Doc. CCPR/C/GC/36 (Oct. 30, 2018); see also U.N. HUM. RTS.: OFF. HIGH COMM’R, GUIDANCE ON LESS LETHAL WEAPONS IN LAW ENFORCEMENT, U.N. Sales No. E.20.XIV.2 (2020), https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf.

¹⁶³ See *French Police Officers Charged Over Death of Man Put in Chokehold*, GUARDIAN (July 16, 2020, 9:14 AM), <https://www.theguardian.com/world/2020/jul/16/french-police-officers-charged-with-manslaughter-over-mans-death-cedric-chouviat>; see also Harmeet Kaur & Janine Mack, *The Cities, States and Countries Finally Putting an End to Police Neck Restraints*, CNN (June 16, 2020 6:24 AM), <https://www.cnn.com/2020/06/10/world/police-policies-neck-restraints-trnd/index.html>.

¹⁶⁴ See ROHINI J. HAAR & VINCENT IACOPINO, INT’L NETWORK CIV. LIBERTIES ORGS. & PHYSICIANS FOR HUM. RTS., *LETHAL IN DISGUISE: THE HEALTH CONSEQUENCES OF CROWD-CONTROL WEAPONS* (2015), <https://www.inclo.net/issues/lethal-in-disguise/>.

¹⁶⁵ See generally SWEDISH POLICE ACT, *supra* note 66; see also SWEDISH PROCLAMATION, *supra* note 107, § 2. The Swedish Police Authority is the main law enforcement body in Sweden. While there are ninety-five local police districts among the seven police regions, all are policed by highly centralized Swedish Police Authority which is subject to the National Police Commissioner.

¹⁶⁶ Besluit van 8 april 1994, arts. 7(c), 8, 9, 11 (Neth.).

¹⁶⁷ See Basic Principles, *supra* note 33.

iii. Limits of External Accountability and Lack of Transparency

Another common feature in the laws and policies studied is the absence of meaningful accountability mechanisms, a failure which seriously undermines any effort to cabin police discretion. As explained above, only three jurisdictions, Amsterdam, Brussels, and Stockholm, require full reporting to or an investigation by an external oversight body for every use of lethal force. For all other jurisdictions reviewed, accountability mechanisms varied significantly in key factors that impact efficacy, including: independence, powers of oversight, and ability to impose civil and criminal sanctions for abuses of discretion.

Where jurisdictions have external accountability mechanisms, they tend to rely on two different forms: (1) an ombudsman or a civilian oversight body,¹⁶⁸ or (2) a public prosecutor.¹⁶⁹ These mechanisms function differently and thus provide varying levels of accountability. An independent civilian body or an ombudsman is specifically charged with oversight of public officials to ensure their compliance with legal requirements and protection of human rights. Depending on the structure, these bodies can investigate and issue recommendations or public reports, but they do not typically prosecute or punish, which limits their impact.¹⁷⁰ Prosecutors, on the other hand, can prosecute and punish. However, their mandate is broad—the enforcement of laws—and they regularly collaborate with police departments, which may or may not influence their propensity to investigate police action.¹⁷¹ Thus, each of these mechanisms raises distinct possibilities for effective oversight as well as distinct concerns and shortcomings.

¹⁶⁸ See e.g., Organic Act on Ombudsman, B.E. 2552 (2009) Sec.13 (Thai.); *Defender of Rights*, INDEP. POLICE COMPLAINTS AUTHORITIES' NETWORK, <https://ipcan.org/members/defender-of-rights> (last visited Mar. 20, 2021); NYC INVESTIGATION PATROL GUIDE, *supra* note 121 (requiring a notification to the district attorney, but no reporting to the Civilian Complaint Review Board).

¹⁶⁹ See, e.g., Ambtsinstructie voor de politie, de Koninklijke marechaussee en andere opsporingsambt [Official instruction for the police, the Royal Netherlands Marechaussee, and other investigating officers] (2020) art. 17(1); *Polisens användning av tjänstevapen*, ÅKLAGARMYNDIGHETEN (Swed.), <https://www.aklagare.se/om-oss/organisation/sarskilda-aklagarkammaren/polisens-anvandning-av-tjanstevapen/> (last visited Mar. 30, 2021); NYC INVESTIGATION PATROL GUIDE, *supra* note 121.

¹⁷⁰ As the U.S. Commission on Civil Rights noted while examining civilian boards in the United States, "[t]he concern . . . is that depending on which model (i.e., investigative, review, or audit) the level of oversight and authority may be extremely limited." U.S. COMM'N ON CIV. RTS., POLICE USE OF FORCE: AN EXAMINATION OF MODERN POLICING PRACTICES 76 (2018) <https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf>.

¹⁷¹ See Zusha Elinson, *More Police Go to Trial in Killings, But Convictions Remain Rare*, WALL ST. J. (Sept. 23, 2015), <https://www.wsj.com/articles/more-police-go-to-trial-in-killings-but-convictions-remain-rare-1443044871>.

Where an independent civilian or executive body serves as the external accountability mechanism, the body is often specifically charged with receiving and reviewing complaints from the public or opening an inquiry when the public interest demands it. In those cases, our grading system awarded full points for accountability only if the police department *required* officers to send a full report to such a body after each instance of use of lethal force. However, Belgian laws and policies were the only ones that required such a report.¹⁷² Often police do not have an obligation on their own initiative to report every use of lethal force to these independent mechanisms. Other jurisdictions allow for discretion as to whether instances of use of lethal force should be investigated. Thailand, for example, empowers the Ombudsman to investigate whenever a complaint from the public alleges injuries to the public or the public interest and authorizes the office to initiate an investigation when it finds it to be in the public interest.¹⁷³ However, the Ombudsman is not required to investigate each use of lethal force, nor are police officers required to report use of lethal force to the Ombudsman. Similarly, the Defender of Rights in France has the authority to review complaints from the public for violation of rights, which the body then evaluates for merit, but no publicly available policy requires the police to report the use of lethal force to this or any other independent oversight body.¹⁷⁴

Other jurisdictions rely on public prosecutors for external accountability and face a different set of challenges, such as the designation of the appropriate prosecutor's office. According to the Chief Administrative Judge of New York State Courts, the Honorable Judge Lawrence Marks, "there is a perceived conflict of interest when prosecutors are expected to both zealously investigate and prosecute police officers, while maintaining a good and symbiotic relationship with them to fulfill their professional duties."¹⁷⁵ In Sweden, the use of a weapon against a citizen requires an investigation led by the "Special Prosecutor's Office," whose chamber is "separate from other prosecutorial activities."¹⁷⁶ The

¹⁷² GENERAL POLICE INSPECTORATE, <https://www.aigpol.be/nl/over-ons> (last visited Mar. 19, 2021); Omzendbrief GPI 62 betreffende de bewapening van de geïntegreerde politie, gestructureerd op twee niveaus [Circular GPI 62 Relating to the Arming of the Integrated Police, Structured at Two Levels] of Feb. 14, 2008, BELGISCH STAATSBAD [B.S.] [Official Gazette of Belgium], Feb 29, 2008, 12615 (Belg.).

¹⁷³ Organic Act on Ombudsman, *supra* note 168 ("In exercising of powers and duties under (1) (a), (b) and (c), the Ombudsmen shall proceed where there is a complaint thereon, provided that the Ombudsmen is of opinion that such act causes injuries to the public or it is necessary to protect public interests and, in such case, the Ombudsmen may consider and conduct investigation irrespective of a complaint.").

¹⁷⁴ DEFENDER OF RIGHTS, REPUBLIC OF FRANCE, <https://www.defenseurdesdroits.fr/> (last visited Mar. 19, 2021).

¹⁷⁵ U.S. COMM'N ON CIV. RTS., *supra* note 170, at 80.

¹⁷⁶ *Polisens användning av tjänstevapen*, ÅKLAGARMYNDIGHETEN, <https://www.aklagare.se/om-oss/organisation/sarskilda-aklagarkammaren/polisens-anvandning-av-tjanstevapen/> ("When a police officer in the service uses his service weapon against a person, a preliminary

requirement for police to report every use of lethal force, together with the separation of the Special Prosecutor's office from the office charged with regular prosecutorial duties, is one of the strongest examples of external oversight.

Finally, the process of researching use of lethal force directives revealed another barrier to accountability—the absence of comprehensive data collection and transparency on use of lethal force. Transparency is necessary to allow the public to evaluate how well existing policies and systems are working. Data and information provided by governments on law enforcement use of force is extremely scarce in most, if not all, jurisdictions.¹⁷⁷ Few police departments are required to publish data on the use of force,¹⁷⁸ and many do not even publish the policies that guide their officers' operational decisions in this regard.¹⁷⁹ The United States, for example, did not have a national database on police use of force until 2019, and the current database is based on voluntary reporting by police departments. As a result, the database remains woefully incomplete, containing data from fewer than half of the approximately 18,000 police departments in

investigation (criminal investigation) is usually initiated. Such investigations are always led by prosecutors at the Special Prosecutor's Office. This chamber is separate from other prosecutorial activities.”).

¹⁷⁷ As Amnesty International explains, “It’s hard to get reliable figures on killings by police because many governments do not collect or publish this data Most of the available data refers to specific countries or time periods, and are often estimates by NGOs or human rights groups.” See *Police Violence*, AMNESTY INT’L, <https://www.amnesty.org/en/what-we-do/police-violence/> (last visited Mar. 30, 2021). This problem occurs both because of a lack of data collection at the national level by governments (see, e.g., Wesley Skogan, *Use of Force and Police Reform in Brazil: A National Survey of Police Officers*, 14 POLICE PRAC. & RES. 319, 322 (2013)) and at the institutional level by police departments (see, e.g., Eddie Bruce-Jones, *German Policing at the Intersection: Race, Gender, Migrant Status and Mental Health*, 56 RACE & CLASS 36, 40 (2015)) and because of a failure to publish data (see, e.g., *Mexico: Overhaul Police Forces*, HUM. RTS. WATCH (July 24, 2020, 9:00 AM), <https://www.hrw.org/news/2020/07/24/mexico-overhaul-police-forces>). Unfortunately, the data that is published by the government is not always reliable. See Ignacio Cano, *Racial Bias in Police Use of Lethal Force in Brazil*, 11 POLICE PRAC. & RES. 31 (2010). In some countries, the lack of data on police killings provided by government has compelled civil society to develop its own accounting mechanism. See, e.g., *Violencia Policial*, CELS, <https://violenciapolicial.org.ar> (last visited Mar. 30, 2021).

¹⁷⁸ See generally Rachel Harmon, *Why Do We (Still) Lack Data on Policing?*, 96 MARQ. L. REV. 1119 (2013); Peter Kim, *17 Years of Police Violence in Canada*, PIVOT (Mar. 28, 2019), https://www.pivotlegal.org/17_years_of_police_violence_in_canada (discussing lack of centralized comprehensive statistics on use of force in Canada).

¹⁷⁹ While some governments have instituted “transparency portals” through which such information may be requested, poor data quality and lengthy delay frustrate accessibility. For example, one Australian study found that the “inflexible, antiquated and under-resourced” data collection system led to underreporting and inaccurate information. OFF. POLICE INTEGRITY, REVIEW OF THE USE OF FORCE BY AND AGAINST VICTORIAN POLICE 12 (2009), https://www.ibac.vic.gov.au/docs/default-source/reviews/opi/review-of-the-use-of-force-by-and-against-victorian-police---july-2009.pdf?sfvrsn=c4586175_8.

the country.¹⁸⁰ Buenos Aires requires statistics on the number of cases of death or bodily injury, including demographic data about victims, to be published quarterly in the Federal Gazette,¹⁸¹ but reports by civil society have highlighted concerns about its lack of comprehensiveness.¹⁸²

On the other hand, some States do engage in public reporting. Mexico's 2019 National Law on Use of Force requires annual public reports on use of force, including the number of people killed by police use of force.¹⁸³ The United Kingdom releases police use of force statistics on a public website. The data covers the whole of England and Wales and includes all uses of force broken down by tactics, outcomes, and demographics.¹⁸⁴

The Handbook of the UN Office of Drugs and Crimes requires transparency through reporting key data and outcomes of independent investigations for effective oversight.¹⁸⁵ Making laws and policies on use of force and accountability mechanisms, especially outcomes of misconduct investigations, accessible to the public promotes transparency, as does providing data on how police use force. Without knowing what the standards are and being able to measure existing practice against those standards, the public cannot adequately assess whether government is protecting their rights and advocate for needed reforms. Lack of data on lethal use of force, as well as police and civilian interactions more broadly, makes it nearly impossible to evaluate the breadth and depth of the problem.¹⁸⁶

V. GLOBAL REFORM: THE IMPORTANCE OF PAPER AS A PATH TO PRACTICE

Our study demonstrates that even in the world's most well-resourced countries, use of lethal force directives fail to restrict law enforcement's use of state-sanctioned violence in accordance with human rights. The failure of States to

¹⁸⁰ *National Use-of-Force Data Collection*, FED. BUREAU INVESTIGATION, <https://www.fbi.gov/services/cjis/ucr/use-of-force> (last visited Mar. 30, 2021).

¹⁸¹ Resolution No. 8 of the Council for Defense of Rights of Human Person, Art. 2 (Buenos Aires).

¹⁸² See *Violencia Policial*, CELS, <https://violenciapolicial.org.ar/> (last visited Mar. 30, 2021) (noting the lack of complete and accessible official data on police use of force).

¹⁸³ Ley Nacional Sobre el Uso de la Fuerza Art. 35, Diario Oficial de la Federación [DOF] 27-05-2019 (Mex.).

¹⁸⁴ *Police Use of Force Statistics*, GOV.UK: HOME OFF., <https://www.gov.uk/government/collections/police-use-of-force-statistics> (last visited Mar. 30, 2021).

¹⁸⁵ U.N. OFF. ON DRUGS & CRIME, *supra* note 60, at iv-v.

¹⁸⁶ See, e.g., Lynne Peeples, *What the Data Say About Police Brutality and Racial Bias—and Which Reforms Might Work*, NATURE (June 19, 2020), <https://www.nature.com/articles/d41586-020-01846-z>; see also Dean Knox, Will Lowe & Jonathan Mummolo, *Administrative Records Mask Racially Biased Policing*, 114 AM. POL. SCI. REV. 619 (2020).

make this most basic commitment to use lethal force against their own population *only* where necessary, proportional, accountable, and legal can and has had dire consequences around the world. Globally, reports abound of law enforcement bodies abusing and misusing the awesome power they have been granted.¹⁸⁷ States that take the human rights of their own populations seriously must, *at minimum*, put in place a legal and policy framework that codifies this commitment. As States have an affirmative obligation to protect human rights, failure to put such directives in place indicates institutional acquiescence or, even worse, an intention to maintain law enforcement systems that allow for abuses of power.

¹⁸⁷ Breiller Pires, *Entre a vida e a morte sob tortura, violência policial se estende por todo o Brasil, blindada pela impunidade* [Between Life and Death Under Torture, Police Violence Extends Throughout Brazil, Shielded by Impunity], EL PAÍS (June 30, 2020, 8:51 AM), <https://brasil.elpais.com/brasil/2020-06-30/entre-a-vida-e-a-morte-sob-tortura-violencia-policial-se-estende-por-todo-o-brasil-blindada-pela-impunidade.html> (discussing that police lethality, victims of which are mostly black, increased drastically in Brazil this year); Álvaro Cordero, *Qué hay detrás de las protestas contra la brutalidad policial en Colombia* [What's Behind the Protests Against Police Brutality in Colombia], EL ORDEN MUNDIAL (Sept. 17, 2020), <https://elordenmundial.com/protestas-brutalidad-policia-colombia-violencia-america-latina/> (describing the “crisis of violence” that Colombia faces where the militarized National Police Force excessively kills in Bogota and various independently armed groups commit massacres throughout the country); *violencia policial en todo el país: es urgente reformar las fuerzas de seguridad* [Police Violence Across the Country: It is Urgent to Reform the Security Forces], CENTRO DE ESTUDIOS LEGALES Y SOCIALES (June 25, 2020), <https://www.cels.org.ar/web/2020/06/https-www-youtube-com-watchvjfmvu-aumo/> (detailing the many cases of police violence in 2020 and calling upon the government to enact major reforms in Argentina); Daniel Geradtz, *Polizeigewalt in Deutschland: Deutlich mehr Fälle als vermutet - vor allem bei Demos* [Police Violence in Germany: Significantly More Cases than Expected—Especially During Demonstrations], MERKUR (Sept. 21, 2020, 5:13 PM), <https://www.merkur.de/politik/polizeigewalt-in-deutschland-deutlich-mehr-faelle-als-vermutet-vor-allem-bei-demos-zr-13015647.html> (explaining the results of a study in Germany on the number of cases of police violence and the high number of unreported cases); *Nigeria Police Brutality Inquiry Hears Graphic Testimony*, BBC (Oct. 27, 2020), <https://www.bbc.com/news/world-africa-54706977> (covering the Nigerian inquiry into police brutality that resulted from public protests against the police); *Protests Follow Yet Another Custodial Death in Egypt*, PEOPLES DISPATCH (Sept. 9, 2020), <https://peoplesdispatch.org/2020/09/09/protests-follow-yet-another-custodial-death-in-egypt/> (describing protests following another death of a man in police custody, something that occurs frequently in Egypt and is the cause for international criticism); *Turkey: Police, Watchmen Involved in Torture, Ill-Treatment*, HUM. RTS. WATCH (July 29, 2020, 12:00 AM), <https://www.hrw.org/news/2020/07/29/turkey-police-watchmen-involved-torture-ill-treatment#> (describing the worrying pattern of police violence in Turkey through recent cases); Krista Stelkia, *Police Brutality in Canada: A Symptom of Structural Racism and Colonial Violence*, YELLOWHEAD INST. (July 15, 2020), <https://yellowheadinstitute.org/2020/07/15/police-brutality-in-canada-a-symptom-of-structural-racism-and-colonial-violence/>; see also Leyland Cecco, *Canada Urged to Open Its Eyes to Systemic Racism in Wake of Police Violence*, GUARDIAN (June 14, 2020, 12:47 PM), <https://www.theguardian.com/world/2020/jun/14/canada-systemic-racism-history> (discussing the link between police brutality and structural racism in Canada).

Moreover, decades of research have shed light on the arbitrary, and too often discriminatory, factors that influence law enforcement officers' decisions to employ force while on duty. These findings further highlight the critical need for States to implement clear directives to restrict law enforcement's use of lethal force. Among these factors are officers' stress levels,¹⁸⁸ biases and individual life experiences,¹⁸⁹ racial stereotypes,¹⁹⁰ mental states,¹⁹¹ gender,¹⁹² and perceived behaviors of the suspects.¹⁹³ Racial bias, whether conscious or unconscious, has been found particularly influential and endemic in police officers' choice of when to use force and how much force is required.¹⁹⁴ Other forms of bias can

¹⁸⁸ Judith Pizarro Andersen et al., *Reducing Lethal Force Errors by Modulating Police Physiology*, 60 J. OCCUPATIONAL & ENV'T MED. 867, 867–68 (2018).

¹⁸⁹ For example, one study noted that the greater the difference in social structures between the officer and the citizen, the more likely it is that the suspect will resist the officer and the officer will then use excessive or at least a more severe type of force in response. Oftentimes, however, perceived differences between officer and citizen are based less on social distinctions and more on norms and expectations: the officer thinks of herself or himself as a superior protector and the suspect as rebellious. See R.E. Sykes & J.P. Clark, *A Theory of Deference Exchange in Police-Civilian Encounters*, 81 AMER. J. SOC. 584 (1975).

¹⁹⁰ See Sébastien Cojean et al., *supra* note 21, at 3–4. The literature had varying conclusions on the impact of race and ethnicity. For example, some of the literature found that use of force increased when the victim's appearance reinforced racial and ethnic stereotypes. Negative cultural perceptions also increased police use of force toward certain ethnic groups. Further, minorities were more likely to be subjected to force earlier in the encounter than their white counterparts.

¹⁹¹ See *id.* at 3. Police are also influenced by the subject's mental state. For example, persons with mental disorders are disproportionately likely to experience use of force techniques, which can only be partially explained by their increased tendency to be aggressive. Persons under the influence of drugs or alcohol are more likely to be subjected to force with an intermediate weapon. Officer's perceptions of such states influence their perception of the dangerousness of the subject, making mentally unstable persons particularly vulnerable to police force.

¹⁹² See Mengyan Dai & Denise Nation, *Understanding Non-Coercive, Procedurally Fair Behavior by the Police During Encounters*, 37 INT'L J. L. CRIME & JUST. 170, 173 (2009) (explaining that women were less likely to experience use of force measures by police).

¹⁹³ One study found that the force used by an officer was influenced by the "disrespect" an officer perceived an individual to have towards the officer. According to Alpert and Dunham, the level of coercion applied by the police officer will increase relative to the degree of the threat posed by the citizen to an officer's authority and not necessarily the officer's life or bodily integrity. See G.P. Alpert et al., *Interactive Police-Citizen Encounters that Result in Force*, 7 POLICE Q. 475 (2004).

¹⁹⁴ According to a recent sociological study investigating the implicit and explicit bias among U.S. police officers, about one in five officers display high levels of unconscious or implicit pro-white and anti-Black bias while one in eight officers show explicit or conscious pro-white bias. Jomills Braddock et al., *How Many Bad Apples? Investigating Implicit and Explicit Bias Among Police Officers and the General Public*, CONTEXTS (Oct. 27, 2020), <https://contexts.org/articles/how-many-bad-apples-investigating-implicit-and-explicit-bias-among-police-officers-and-the-general-public/>. Another study from 2012 found that officers were quicker to shoot an armed Black target, relative to an armed white target and quicker to

press “don’t shoot” for the unarmed white target, relative to the unarmed Black target. *See* POLICYLINK & ADVANCEMENT PROJECT, LIMITING POLICE USE OF FORCE: PROMISING COMMUNITY-CENTERED STRATEGIES 1, 7 (2014), https://www.policylink.org/sites/default/files/pl_police_use%20of%20force_111914_a.pdf. Such biases are not exclusive to U.S. police officers, and there is mounting evidence of similar patterns in other parts of the world. The United Nations Working Group of Experts on People of African Descent found practices of racial profiling in the criminal justice systems of both Brazil and Canada. *See* U.N. Secretary General, *Preventing and Countering Racial Profiling of People of African Descent: Good Practices and Challenges*, 3-4, U.N. Doc. A/73/354 (2019), <https://www.un.org/sites/un2.un.org/files/preventracialprofiling-en.pdf>; *see also*, Ignacio Cano, *supra* note 177 (showing that the ratio of individuals killed versus wounded by the police in Rio de Janeiro is higher for Black individuals than white individuals). In France, following the death of Adama Traore, a Black Frenchman, while in the custody of French gendarmes officials, the public protested and called for the French government to address racism and excessive use of force within the police. Paris’s police chief Didier Lallement responded with sympathy for the police officers involved in the death of Traore and stated that the Paris police were not racist and did not use excessive force. Rokhaya Diallo, *France is Still in Denial About Racism and Police Brutality*, AL JAZEERA (June 11, 2020), <https://www.aljazeera.com/opinions/2020/6/11/france-is-still-in-denial-about-racism-and-police-brutality/>.

relate to religious identity, gender, and ethnic stereotypes.¹⁹⁵ Officers are also influenced by their own idiosyncrasies, such as their personality,¹⁹⁶ ethnicity,¹⁹⁷ gender,¹⁹⁸ mental capacity,¹⁹⁹ and level of education and experience.²⁰⁰

¹⁹⁵ One study found that half of India's police expressed "anti-Muslim feelings" and believed that Muslims were inherently more likely to commit crimes. *See generally* CJ Werleman, *How India's Police Force Are 'Adopting and Mirroring' BJP's Racist and Prejudice Beliefs*, NEW ARAB (Sept. 4, 2019), <https://english.alaraby.co.uk/english/indepth/2019/9/4/half-of-indias-police-force-express-anti-muslim-bias> (citing COMMON CAUSE AND CSDS, STATUS OF POLICING IN INDIA REPORT 2019: POLICE ADEQUACY AND WORKING CONDITIONS (2019), https://www.commoncause.in/uploadimage/page/Status_of_Policing_in_India_Report_2019_by_Common_Cause_and_CSDS.pdf).

¹⁹⁶ While no study has yet been completed comparing the effect of different personalities on the decision to use force, studies have shown that a small number of officers are responsible for a large number of incidents, which cannot be explained fully by shift hours and patrol area. Researchers hypothesize that cognitive ability and emotional regulation both play a role in use of force decisions. *See generally* Steven Brandl & Megan Stroshine, *The Role of Officer Attributes, Job Characteristics, and Arrest Activity in Explaining Police Use of Force*, 25 CRIM. JUST. POL'Y REV. 548 (2012); Katelyn Jetelina et al., *Dissecting the Complexities of the Relationship Between Police Officer-Civilian Race/Ethnicity Dyads and Less-than-Lethal Use of Force*, 107 AM. J. PUB. HEALTH 1164 (2017).

¹⁹⁷ At least one study showed that white police officers are more coercive towards Black individuals than their Black counterparts. *See generally* Eugene Paoline et al., *Race and the Police Use of Force Encounter in the United States*, 58 BRIT. J. CRIMINOLOGY 54 (2018).

¹⁹⁸ The gender of the officer also influences the use of coercion. Women officers use less force than men and employ force based on different reasoning, with an emphasis on need and opportunity. *See generally* Orville Nickel, *Critical Factors in Police Use of Force Decisions*, WALDEN DISSERTATIONS & DOCTORAL STUDIES, <https://scholarworks.waldenu.edu/dissertations/1270/> (last visited Apr. 1, 2021). Moreover, while women generally use less force than men, they also use it differently. Studies show that they use less empty-hand control than men, but they are significantly more likely to use intermediate weapons. *See* Katelyn Jetelina et al., *supra* note 196.

¹⁹⁹ Heather Kleider et al., *Shooting Behaviour: How Working Memory and Negative Emotionality Influence Police Officer Shoot Decisions*, 24 APPLIED COGNITIVE PSYCH. 707, 708 (2010).

²⁰⁰ Regarding professional experience, experts and experienced police officers adapt better to circumstances and possible outcomes than novices, whose reasoning is more sequential and linear. This was shown in an analysis of cognitive tasks performed by twelve experienced officers (specialized firearm officers, SFO) and eleven novices (authorized firearm officers, AFO). Laura Boulton & Jon Cole, *Adaptive Flexibility: Examining the Role of Expertise in the Decision Making of Authorized Firearms Officers During Armed Confrontation*, 10 J. COGNITIVE ENG'G & DECISION MAKING 291, 294 (2016). Other researchers also observed considerable differences in the way experts and novices reacted to videos showing police use of force; the experts focused on the broader picture, putting "force mitigation" and "back-up opportunity" at the top of their word list. They also referred to "verbal command" or "verbal direction," whereas novices frequently referred to "control." *See* Laura Mangels et al., *Police Expertise and Use of Force: Using a Mixed-Methods Approach to Model Expert and Novice Use-of-Force Decision-Making*, 35 J. POLICE & CRIM. PSYCH. 293, 297–99 (2020). Experts thus seem to focus on the event as a whole, and not solely on the aim of controlling the suspect. This observation also applies to shooting speed and accuracy. In a study comparing elite

The wide-ranging nature of factors that impact police use of force, many of which violate basic principle of non-discrimination, underscores the need for governments to establish constraints on the permissible use of force through policy prescriptions grounded in law. Moreover, available research on how police behavior is impacted by written directives confirms the need for clear and specific policies on lethal use of force.²⁰¹ Policies containing broad, discretionary language and lacking in accountability mechanisms have been found to be ineffective at cabining police discretion.²⁰² Conversely, clear and specific language, accompanied by a robust accountability framework that includes standardized use of force reporting and review, is correlated with lower rates of police use of force.²⁰³ One study concluded that a policy which required an officer to report

members of an Emergency Response Team (ERT) and rookie police officers, the former had greater shooting speed, better accuracy, and made fewer mistakes. An eye-tracking device revealed that the better performance of the experts could partly be explained by their greater use of the “quiet-eye” technique, enabling them to focus longer on the target before shooting. Joan Vickers & William Lewinski, *Performing Under Pressure: Gaze Control, Decision Making and Shooting Performance of Elite and Rookie Police Officers*, 31 HUM. MOVEMENT SCI. 101, 101 (2012). We can also assume that a higher education level, while not affecting the number of arrests or searches, may significantly reduce the frequency of the use of coercion. Jason Rydberg & William Terrill, *The Effect of Higher Education on Police Behavior*, 13 POLICE Q. 92, 92 (2010).

²⁰¹ For example, results showed that U.S. officers working under the most restrictive policies used force less readily than those who were acting under more discretionary policies. William Terrill & Eugene Paoline III, *Police Use of Less Lethal Force: Does Administrative Policy Matter?*, 34 JUST. Q. 193, 193 (2017).

²⁰² One study found that “considerable reductions in police shooting and both officer and citizen injury and death are associated with the establishment of clearly delineated guidelines and procedures for the review of officer shooting discretion.” James Fyfe, *Administrative Interventions on Police Shooting Discretion: An Empirical Examination*, 7 J. CRIM. JUST. 309, 322 (1979). Others found that an administrative policy can be successful in controlling an officer’s decision to use deadly force. See Michael D. White, *Controlling Police Decisions to Use Deadly Force: Reexamining the Importance of Administrative Policy*, 47 CRIME & DELINQUENCY 131, 131 (2001).

²⁰³ One U.S.-centered study found that departments with policies that incorporate a division of responsibilities, clear supervisory roles, and a well-established hierarchy are less likely to engage in excessive uses of force. Hoon Lee & Michael S. Vaughn, *Organizational Factors that Contribute to Police Deadly Force Liability*, 38 J. CRIM. JUST. 193, 202 (2010) (increased training, heightened oversight, and administrative policies were correlated with reduced police shootings) (citing Concetta Culliver & Robert Sigler, *Police Use of Deadly Force in Tennessee Following Tennessee v. Garner*, 11 J. CONTEMP. CRIM. JUST. 187, 191–92 (1995)); see also Tim Prenzler et al., *Reducing Police Use of Force: Case Studies and Prospects*, 18 AGGRESSION & VIOLENT BEHAV. 343, 354 (2013) (“Policies need to be explicit about what is required of officers . . . and policies need to be written down, regularly reviewed, and updated where appropriate. More generally, an enhanced accountability framework appears to be essential for reducing force.”); Terrill & Paoline, *supra* note 201, at 210 (“[R]esults show that officers working in the agency . . . with the least restrictive, or loosely-coupled policy, were more apt to use force.”).

every time he aimed his firearm at an individual but did not fire was correlated with overall lower rates of shooting deaths.²⁰⁴ Policies that set out external oversight bodies have been found to be more effective than those with internal mechanisms.²⁰⁵ Further, these external mechanisms have proven most effective when they have the power to conduct their own investigations independently from police departments.²⁰⁶ For these many reasons, putting in place clear use of force directives in line with international standards is an important foundation for law enforcement to respect and protect human rights. It is, however, important to note that such directives cannot stand alone. Use of lethal force directives must be accompanied by meaningful implementation,²⁰⁷ viable and available alternatives

²⁰⁴ Jay T. Jennings & Meghan E. Rubado, *Preventing the Use of Deadly Force: The Relationship Between Police Agency Policies and Rates of Officer-Involved Gun Deaths*, 77 PUB. ADMIN. REV. 217, 217 (2017).

²⁰⁵ According to the U.N. OFF. ON DRUGS AND CRIME, HANDBOOK ON POLICE ACCOUNTABILITY, OVERSIGHT AND INTEGRITY 8 (2011), external civilian oversight of police conduct is a “hallmark of a democratic police force” (internal citations omitted).

²⁰⁶ 2014 UNSR Report, *supra* note 34, at ¶¶ 83–84.

²⁰⁷ While implementation of use of force directives is beyond the scope of this research, abundant research exists on how such directives must be socialized and enforced within a police department to be effective. First, directives are most effective when they become second nature through repeated socialization. See Zachary W. Oberfield, *Socialization and Self-Selection: How Police Officers Develop Their Views About Using Force*, 44 ADMIN. & SOC’Y 702, 722–25 (2012). Second, robust internal training on appropriate use of force scenarios grounded in the departmental policy strongly influences how officers make decisions to use force. See Kelly A. Hine et al., *Exploring Police Use of Force Decision-Making Processes and Impairments Using a Naturalistic Decision-Making Approach*, 45 CRIM. JUST. & BEHAV. 11, 1782, 1794 (2018). Northern Ireland is another example. Following passage of new legislation requiring government authorities, including the police, to view their obligation to protect human rights at the same level as traditional policing duties, police culture around human rights shifted “from an approach of ‘control and stop’ to one of facilitation.” INT’L NETWORK OF CIVIL LIBERTIES ORG. & THE INT’L HUMAN RIGHTS CLINIC—UNIV. OF CHI. LAW SCH., DEFENDING DISSSENT: TOWARDS STATE PRACTICES THAT PROTECT AND PROMOTE THE RIGHTS TO PROTEST 7 (2018), <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1007&context=ihrcc>.

to use of force,²⁰⁸ and effective mechanisms for transparency and accountability.²⁰⁹

Finally, regulation of police use of force through directives and implementation of these directives, however effective, should not be considered the ultimate goal of reform of law enforcement practices. As many advocates and policy makers have noted, use of force can only truly be minimized by establishing limits to police contact in the first instance²¹⁰ and reducing the common practice of over-policing, especially of minority and marginalized communities.²¹¹

Globally, use of lethal force directives provide a critical and necessary foundation for cabining police discretion in a human rights-compliant manner. None

²⁰⁸ Even the most specific, well-constructed, and socialized directives must be accompanied by other measures to ensure compliance. For example, the availability of less coercive measures tends to reduce the amount of force used in a given situation, in accordance with the international policing principle of de-escalation. See Yu-Sheng Lin & Tonisha R. Jones, *Electronic Control Devices and Use of Force Outcomes: Incidence and Severity of Use of Force, and Frequency of Injuries to Arrestees and Police Officers*, 33 POLICING: AN INT'L J. 152, 171 (2010); William Sousa et al., *The Impact of TASERS on Police Use-of-Force Decisions: Findings from a Randomized Field-Training Experiment*, 6 J. EXPERIMENTAL CRIMINOLOGY 35, 35 (2010); Bruce Taylor & Daniel J. Woods, *Inquiries to Officers and Suspects in Police Use-of-Force Cases: A Quasi-Experimental Evaluation*, 13 POLICE Q. 3 (2010). Additionally, providing police officers with crisis intervention team (CIT) programs that focus on how to interact with individuals in a mental health crisis without resorting to using force have been found effective. Implementing CIT training and partnerships between police and mental health services will best serve those undergoing mental health crises. Jennifer L.S. Teller, PhD et. al., *Crisis Intervention Team Training for Police Officers Responding to Mental Disturbance Calls*, 57 PSYCHIATRIC SERVICES 232–37 (2006). The use of body cameras can provide a useful avenue for monitoring police activity for misconduct and has been successful in some contexts in decreasing use of force. For example, in Great Britain, body-worn cameras led to a 50% reduction in the use of force, but mostly at the bottom of the force continuum. Darren Henstock & Barak Ariel, *Testing the Effects of Police Body-Worn Cameras on Use of Force During Arrests: A Randomized Controlled Trial in a Large British Police Force*, 14 EUR. J. CRIMINOLOGY 720, 720 (2017).

²⁰⁹ Without transparency and accountability in police use of force, a prohibition on arbitrary killings is ineffective. See *McCann v. United Kingdom*, App No. 18984/91, 21 Eur. H.R. Rep. 97, ¶ 161 (1995).

²¹⁰ Black individuals stopped by the police tend to show signs of nervousness, which increases the likelihood of an officer using force and thereby validating the officer's racial bias. See LIMITING POLICE USE OF FORCE: PROMISING COMMUNITY-CENTERED STRATEGIES, *supra* note 194, at 7–8.

²¹¹ For example, in Brazil, communities from the lowest socio-economic strata—mostly Black communities—are policed more frequently. See Ignacio Cano, *supra* note 177. In France, police often target Black and Arab men and boys when conducting investigatory stops. See *Abusive Police Stops in France*, HUM. RTS. WATCH (June 18, 2020), <https://www.hrw.org/report/2020/06/18/they-talk-us-were-dogs/abusive-police-stops-france>. Similar over-policing practices of racial minorities are evident in Australia. See Rob White, *Ethnic Diversity and Differential Policing in Australia: The Good, the Bad and the Ugly*, 10 J. INT'L MIGRATION & INTEGRATION 359, 359 (2009).

of the countries evaluated by our study—which comprises the most well-resourced countries in the world—satisfied this threshold requirement under international law. For States to guarantee the human rights of their populations, not only on paper but also in practice, they must start by instituting a legal and policy framework that adequately protects the right to life against law enforcement’s power to use force. Establishing such a framework, in conformity with the principles set by international law, would be a first step towards living up to their fundamental commitments on human rights.

City	Legality	Necessity	Proportionality	Accountability	Total Grade
New York City	5	30	25	12	72
Mexico City	5	30	25	10	70
Buenos Aires	5	30	25	10	70
Lagos	5	30	25	5	65
Jakarta	5	30	25	5	65
Toronto	5	20	25	13	63
Seoul	5	10	25	5	45
Amsterdam	5	10	0	25	40
Brussels	5	10	0	25	40
Stockholm	5	10	0	25	40
London	5	20	0	13	38
Oslo	5	10	0	18	33
Istanbul	5	20	0	5	30
Vienna	5	10	0	13	28
Tokyo	5	15	0	5	25
Madrid	5	15	0	5	25
Warsaw	5	10	0	10	25
Zurich	5	5	0	13	23
Tehran	5	10	0	8	23
Sydney	5	10	0	5	20
Berlin	5	15	0	0	20
São Paulo	5	10	0	5	20
Bangkok	5	10	0	5	20
Shanghai	5	0	0	10	15
Moscow	5	0	0	10	15
Rome	5	0	0	0	5
Mumbai	5	0	0	0	5
Paris	5	0	0	0	5
Riyadh	0	0	0	0	0

Figure 9: total grade by city and principle