

# **Geneva Guidelines on Less-Lethal Weapons and Related Equipment in Law Enforcement**

**Text for Consultation**

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# 1. INTRODUCTION

- 1.1 Less-lethal weapons<sup>1</sup> and related equipment have an important role in law enforcement, which aims to protect individuals and uphold the law. They may be used in situations where some degree of force is necessary but where the use of firearms would be unlawful, or as a less dangerous alternative to firearms, in order to reduce the risk of injury to members of the public and to criminal suspects. Law enforcement officials should be equipped with an appropriate range of less-lethal weapons and related equipment. Where they are equipped only with a baton and a firearm, the risks to themselves and to the public are heightened.
- 1.2 Nonetheless, less-lethal weapons and related equipment may also kill or inflict serious injury, especially when they are not used by trained personnel in accordance with specifications, general principles on the use of force, and fundamental human rights. In addition, in many instances, extrajudicial killings and acts of torture — serious violations of international law — have been perpetrated using less-lethal weapons and certain forms of related equipment.
- 1.3 The purpose of these Guidelines is to provide guidance on the lawful and responsible design, production, procurement, testing, training, transfer, deployment, and use of less-lethal weapons and related equipment to States, law enforcement agencies, manufacturers, human rights bodies and mechanisms, private security companies, police oversight bodies, human rights defenders, as well as individuals seeking to assert their right to a remedy for human rights violations. The Guidelines are also intended to promote accountability for the design, production, testing, transfer, deployment, and use of less-lethal weapons and related equipment. The Guidelines are not intended to serve as standing operating procedures for individual officers, but may assist States and their law enforcement to implement their duty to put in place such procedures.
- 1.4 The Guidelines are based on international law, in particular international human rights law and law enforcement rules, as well as good law enforcement practice. The Guidelines may assist in the interpretation of fundamental human rights and freedoms, especially the rights to life, to security of person, to freedom from torture or other forms of cruel, inhuman, or degrading treatment or punishment, and to freedom of peaceful assembly.<sup>2</sup> They supplement and complement the standards laid down in the 1979 United Nations (UN) Code of Conduct for Law Enforcement Officials (1979 Code of Conduct)<sup>3</sup> and the 1990 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990 Basic Principles).<sup>4</sup>
- 1.5 The 1979 Code of Conduct requires that in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold

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<sup>1</sup> The Guidelines avoid referring to weapons and equipment as ‘non-lethal’ since the use of any weapon can have fatal consequences.

<sup>2</sup> These rights are protected, for example, in Articles 6, 7, and 9 of the 1966 International Covenant on Civil and Political Rights (ICCPR) and in the regional human rights treaties.

<sup>3</sup> Code of Conduct for Law Enforcement Officials, adopted by UN General Assembly Resolution 34/169. The resolution was adopted without a vote on 17 December 1979.

<sup>4</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, welcomed by UN General Assembly Resolution 45/166. The resolution was adopted without a vote on 14 December 1990.

the human rights of all persons.<sup>5</sup> The 1990 Basic Principles call on States and law enforcement agencies to develop ‘non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons’.<sup>6</sup> The 1990 Basic Principles further call for the development and deployment of such weapons to be ‘carefully evaluated in order to minimize the risk of endangering uninvolved persons’, and affirm that ‘the use of such weapons should be carefully controlled’.<sup>7</sup>

- 1.6 In 2014, Resolution 25/38 of the UN Human Rights Council encouraged States to make ‘non-lethal weapons available to their officials exercising law enforcement duties, while pursuing international efforts to regulate and establish protocols for the training and use of non-lethal weapons’.<sup>8</sup> In 2018, the UN Human Rights Council further encouraged the establishment of protocols ‘for the training and use of non-lethal weapons, bearing in mind that even less-lethal weapons can result in risk to life’.<sup>9</sup>
- 1.7 The present Guidelines apply to acts of law enforcement at all times, including during an armed conflict, in counterterrorism operations, or during situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature. They apply to acts of law enforcement wherever they occur, including extraterritorially.
- 1.8 In this document, the words ‘shall’, ‘should’, and ‘may’ are used to convey the intended degree of fulfilment with the Guidelines. This is consistent with the use of such language in International Organization for Standardization (ISO) standards and guidelines. ‘Shall’ is used to indicate a requirement. ‘Should’ is used to indicate a preferred method or course of action. ‘May’ is used to indicate a possible method or course of action.

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<sup>5</sup> Article 2, 1979 Code of Conduct.

<sup>6</sup> Principle 2, 1990 Basic Principles.

<sup>7</sup> Principle 3, 1990 Basic Principles.

<sup>8</sup> Human Rights Council Resolution 25/38, adopted on 28 March 2014, para. 14.

<sup>9</sup> Human Rights Council Resolution 38/11, adopted without a vote on 6 July 2018, para. 15.

## 2. DEFINITIONS

2.01 The definitions in this section are in alphabetical order.

### ASSEMBLY

2.1 Assembly refers to an intentional and temporary gathering in a private or public space for a specific purpose. Assemblies may take the form of demonstrations, meetings, strikes, processions, rallies, or sit-ins with the purpose of voicing grievances, aspirations, or celebrations.<sup>10</sup> The term extends also to incorporate other public gatherings, such as sporting events or music concerts.

### CUSTODIAL SETTING

2.2 Custodial setting refers to any form of detention, imprisonment, or institutionalisation of a person in a public or private institution which that person is not permitted to leave at will, by order or under de facto control of a judicial, administrative, or any other authority.<sup>11</sup> This includes detention in a ship or other maritime vessel in the context of maritime law enforcement. Those responsible for securing and protecting detainees are custodial staff.

### DETENTION

2.3 Detention covers situations where a law enforcement official apprehends or holds an individual against his or her will, including during or following an arrest. It is a broader notion than custody. Detention includes situations where an individual is held against his or her will in a vehicle, such as a police car or van, amounts to detention. Prolonged maintenance of a person in a police cordon is also likely to amount to detention.

### DIRECTED ENERGY WEAPONS

2.4 Directed energy weapons are those weapons that use technologies that produce concentrated electromagnetic energy and atomic or subatomic particles as a means to damage or destroy equipment and kill or injure personnel.<sup>12</sup>

### DISCRIMINATION

2.5 Discrimination means any distinction, exclusion, or restriction on the basis of prohibited grounds which has the purpose or effect of impairing or nullifying the recognition,

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<sup>10</sup> 'Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies', UN doc. A/HRC/31/66, 4 February 2016, para. 10.

<sup>11</sup> Inter-American Commission on Human Rights, 'Revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners', UN doc. UNODC/CCPCJ/EG.6/2014/INF/2, 8 October 2013, p. 3.

<sup>12</sup> See Joint Chiefs of Staff, *Electronic Warfare*, Joint Publication 3-13.1, 8 February 2012, p. 1-16; Andrew Feickert, *U.S. Army Weapons-Related Directed Energy (DE) Programs: Background and Potential Issues for Congress*, United States Congressional Research Service, 12 February 2018, p. 1.

enjoyment, or exercise, on an equal basis with others, of human rights and fundamental freedoms.

## IMPENDING THREAT

2.6 An impending threat is one that is expected to occur within a matter of minutes, and which is likely to lead to injury.

## IMMINENT THREAT

2.7 An imminent threat is one that is expected to occur in a split second or at most a matter of several seconds, and which is likely to lead to injury.<sup>13</sup>

## INJURY

2.8 Injury means physical or physiological bodily trauma resulting from interaction of the body with energy (mechanical, thermal, electrical, chemical or radiant, or due to extreme pressure) in an amount, or at a rate of transfer, that exceeds physical or physiological tolerance.<sup>14</sup>

## LAW ENFORCEMENT AGENCY

2.9 Law enforcement agency means any entity or body that is formally entrusted or contracted by a State with the prevention, detection, and investigation of crime and the arrest and detention of criminal suspects and offenders. This includes immigration and other border control agencies. Law enforcement agencies may be local, provincial, national, or supranational. The relevant body or unit of the military and other security forces will be considered a law enforcement agency when it is conducting law enforcement tasks, whether that occurs domestically or in any other jurisdiction.<sup>15</sup>

## LAW ENFORCEMENT OFFICIAL

2.10 Law enforcement official means any officer of the law, whether appointed or elected, who exercises police powers, especially the powers of arrest or detention.<sup>16</sup> Where police powers are exercised by the military, whether uniformed or not, or by State security forces, the definition of law enforcement official includes any officers of such services.<sup>17</sup> Law enforcement officials include immigration officers. The term also applies to those acting extraterritorially.

## LEGITIMATE LAW ENFORCEMENT OBJECTIVE

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<sup>13</sup> Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns, UN doc. A/HRC/26/36, 1 April 2014, para. 59.

<sup>14</sup> World Health Organisation, 'Injury, poisoning or certain other consequences of external causes', International Classification of External Causes of Injury (ICECI), June 2018, at: <https://bit.ly/2DGIH5j>.

<sup>15</sup> Commentary (a) and (b) to Article 1 of the 1979 Code of Conduct; footnote to the 1990 Basic Principles.

<sup>16</sup> Commentary (a) on Article 1, 1979 Code of Conduct.

<sup>17</sup> Commentary (a) and (b) to Article 1 of the 1979 Code of Conduct; footnote to the 1990 Basic Principles.



2.11 Legitimate law enforcement objective refers to one that is recognised in both international and national law, such as protecting members of the public or a law enforcement official against unlawful violence, preventing the perpetration of a criminal offence, arresting a person suspected of having committed a criminal offence, or detaining a convicted criminal pursuant to a lawful sentence. It also refers to the duty of law enforcement agencies and officials to facilitate and protect the right of peaceful assembly and, in certain circumstances, for medical purposes in accordance with medical ethics.

## LESS-LETHAL WEAPONS

2.12 Less-lethal weapons mean weapons designed or intended for use on individuals or groups of individuals which, in the course of expected or reasonably foreseen use, have a lower risk of causing death or serious injury than do firearms. Less-lethal weapons do not include firearms, as that term is understood in international law,<sup>18</sup> when the firearms are employed to discharge lethal projectiles. Less-lethal weapons are not those whose expected or reasonably foreseen use would be likely to result in life-threatening injuries.

## MODERATE INJURY

2.13 A moderate injury is an injury that is not potentially life-threatening but is more severe than minor injuries, such as small cuts, abrasions, or bruises.

## PERMANENT BLINDNESS

2.14 Permanent blindness means irreversible and uncorrectable loss of vision in at least one eye which is seriously disabling with no prospect of recovery. Serious disability is equivalent to visual acuity of less than 20/200 Snellen measured for the eye.<sup>19</sup>

## RELATED EQUIPMENT

2.15 Related equipment includes personal protective equipment such as shields, helmets, body armour, and other equipment that is provided to law enforcement officials to minimise injury. Equipment may be general in nature or specific to certain situations, such as assemblies, and includes equipment that may be used remotely, automatically, or autonomously, as well as information communication technology used by law enforcement. The term also covers restraints used in custodial settings.

## SERIOUS INJURY

2.16 A serious injury is an injury that is potentially life-threatening or life-changing.

## SPECIFIC WEAPONRY

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<sup>18</sup> See Art. 3(a), Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing The United Nations Convention Against Transnational Organized Crime (2001 Firearms Protocol).

<sup>19</sup> Art. 4, 1995 Protocol IV on blinding laser weapons to the 1980 Convention on Certain Conventional Weapons.

2.17 Specific weaponry refers to the particular weapons or weapons systems addressed in Section 8 of these Guidelines (as opposed to less-lethal weapons as a class).

## TRANSFER

2.18 Transfer means the export of weapons from the jurisdiction of one State to the jurisdiction of another, including where the exporter or importer is an individual or a company. In addition to sales, transfer comprises also gifts, leases, and loans.

## UNDUE RISK

2.19 Undue risk is a level of identifiable risk that is unacceptable under domestic or international law.

## USE OF FORCE

2.20 Use of force refers to the use or the threat of imminent use of physical means to coerce or influence behaviour, injure a person, or damage property. Such means may be kinetic in nature, as well as chemical, electrical, or other. A weapon may be used without it being discharged, for example by pointing it at a person.

### 3. GENERAL PRINCIPLES ON USE OF FORCE

- 3.1 Law enforcement officials shall at all times respect and protect fundamental human rights and freedoms, in particular when they consider any use of force. The rights of law enforcement officials to life and to security shall also be respected and ensured. Law enforcement officials should, as and where necessary, be equipped with appropriate personal protective equipment,<sup>20</sup> such as helmets, shields, stab-resistant gloves and vests, and bullet-resistant vests.
- 3.2 In carrying out their duties, law enforcement officials should, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force only if other means remain ineffective or without any promise of achieving the intended result.<sup>21</sup> Appropriate personal protective equipment may decrease the need for law enforcement officials to use weapons of any kind.<sup>22</sup>
- 3.3 Any use of force by law enforcement officials should comply with the principles of legality, precaution, necessity, proportionality, non-discrimination, and accountability. The use of force shall be regulated by domestic law in accordance with international law.<sup>23</sup> National policies shall be adopted on the use of force by law enforcement agencies and officials that comply with international law and standards.

#### THE PRINCIPLE OF LEGALITY

- 3.4 Only weapons and weapons systems duly authorised by the relevant State authorities for use in law enforcement may be deployed by law enforcement agencies and used by law enforcement officials. Domestic law and regulations shall specify conditions for the use of less-lethal weapons and related equipment and impose limitations on the use of specific less-lethal weapons in order to minimise the risk of injury.

#### THE PRINCIPLE OF PRECAUTION

- 3.5 Law enforcement operations and actions shall be planned and conducted taking all necessary precaution to avoid or at least minimise the risk of recourse to force by law enforcement officials as well as members of the public.<sup>24</sup> Where appropriate, law enforcement officials should delay direct contact or engagement with members of the

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<sup>20</sup> Principle 2, 1990 Basic Principles.

<sup>21</sup> Principle 4, 1990 Basic Principles.

<sup>22</sup> Human Rights Council Resolution 38/11, adopted without a vote on 6 July 2018, para. 15.

<sup>23</sup> Principle 1, 1990 Basic Principles; African Commission on Human and Peoples' Rights, General Comment No. 3 on the African Charter on Human and Peoples' Rights: Article 4, the Right to Life', adopted in November 2015, para. 27; Inter-American Court of Human Rights, *Cruz Sánchez and others v. Peru*, Judgment, 17 April 2015, para. 261; European Court of Human Rights, *Nachova and others v. Bulgaria*, Judgment, 6 July 2005, paras. 99, 100.

<sup>24</sup> European Court of Human Rights, *McCann and others v. United Kingdom*, Judgment, 27 September 1995, para. 194; Inter-American Court of Human Rights, *Nadege Dorzema and others v. Dominican Republic*, Judgment, 24 October 2012, para. 87; Principle 5(b), 1990 Basic Principles; Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns, UN doc. A/HRC/26/36, 1 April 2014, para. 63.

public, if doing so would make the need to use force or the potential for violent outcomes less likely.<sup>25</sup>

## THE PRINCIPLE OF NECESSITY

- 3.6 In carrying out their duty, law enforcement officials may use force only when strictly necessary and only to the extent required for the performance of their duty. In other words, law enforcement officials should only use force when it is necessary in the circumstances to achieve a lawful and legitimate law enforcement objective.
- 3.7 Necessity requires that no reasonable alternative, other than resorting to the use of force, is available at that moment, to achieve a legitimate law enforcement objective.<sup>26</sup> When the use of force is reasonably necessary in the circumstances, only the minimum force required to achieve that objective shall be used.<sup>27</sup>

## THE PRINCIPLE OF PROPORTIONALITY

- 3.8 The use of force and the injuries that may be reasonably expected to result shall be proportionate to the threat posed by an individual or group of individuals or the offence that is being, or is about to be, committed.<sup>28</sup> In no case should force be used which is disproportionate to the legitimate objective to be achieved.<sup>29</sup> At all times, law enforcement officials should consider and limit to a minimum the possible impact of their use of force on bystanders, passers-by, and journalists.

## THE PRINCIPLE OF NON-DISCRIMINATION

- 3.9 In carrying out their functions, law enforcement officials shall not discriminate against any person on the basis of race, ethnicity, colour, sex, language, religion, political or other opinion, national or social origin, disability, property, birth, or other similar criteria. In order to ensure non-discrimination and de facto equal treatment of persons subject to the use of force, a heightened level of care and precaution shall be exercised with respect to individuals who are known or are likely to be especially vulnerable to the effects of a particular weapon.<sup>30</sup>

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<sup>25</sup> European Court of Human Rights, *Shchiborshch and Kuzmina v. Russia*, Judgment, 16 January 2014, para. 240.

<sup>26</sup> Principle 4, 1990 Basic Principles; Article 3 and Commentary (a), 1979 Code of Conduct.

<sup>27</sup> Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns, UN doc. A/HRC/26/36, 1 April 2014, para. 60; Commentary (a) on Article 3, 1979 Code of Conduct.

<sup>28</sup> Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns, UN doc. A/HRC/26/36, 1 April 2014, para. 66; Principle 5(a), 1990 Basic Principles; Commentary (b) on Article 3, 1979 Code of Conduct.

<sup>29</sup> Commentary (b) on Article 3, 1979 Code of Conduct.

<sup>30</sup> For example, in the case of conducted electrical weapons, the United Kingdom's Defence Scientific Advisory Council Sub-Committee on the Medical Implications of Less-Lethal Weapons advises that 'individuals with heart disease, or who have taken certain prescription or recreational drugs, may be more likely to experience adverse cardiac effects as a result of Taser discharge'. Defence Scientific Advisory Council Sub-Committee on the Medical Implications of Less-Lethal Weapons, 'Statement on the Medical Implications of Use of the Taser X26 and M26 Less-Lethal Systems on Children and Vulnerable Adults', 2012, para. 77, at: <https://bit.ly/2tFIS8f>.

## 4. ACCOUNTABILITY

- 4.1 Law enforcement officials shall be held accountable for their actions, including any decision to use force. They also have an obligation to protect the public, so in certain circumstances they shall also be held accountable for omissions.<sup>31</sup> To fulfil this obligation, law enforcement agencies shall establish effective internal accountability mechanisms and States should consider the establishment of an adequately resourced external oversight body, in the absence of which an Ombudsman or National Human Rights Institution should fulfil this external oversight function.<sup>32</sup> Law enforcement officials should be identifiable, such as by the wearing of nametags or service numbers. Accountability is also facilitated by the marking of all weapons,<sup>33</sup> and, where feasible, ammunition, munitions, batons, and projectiles. Accountability is further facilitated by record-keeping of the equipping of law enforcement officials with less-lethal weapons, combined with prompt and comprehensive reporting of incidents where officials have used force.
- 4.2 Effective accountability for law enforcement officials involves many different actors: government representatives, parliament, the judiciary, civil society actors, and independent oversight bodies, including national human rights institutions or ombudspersons' offices. Primarily, though, it concerns the police or other law enforcement agency itself.<sup>34</sup> Members of the government and other political authorities should promote a culture of accountability for law enforcement and should be held responsible if they encourage or promote unlawful behaviour. Internal and external oversight systems should be in place for every law enforcement agency. States are obligated to regulate and control the actions of private security companies operating on or from their territory in domestic law that complies with international law.
- 4.3 States should consider requiring all law enforcement agencies to document every use of force involving less-lethal weapons or related equipment, at a minimum where moderate injury occurs. A subsequent report should contain sufficient information to establish whether the use of force was necessary and proportionate, and set out the details of the incident, including: the surrounding circumstances; the type and manner of force employed, including specific weaponry; the reasons for the use of force; its effectiveness; and the consequences. The report should conclude whether the use of force was lawful and, whether or not this was the case, identify any lessons learned from the incident.

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<sup>31</sup> See, e.g., European Court of Human Rights, *Tagayeva v. Russia*, Judgment (First Section), 13 April 2017 (rendered final on 18 September 2017); 'Police officers jailed over Bijan Ebrahimi murder case', *The Guardian*, 9 February 2016, at: <https://www.theguardian.com/uk-news/2016/feb/09/bijan-ebrahimi-murder-bristol-police-sentenced>.

<sup>32</sup> African Commission on Human and Peoples' Rights, *Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa*, Banjul, 2017, para. 8.1.

<sup>33</sup> According to Article 8(1) of the 2001 Firearms Protocol, for example, each state party is required, at the time of manufacture of each firearm, to require 'unique marking with the name of the manufacturer, the country or place of manufacture, and the serial number', or any alternative marking 'with simple geometric symbols in combination with a numeric and/or alphanumeric code' that permits 'ready identification by all States of the country of manufacture'.

<sup>34</sup> UN Office on Drugs and Crime (UNODC), *Handbook on Police Accountability, Oversight and Integrity*, Criminal Justice Handbook Series, Vienna, July 2011.

- 4.4 Every law enforcement official is responsible for his or her decisions and actions, including a commander. Each use of force shall be justified and justifiable.<sup>35</sup> Obedience to a manifestly unlawful order from a superior to use force shall not excuse any illegal act.<sup>36</sup> The government and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on a law enforcement official who refuses to carry out an illegal order to use a less-lethal weapon, or who reports such illegal orders, or such use of force by other officials.<sup>37</sup>
- 4.5 Where a violation of domestic or international law or administrative regulation occurs, in addition to any criminal law or disciplinary sanction or civil law penalty that may be imposed on responsible law enforcement officials, retraining or requalification may be required. States should ensure, including through internal periodic review, that lessons learned from situations where human rights have been violated by the use of less-lethal weapons or related equipment are fully reflected in policies, procedures, and training.
- 4.6 Where death or injury is caused by the use of a less-lethal weapon or related equipment by any law enforcement official, the incident shall be reported promptly to the official's superiors.<sup>38</sup> This obligation also applies to any private security company undertaking law enforcement activities. All moderate or more severe injuries resulting from the use of less-lethal weapons or related equipment, especially where they follow an unlawful or potentially unlawful use of force or any breach of the present Guidelines, should be investigated effectively and promptly.
- 4.7 The use of force in a custodial setting should be reported immediately to the Director of the institution or individual of equivalent authority, as appropriate.<sup>39</sup> Notwithstanding the initiation of an internal investigation, the prison director shall report, without delay, any custodial death, disappearance or serious injury or incident in which there are reasonable grounds to believe that torture or other cruel, inhuman or degrading treatment or punishment has been committed to a judicial or other competent authority. This authority shall be independent of the prison administration and mandated to conduct prompt, impartial, and effective investigations into the circumstances and causes of such cases.<sup>40</sup>
- 4.8 Under international human rights law, there is an obligation on the State to investigate all alleged or suspected violations of human rights, in particular the rights to life, to security, and to freedom from torture or other forms of cruel, inhuman, or degrading treatment or punishment.<sup>41</sup> Such investigations shall be impartial, independent, and effective, and conducted in a prompt and transparent manner. All law enforcement officials shall cooperate fully with any such investigation and investigators shall be able to compel the production of evidence. This includes independent police oversight mechanisms, which strengthen the accountability of law enforcement agencies and officials. Medical

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<sup>35</sup> See, e.g., US Court of Appeals (Fourth Circuit), *Meyers v. Baltimore County*, 713 F.3d 723 (2013), pp. 733–34.

<sup>36</sup> Principle 26, 1990 Basic Principles; European Court of Human Rights, *Gäfgen v. Germany*, Judgment, 1 June 2010, paras. 176, 177.

<sup>37</sup> Principle 25, 1990 Basic Principles.

<sup>38</sup> Principles 6 and 22, 1990 Basic Principles.

<sup>39</sup> Rule 82(1), UN Standard Minimum Rules for the Treatment of Prisoners, adopted without a vote by UN General Assembly Resolution 70/175 of 17 December 2015 ('2015 Nelson Mandela Rules').

<sup>40</sup> Rule 71(1), 2015 Nelson Mandela Rules.

<sup>41</sup> See generally the *Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016)*, Office of the High Commissioner for Human Rights (OHCHR), Geneva, 2017.

professionals involved in any investigation shall act in accordance with professional ethics, including the duty to act impartially with a view to facilitating justice.

- 4.9 When law enforcement officials deprive an individual of liberty, for instance by detaining or placing that person in custody, they assume a heightened level of responsibility to protect that individual's rights, in particular, the right to life. Where a person dies in custody, including as a result of the use of less-lethal weapons, there is a presumption of State responsibility, and the burden of proof rests upon the State to prove otherwise, through a prompt, impartial, independent and effective, and transparent investigation carried out by an independent body.<sup>42</sup>
- 4.10 Where an investigation involving law enforcement officials reveals evidence that a death or moderate or more severe injury may have been caused unlawfully, the State should ensure that perpetrators are prosecuted through a judicial process and, if convicted, given a suitable punishment.<sup>43</sup> Punishment for unlawful use of force by law enforcement officials shall be effective, proportionate, and dissuasive.
- 4.11 Victims of unlawful use of force by law enforcement officials shall have an effective right to a remedy.<sup>44</sup> Forms of remedy include compensation, guarantees of non-repetition, rehabilitation, reparation, restitution, and satisfaction. The right of victims to participate in any investigation should be respected.
- 4.12 International mechanisms of accountability include United Nations treaty bodies and special procedures, the regional human rights courts, tribunals, and mechanisms, and, in certain circumstances, the International Criminal Court. Accountability for unlawful use of force in law enforcement contexts has also been dealt with by international commissions of inquiry and fact-finding missions, and in reports of the Office of the UN High Commissioner for Human Rights (OHCHR).

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<sup>42</sup> *Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016)*, para. 17.

<sup>43</sup> *Ibid.*, para. 8(c).

<sup>44</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by UN General Assembly Resolution 60/147, 21 March 2006; Human Rights Committee, General Comment No. 31 on The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 15.

# 5. GENERAL PRINCIPLES PERTAINING TO LESS-LETHAL WEAPONS AND RELATED EQUIPMENT

## 5.1 DESIGN AND PRODUCTION

- 5.1.1 Less-lethal weapons and related equipment intended for use in law enforcement shall be designed and produced to meet legitimate law enforcement objectives and to comply with international human rights law. This duty applies to the State and its agents and also to companies that manufacture weapons for law enforcement.<sup>45</sup>
- 5.1.2 Public and private manufacturers of less-lethal weapons and related equipment should make public relevant information about the risks from the less-lethal weapons and related equipment that they produce. They should bring specific risks to the attention of the purchaser and/or user. States, law enforcement agencies, and manufacturers should be transparent about the technical specifications of weapons in use, while respecting non-disclosure agreements and manufacturers' intellectual property rights. At a minimum, all material safety data sheets should be provided by the manufacturers to the purchaser and/or user. This should include their design features and parameters<sup>46</sup> with a view to facilitating medical treatment and public acceptance. Manufacturers should also identify and release all medical studies and the names of experts who have contributed to safety analyses, disclosing those who have received compensation for promoting their products.
- 5.1.3 The nature of law enforcement places special constraints on the extent to which force may be delivered remotely or automatically or may be autonomously released.<sup>47</sup> This has implications for the design of less-lethal weapons and related equipment.

## 5.2 LEGAL REVIEW, TESTING, AND PROCUREMENT

- 5.2.1 States shall ensure that a legal review is conducted prior to procurement and equipping of law enforcement officials, to determine whether the use of a less-lethal weapon or item of related equipment would, in some or all circumstances, be prohibited by any rule of international or domestic law, in particular human rights law.<sup>48</sup>
- 5.2.2 As part of the legal review, testing should be conducted independently of the manufacturer and in accordance with recognised standards. Testing should take full account of both the required and the potential capabilities and effects of the weapon, and should be based on impartial legal, technical, medical, and scientific expertise and

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<sup>45</sup> See, e.g., *The Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, OHCHR, Geneva/New York, 2011.

<sup>46</sup> Thus, for example, in the case of a chemical irritant, this would encompass its strength and the type of solvent used.

<sup>47</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN doc. A/69/265, 6 August 2014, paras. 77–89.

<sup>48</sup> Human Rights Council Resolution 38/11, para. 16. Art. 36, 1977 Additional Protocol I to the 1949 Geneva Conventions.



evidence.<sup>49</sup> Testing should evaluate the effects of all reasonably likely or expected uses of the weapon. Particular consideration should be given to assessing the potential effects of using less-lethal weapons and related equipment against individuals who may be especially vulnerable.<sup>50</sup>

- 5.2.3 Less-lethal weapons and related equipment whose designated, expected, or intended use does not comply with the rules governing law enforcement, or which presents undue risks of loss of life or serious injury to criminal suspects, bystanders, or law enforcement officials themselves, shall not be authorised for procurement, deployment, or use.
- 5.2.4 Less-lethal weapons and related equipment that deliver force through remote control, automatically, or autonomously should only be authorised if, in the context of their intended or ordinary use, it can be ensured that such use would comply with domestic law and international law, in particular international human rights law.

### 5.3 MONITORING

- 5.3.1 States and law enforcement agencies shall monitor the use and effects of all less-lethal weapons and related equipment they procure, deploy, and use for law enforcement purposes.
- 5.3.2 Monitoring should include contextual information about the circumstances of use. Relevant data on those on whom force is used should be disaggregated, to the extent possible, for example by age, sex/gender, disability (where that exists), and ethnic group.
- 5.3.3 Monitoring should include spot checks on less-lethal weapons and related equipment. The use of body-worn cameras (or other suitable recording equipment) when less-lethal weapons are used should also be considered.
- 5.3.4 Analysis of data should inform changes to training, guidance, deployment, and policy, as and where necessary.

### 5.4 TRANSPARENCY

- 5.4.1 States and law enforcement agencies should be transparent about the guidance surrounding the use of less-lethal weapons and related equipment and the policies on, and criteria for, their lawful use. Where manufacturers provide guidance on risks during use or on the operational use of their less-lethal weapons, this should also be subject to transparency requirements. Wherever it is possible to do so, States should consider consulting the public about the type of less-lethal weapons that are procured.

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<sup>49</sup> Human Rights Council Resolution 25/38, para. 15. See also Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, 'Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment', UN doc. A/72/178 (2017); and UNODC/OHCHR, *Resource Book on the Use of Force and Firearms*, United Nations, New York, 2017.

<sup>50</sup> See, e.g., Taser International, 'TASER® Handheld CEW Warnings, Instructions, and Information: Law Enforcement', 1 March 2013, p. 3; Environmental Defender's Office (ACT) (Australia), *The Risks of Use of Capsicum Spray and Pain Compliance Techniques against Public Gatherings, Police Powers of Crowd Control*, Submission to ACT Legislative Assembly Legal Affairs Committee Inquiry, June 2005.

- 5.4.2 The results of data collection on the use and impact of less-lethal weapons should be made publicly available on a regular basis. Anonymity of law enforcement officials and/or victims may be preserved where necessary and appropriate. Where legitimate limitations are imposed on the detail included in transparency measures, such limitations should not be used as a justification to suppress publication of aggregate data.
- 5.4.3 Relevant data and information should also be shared within law enforcement communities, including at regional and international levels.

## 5.5 TRAINING

- 5.5.1 Law enforcement officials shall be trained in the lawful use of force. This should include training on applicable human rights standards, how to avoid the use of force, including through de-escalation techniques, mediation, and effective communication, and on how less-lethal weapons may offer a safe and effective alternative to firearms. Training should be scenario-based as well as theoretical in nature, and should not be provided solely by the manufacturer of a particular weapon.
- 5.5.2 Law enforcement officials shall receive appropriate initial and refresher training in the use and effects of any less-lethal weapons with which they may be equipped or deployed, including on the particular vulnerabilities of certain individuals to the effects of a particular weapon.<sup>51</sup> They shall be made aware of not only the primary risk of injury arising from use of any less-lethal weapons with which they may be equipped but also the secondary injuries that may result (for example, as a result of the person against whom the weapon is used falling from an elevated position or onto a hard surface). These effects and risks should also be reflected in standing operating procedures.
- 5.5.3 Appropriate emergency first-aid training shall be provided to all law enforcement officials to enable them to respond appropriately to the injuries or other impacts that may result from the use of the weapons with which they are equipped. Law enforcement officials shall be made aware of the potential injurious effects of the weapons they are authorised to use and be specifically trained on attending to those consequences. Training shall also address the requirements for specialist medical attention (including to vulnerable individuals) and on the need to gather data to assess the forms of use, their effectiveness, and issues of safety.

## 5.6 MEDICAL ASSISTANCE

- 5.6.1 Medical assistance shall be rendered to any injured or affected person at the earliest possible moment.<sup>52</sup> The duty to assist applies without discrimination of any kind. Thus, assistance shall be duly provided irrespective of whether or not the injured person is a suspected offender. Distinctions as to the medical assistance provided are only justifiable on medical grounds, for instance the urgency of the medical needs. Access to medical assistance should therefore be provided on the basis of severity of injury, so that treatment of less-severely injured security personnel does not preclude or delay treatment of other persons who appear more severely injured.

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<sup>51</sup> Principles 19 and 20, 1990 Basic Principles; Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns, UN doc. A/HRC/26/36, 1 April 2014, para. 106.

<sup>52</sup> Principle 5(c), 1990 Basic Principles.

- 5.6.2 Where feasible, appropriate first-aid equipment should routinely be accessible by law enforcement officials (for example, in police vehicles and during assemblies).
- 5.6.3 Law enforcement officials shall at all times facilitate and cooperate with those providing medical assistance, including by making available pertinent information relating to the less-lethal weapon or related equipment that has been used.<sup>53</sup> This duty applies to interactions with medical professionals rendering assistance who are working in their official capacity in ambulances or hospitals as well as volunteers who have identification showing they are health-care workers with appropriate skills.

## 5.7 TRANSFER

- 5.7.1 States shall regulate all transfer, including export and import, of less-lethal weapons and related equipment in accordance with their international obligations.<sup>54</sup>
- 5.7.2 Less-lethal weapons and related equipment whose designated, expected, or intended use is of a nature to amount to torture or other forms of cruel, inhuman, or degrading treatment or punishment shall never be transferred.<sup>55</sup>
- 5.7.3 Less-lethal weapons and related equipment that present undue risks of loss of life or injury following designated, expected, or intended use shall not be transferred.

## 5.8 INTERNATIONAL COOPERATION AND ASSISTANCE

- 5.8.1 States in a position to do so should consider responding positively to requests for international cooperation and assistance, including the supply of appropriate less-lethal weapons and related equipment (including personal protective equipment), in particular where the weapons or equipment are expected or are likely to result in greater compliance with international human rights law.
- 5.8.2 Wherever possible, the provision of assistance should be accompanied by support for training in the appropriate use of the less-lethal weapons and related equipment, and how to mitigate any negative consequences associated with use.

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<sup>53</sup> European Court of Human Rights, *Finogenov and Others v. Russia* (application Nos. 18299/03 and 27311/03), Judgment of 20 December 2011.

<sup>54</sup> Such obligations may result, inter alia, from their adherence to the 2013 United Nations Arms Trade Treaty, under international human rights law, or from their membership of regional organisations or adherence to relevant regional treaties.

<sup>55</sup> See, e.g., Omega Research Foundation, *Ending the Trade in the Tools of Torture: Five Key Principles*, United Kingdom, 2017, at: <https://bit.ly/2IAADPH>.

## 6. PROHIBITED LESS-LETHAL WEAPONS AND RELATED EQUIPMENT

### 6.1 UNLAWFUL LESS-LETHAL WEAPONS

6.1.1 The use of the following weapons is widely considered to violate fundamental human rights and should not be used in law enforcement:

- Spiked or electrified batons<sup>56</sup>
- Lasers designed to permanently blind<sup>57</sup>
- Directed energy weapons of a nature to cause serious injury.

### 6.2 UNLAWFUL RELATED EQUIPMENT

6.2.1 The following equipment is inherently degrading or unnecessarily painful and would violate fundamental human rights and should not be used:

- Metal chains (shackles)
- Irons (leg or wrist)
- Spiked or electrified instruments of restraint
- Weighted instruments of restraint.<sup>58</sup>

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<sup>56</sup> See, e.g., European Commission Council Regulation No. 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture, or other cruel, inhuman, or degrading treatment or punishment (as amended), 27 June 2005.

<sup>57</sup> 1995 Protocol IV on blinding laser weapons to the 1980 Convention on Certain Conventional Weapons.

<sup>58</sup> Rule 47(1), 2015 Nelson Mandela Rules. According to Rule 43(2), 'Instruments of restraint shall never be applied as a sanction for disciplinary offences'.

# 7. USE OF FORCE IN SPECIFIC SITUATIONS

## 7.1 DURING ARREST

- 7.1.1 Force is often used by law enforcement officials during the course of an arrest. The force used in the course of an arrest should be no more than the minimum necessary to immobilise a person. Arrest and detention shall never be used to justify excessive or abusive use of force or any form of cruel, inhuman, or degrading treatment or punishment. The use of a law enforcement official's hands and arms are not covered by the present Guidelines, but the same general principles on the use of force apply to such means as they do to less-lethal weapons or related equipment.
- 7.1.2 When police dogs are present during arrest, they shall be properly trained and should be under the effective control of their handlers at all times, including when they are not on a leash. Police dogs may cause serious and life-long injuries to a victim. There is also a risk of secondary infection from dog bites.<sup>59</sup>
- 7.1.3 Disorientation or distraction devices, such as pyrotechnic flash-bang grenades, are devices that are designed to warn or to help facilitate a safe arrest, especially in the course of high-risk operations. The improper use of pyrotechnic flash-bang grenades may cause serious burns or blast injuries and there may even be a risk of fragmentation in certain cases.

## 7.2 CUSTODIAL SETTINGS

- 7.2.1 Individuals are especially vulnerable to injury in custodial settings. In accordance with the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), all prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture or other forms of cruel, inhuman, or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, and visitors shall be ensured at all times.<sup>60</sup>
- 7.2.2 Regulations for custodial settings should clearly state which less-lethal weapons and related equipment are authorised for use, by whom, and what types of force may be used. They should establish rules and procedures for use that comply with international standards.
- 7.2.3 Custodial staff shall not, in their relations with persons in custody, use force except as a last resort, and only in cases involving self-defence, attempted escape, or active/passive physical resistance to an order based on law or regulations.<sup>61</sup> Proportionate force may also be used, where necessary, to protect a detainee, including where he or she is self-harming.

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<sup>59</sup> See, e.g., P. C. Meade, 'Police and domestic dog bite injuries: What are the differences? What are the implications about police dog use?', *Injury Extra*, Vol. 37, No. 11 (November 2006), pp. 395–401.

<sup>60</sup> Rule 1, 2015 Nelson Mandela Rules.

<sup>61</sup> Rule 82(1), 2015 Nelson Mandela Rules.

## 7.3 DURING ASSEMBLIES (PUBLIC ORDER MANAGEMENT)

- 7.3.1 Law enforcement officials should respect and protect the right to freedom of peaceful assembly without discrimination and in accordance with international law.<sup>62</sup> Whether or not an assembly is authorised by the authorities, the fundamental rights of the participants shall be respected and protected.<sup>63</sup> Where force is necessary to achieve a legitimate law enforcement objective, all possible precautionary steps shall be taken to avoid, or at least minimise the risk of injury or death.<sup>64</sup>
- 7.3.2 In an assembly in which certain individuals are behaving violently, law enforcement officials have a duty to distinguish between those individuals and the rest of the assembly participants, whose individual right to peaceful assembly should be unaffected. If it is decided that less-lethal weapons are an appropriate means of addressing individual acts of violence, then due care should be given to the likely close proximity of third parties and bystanders.
- 7.3.3 The use of less-lethal weapons to disperse an assembly is an indiscriminate tactic, and should only be considered a last resort. Dispersal may be considered where violence is serious and widespread and represents an imminent threat to bodily integrity or property, and where law enforcement officials have exhausted all reasonable measures to facilitate the assembly and protect participants from injury.<sup>65</sup> Before approving dispersal, law enforcement agencies should seek to identify and isolate any violent individuals separately from the main assembly, which may allow the assembly to continue.<sup>66</sup> Before action to disperse an assembly is taken, an appropriate warning should be given, unless to do so causes delay that risks serious injury or is futile, in addition time should be given for protestors to obey the warning, and a safe space or route for them to move to shall be ensured.
- 7.3.4 When the use of any less-lethal weapons or related equipment is envisaged against assembly participants, due attention should be paid to the potential for panic in a crowd, including the risk of a stampede.
- 7.3.5 Physical barriers should never be such as to pose a risk to safety. Barbed wire, razor wire, or other spiked barriers typically create an undue risk of injury to participants in an assembly. Safer alternatives should be employed where a barrier is needed. Medical personnel should be provided with safe access to attend to any injured, whether they are acting officially or as volunteers.

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<sup>62</sup> Human Rights Council Resolution 25/38, paras. 3, 4.

<sup>63</sup> 'Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies', UN doc. A/HRC/31/66, 4 February 2016, paras. 13–17 and 25.

<sup>64</sup> *Ibid.*, para. 52; and Human Rights Council Resolution 25/38, para. 9.

<sup>65</sup> Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN doc. A/HRC/31/66, 4 February 2016, para. 61.

<sup>66</sup> *Ibid.*, para. 61.

## 8. USE OF SPECIFIC LESS-LETHAL WEAPONS AND RELATED EQUIPMENT

8.01 This section describes key issues and specific considerations with respect to use of certain less-lethal weapons. This is not an exhaustive list of less-lethal weapons, but includes those most commonly used in contemporary law enforcement. Certain weapons are designed to be used against individuals, while others are less discriminate, intended for use against groups of individuals. The guidance provided in this section supplements the general principles set out above on the use of force and less-lethal weapons, which relate to all less-lethal weapons and related equipment.

### 8.1 POLICE BATONS

#### UTILITY AND DESIGN

8.1.1 The police baton (also called a truncheon or nightstick) is the most common less-lethal weapon with which law enforcement officials are equipped. Police batons are most often made out of wood, rubber, plastic, or metal, and are available in a variety of lengths, some up to nearly a metre long. The most widely sold products on the market today are straight batons, side-handle batons ('tonfa'), and telescopic batons.<sup>67</sup>

8.1.2 Batons have many uses in law enforcement, some unrelated to their function as a weapon for use against a person, but are typically used as a less-lethal weapon to enable law enforcement officials to defend themselves against violent assailants or to effect the lawful arrest of a suspect who is violently resisting.

#### CIRCUMSTANCES OF POTENTIALLY LAWFUL USE

8.1.3 Batons are, in general, a weapon that is used against specific individuals engaged in or threatening violence against a law enforcement official or member of the public. Baton strikes should be targeted against the arms or legs of an assailant.

#### SPECIFIC RISKS

8.1.4 Officials should avoid baton strikes to sensitive areas of the body, such as the head, neck and throat, spine, kidneys, and abdomen. Overarm baton strikes on bones and joints can result in dislocations, fractures, and soft-tissue injuries.<sup>68</sup> In particular, jabs or driving strikes with a baton at the thorax should be avoided because of the risk of injury to, and even rupture of, vital organs.

#### UNLAWFUL USE

8.1.5 Neck-holds using batons should not be employed as they present an especially high risk of death or serious injury as a result of large blood-vessel or airway compression. There is also the risk of injury to the larynx, trachea, and hyoid bone.

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<sup>67</sup> Omega Foundation, 'Police Batons', Unpublished document, 2014.

<sup>68</sup> M. Stark (ed.), *Clinical Forensic Medicine: A Physician's Guide*, 2<sup>nd</sup> Edn, Humana Press, New York, 2005, p. 198.

## 8.2 HAND-HELD CHEMICAL IRRITANTS

### UTILITY AND DESIGN

8.2.1 A range of hand-held chemical irritants (also called lachrymatory agents) exist for use in law enforcement. The most common are pepper spray (also known as OC: oleoresin capsicum), PAVA and CS spray. Pepper spray contains capsaicin, a chemical extracted from the fruit of certain plants and which is incorporated in liquid and pressurised to turn it into an aerosol. Sprays come in the form of jets or 'fogger' variants, with jets being more discriminating.

8.2.2 Chemical irritants are used to incapacitate or weaken a violent assailant or help effect a lawful arrest of a suspect who is violently resisting.<sup>69</sup>

### CIRCUMSTANCES OF POTENTIALLY LAWFUL USE

8.2.3 A chemical irritant should only be used where sufficient toxicological information is available and when its delivery against a target is accurate. Chemical irritants should only be deployed where a law enforcement official believes there is an imminent threat of violence. They are intended to be used to spray the face of a person at a distance of up to several metres, delivering the active chemical to the eyes, nose, and mouth. This causes irritation to the eyes, upper respiratory tract, and skin.<sup>70</sup>

### SPECIFIC RISKS

8.2.4 The effects of chemical irritants when used appropriately are normally transient. Exposure to fresh air and treating the eyes with cool water<sup>71</sup> typically remedies the effects within one or two hours. Certain people, though, have exceptionally severe reactions to irritant spray. Restraining a suspect by placing them in the prone position should be avoided after exposure. If an individual suffering from the effects of a chemical irritant is restrained, his or her breathing shall be monitored constantly. Any unexpected or long-lasting effects should be referred for relevant specialist assessment.

8.2.5 There is also the possibility of burns or other injury resulting directly from the solvents if they have not evaporated before contact with skin. There is a specific risk of flammability from the solvent: for instance if a subject is smoking.

### UNLAWFUL USE

8.2.6 Irritants that contain carcinogenic substances or hazardous levels of active agent should not be used. Repeated exposure should be avoided. Some solvents are toxic, may cause corneal erosion, or are flammable.<sup>72</sup>

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<sup>69</sup> Omega Foundation, 'Crowd Control Technologies: An Appraisal of Technologies for Political Control', 2000.

<sup>70</sup> J. McGorrigan & J. Payne-James, 'Irritant Sprays: Clinical Effects and Management', Faculty of Forensic and Legal Medicine, United Kingdom, 2014, at: <https://bit.ly/2tRWCMt>.

<sup>71</sup> Hot water will reactivate the irritant.

<sup>72</sup> M. Holopainen *et al.*, 'Toxic carriers in pepper sprays may cause corneal erosion', *Toxicology and Applied Pharmacology*, No. 186 (2003); and P. Rice, D. Jones, and D. Stanton, *A literature review of the solvents suitable for the police CS spray device*, Chemical & Biological Defence Establishment, Salisbury, 1997.



8.2.6 Chemical irritants should generally not be used in situations of purely passive resistance.<sup>73</sup> Chemical irritants should not be used in closed environments without adequate ventilation.

## 8.3 CHEMICAL IRRITANTS DISPERSED AT A DISTANCE (TEAR GAS)

### UTILITY AND DESIGN

8.3.1 A range of chemical irritants<sup>74</sup> are available which can be launched at a distance against groups of individuals engaged in violent acts. The term “tear gas” is used to describe a variety of lachrymatory agents used by police forces in certain countries. The most widely used chemical irritant dispersed at a distance is CS (either micronised powder or pyrotechnically generated CS particles), which is typically discharged either in the form of projectiles or from grenades shot from a launcher.

### CIRCUMSTANCES OF POTENTIALLY LAWFUL USE

8.3.2 The aim of using chemical irritants dispersed at a distance is usually to cause the members of the group to disperse and to refrain from further violence.

### SPECIFIC RISKS

8.3.3 A stampede may result when irritants are used against a crowd in enclosed areas, such as a football stadium.<sup>75</sup> In such cases, the consequences may be lethal.<sup>76</sup> Using chemical irritants in closed spaces has multiple risks, including high levels of exposure, leading to injury and death. Pyrotechnic irritants may result in death as a result of fire generated by the round burning near combustible material.

8.3.4 When chemical irritants are deployed behind a group of violent individuals, this may prompt them to move towards law enforcement officials and agencies, increasing the risk of a violent confrontation. Irritants will also affect law enforcement officers if they are not adequately protected from cross contamination caused by movement of the irritant cloud/particles.

8.3.5 Use of chemical irritants can temporarily cause breathing difficulties, nausea, vomiting, irritation of the respiratory tract, tear ducts, and eyes; spasms; chest pains; dermatitis; and allergies. In high doses, it can cause necrosis of the tissue in the respiratory tract and the digestive system, pulmonary oedema, and internal bleeding.<sup>77</sup> Repeated

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<sup>73</sup> US Court of Appeals (Ninth Circuit), *Headwaters Forest Defense v. County of Humboldt*, 240 F.3d 1185 (2000), pp. 1205–06.

<sup>74</sup> The term riot control agent is employed in the 1992 Chemical Weapons Convention. Therein they are defined broadly as ‘Any chemical not listed in a Schedule, which can produce rapidly in humans sensory irritation or disabling physical effects which disappear within a short time following termination of exposure.’ Art. II(7), 1992 Chemical Weapons Convention. Their use is not restricted to a riot, as defined by States under domestic law.

<sup>75</sup> Report of the International Commission of Inquiry mandated to establish the facts and circumstances of the events of 28th September 2009 in Guinea, UN doc. S/2009/693, 18 December 2009, para. 62.

<sup>76</sup> Y. Karagama *et al.*, ‘Short Term and Long Term Physical Effects of Exposure to CS Spray’, *Journal of the Royal Society of Medicine*, Vol. 94, No. 4 (2003), pp. 172–74; M. Crowley, *Chemical Control*, Palgrave, London, 2015, p. 48.

<sup>77</sup> European Court of Human Rights, *Abdullah Yaşa and others v. Turkey*, Judgment, 16 July 2013, para. 30.

exposure of chemical irritants should be avoided. A detainee who has been exposed to any chemical irritant should be decontaminated immediately.

## UNLAWFUL USE

- 8.3.6 Irritant projectiles should not be fired at the head or face of an individual owing to the risk of death or serious injury from impact trauma.<sup>78</sup>
- 8.3.7 In general, chemical irritants should not be used in confined spaces, such as prison cells,<sup>79</sup> where there is no viable exit or adequate ventilation, owing to the risk of death or serious injury from asphyxiation. Low cross-contamination sprays (e.g. PAVA) may be better suited to this application.
- 8.3.8 Chemical irritants that contain hazardous levels of active agent should not be used. Where an irritant is found to have had long-term effects on individuals, it should be determined whether these effects may be prevented through better supervision and training of law enforcement officials or whether the use of the particular type of agent should be discontinued. Associated chemicals (for example, combustion products from pyrotechnic devices) may also have toxic effects. Accordingly, any toxic effects of active or associated chemicals should be considered and suitably tested.

## 8.4 CONDUCTED ELECTRICAL WEAPONS

### UTILITY AND DESIGN

- 8.4.1 Conducted electrical weapons are typically used deliver pulses of electrical charge that cause the subject's muscles to contract in an uncoordinated way and prevent purposeful movement. The charge is delivered through metal probes that are fired towards the subject but which remain electrically connected to the device by fine wires. During the period of uncoordinated muscle activity, law enforcement officials are able to intervene to restrain the subject using conventional methods, such as wrist cuffs. Many models<sup>80</sup> use compressed air to fire two darts that trail electric cable back to the weapon's handset. When the darts strike the human body, a high voltage charge passes down the cable.<sup>81</sup> Many conducted electrical weapons can also deliver an electric-shock when pressed directly against an individual (a use sometimes referred to as drive-stun mode), though this relies on pain compliance and does not result in neuro-muscular incapacitation. There are also direct-stun conducted electrical weapons.

### CIRCUMSTANCES OF POTENTIALLY LAWFUL USE

- 8.4.2 Among other uses, conducted electrical weapons are used by law enforcement officials to incapacitate, at a distance, individuals posing an impending threat of injury (to others

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<sup>78</sup> European Court of Human Rights, *Ataykaya v. Turkey*, Judgment, 22 July 2014, paras. 56, 57.

<sup>79</sup> OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, Chap. 5.

<sup>80</sup> TASER® is a market-leading brand of conducted electrical weapon and the word 'taser' is sometimes used generically to describe this type of weapon.

<sup>81</sup> It has been claimed by one manufacturer that only 1,200 volts enter the victim's body. US Court of Appeals (Ninth Circuit), *Bryan v. McPherson*, Opinion (Case No. 08-55622), 28 December 2009, para. 2 and note 4.

or to themselves),<sup>82</sup> with a low level of risk. Conducted electrical weapons offer an alternative to other less-lethal weapons that might prove more dangerous, in the circumstances, either to the law enforcement official or the individual being targeted. The use of red-dotting or arcing of a conducted electrical weapon may achieve a legitimate law enforcement objective without the need to discharge the weapon.

8.4.3 To avoid a prolonged charge being applied to a suspect, every conducted electrical weapon should have an automatic cut-off of the electrical charge. This is often set at no more than five seconds. An automatic cut-off feature is not incorporated into every weapon. The risk of inflicting pain or suffering that may rise to the level of torture or other forms of cruel, inhuman, or degrading treatment or punishment is especially severe when the weapon is used in 'drive-stun' mode, where the weapon directly applies electricity to an individual.<sup>83</sup>

## SPECIFIC RISKS

8.4.4 The risks from a conducted electrical weapon discharge involve primary injury from the electrical charge or the barbs imbedded in the skin.<sup>84</sup> The elderly may be more prone to musculo-skeletal injury from the muscle contractions produced by the weapon.<sup>85</sup> Conducted electrical weapon should not be used against persons in elevated positions owing to the risk of secondary injury. This is particularly as a result of falling to the ground from height or onto a hard surface, since subjects who have received the electrical charge will typically be physically incapable of breaking their fall using their hands.

8.4.5 The risk of significant injury is heightened in certain conditions, including where the individuals who have been electrically shocked have heart disease, have taken certain prescription or recreational drugs, or are more susceptible for other reasons to adverse cardiac effects. Children and slender adults may be at greater risk of internal injury from tissue-penetrating barbs as their body-wall thickness is generally less.<sup>86</sup> Discharge of a conducted electrical weapon may trigger seizures in those affected by epilepsy, irrespective of barb location.<sup>87</sup> The risk of severe secondary injuries is exacerbated when the suspect is on an elevated surface or position, such as a roof, a ladder, or a wall.<sup>88</sup>

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<sup>82</sup> US Court of Appeals (Fourth Circuit), *Armstrong v. Village of Pinehurst*, Judgment, 11 January 2016, pp. 19, 21.

<sup>83</sup> Independent Police Complaints Commission (IPCC), *IPCC Review of Taser Complaints and Incidents: 2004–2013*, United Kingdom, 2014, p. 12.

<sup>84</sup> J. Payne-James and B. Sheridan, 'Taser: Clinical Effects and Management of those subjected to Taser Discharge', Faculty of Forensic and Legal Medicine, United Kingdom, 2017, at: <https://bit.ly/2EXzCmV>.

<sup>85</sup> Defense Scientific Advisory Council Sub-committee on the Medical Implications of Less-lethal Weapons (DOMILL), Statement on the Medical Implications of Use of the Taser X26 and M26 Less-Lethal Systems on Children and Vulnerable Adults, United Kingdom, 2012, at: <http://data.parliament.uk/DepositedPapers/Files/DEP2012-0729/96605%20Library%20Deposit.pdf>.

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*

<sup>88</sup> For instance, Los Angeles Police Department policy and training cautions against use against an individual who is danger of falling 'which would likely result in death or serious bodily injury'.

- 8.4.6 Use in the presence of flammable liquid or explosive vapour may result in fire, deflagration, or even an explosion.<sup>89</sup> Some irritant spray solvents may be flammable, and the solvent may be ignited by the arc discharge from a conducted electrical weapon.
- 8.4.7 Use against an individual who is self-harming may be justified in serious cases, but this remains a controversial measure. Drive-stun use of conducted electrical weapons may not be effective on persons with serious mental health issues or on others who may not respond to pain due to a mind-body disconnect. In such instances, a heightened risk of serious injury exists.<sup>90</sup>

## **UNLAWFUL USE**

- 8.4.8 Conducted electrical weapons should not be used by law enforcement officials as a form of punishment for perceived wrongdoing or, without clear justification, with a view to overcoming purely passive resistance to an official's instructions through the infliction of pain.<sup>91</sup>

## **8.5 KINETIC IMPACT PROJECTILES**

### **UTILITY AND DESIGN**

- 8.5.1 A range of kinetic impact projectiles are used to tackle violent individuals, including as a less-lethal alternative to lethal ammunition discharged by firearms. Various names are used to describe kinetic impact projectiles such as rubber bullets, plastic bullets, impact rounds, baton rounds, bean bags, and attenuating energy projectiles.

### **CIRCUMSTANCES OF POTENTIALLY LAWFUL USE**

- 8.5.2 Kinetic impact projectiles should generally only be used in direct fire against the lower body of a violent individual when a substantial risk exists of immediate serious injury to either a law enforcement official or a member of the public.

### **SPECIFIC RISKS**

- 8.5.3 Targeting the face or head may result in skull fracture, damage to the eyes, including permanent blindness, and even death. The dispersal of kinetic impact projectiles from the air, such as during assemblies, is likely to increase their risk of striking protesters in the head. Targeting the torso may cause damage to the vital organs. The calibre and velocity of the projectiles, as well as the material of their construction, will also affect the likelihood and seriousness of injury. Skip-firing off the ground causes an unacceptable risk of serious injury.

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<sup>89</sup> Scientific Advisory Committee on the Medical Implications of Less-Lethal Weapons (SACMILL), 'Statement on the Medical Implications of Use of the TASER X2 Conducted Energy Device System', 2016, at: <https://bit.ly/2KjxHMu>.

<sup>90</sup> US Department of Justice, *Investigation of the Baltimore City Police Department*, 10 August 2016, p. 62; and see also Police Executive Research Forum (PERF) & Community Oriented Policing Services (COPS), *2011 Electronic Control Weapon Guidelines*, United States, 2011, p. 14, at: <https://bit.ly/2MzSFUt>.

<sup>91</sup> US Department of Justice (Civil Rights Division), *Investigation of the Ferguson Police Department*, Washington DC, 4 March 2015, p. 28; US Court of Appeals (Eighth Circuit), *Brown v. City of Golden Valley*, 574 F.3d 491, 499 (2009).

8.5.4 Certain projectiles are highly inaccurate. To meet international standards, impact projectiles should be capable of striking an individual to within a 10-centimetre diameter of the targeted point when fired from the designated range.<sup>92</sup>

## **UNLAWFUL USE**

8.5.5 Kinetic impact projectiles should not be fired in automatic mode.

8.5.6 Multiple projectiles are inaccurate and, in general, their use cannot comply with the principles of necessity and proportionality. Metal pellets should never be used.

8.5.7 Kinetic impact projectiles should not be targeted against the head.

## **8.6 DAZZLING WEAPONS**

### **UTILITY AND DESIGN**

8.6.1 Dazzling weapons, a form of directed energy weapon, are used in law enforcement, especially against subjects in a moving vehicle. Depending on the model, they can be used to engage targets at distances up to several kilometres.

### **CIRCUMSTANCES OF POTENTIALLY LAWFUL USE**

8.6.2 Dazzling weapons, including those using lasers or light-emitting diodes (LEDs), may have a utility in high-risk scenarios, in particular as an alternative to the use of firearms. There are, though, other, potentially safer alternatives to cause a vehicle to be stopped and the use of dazzling weapons for such an objective should be exceptional. A mechanism should be incorporated as part of a weapon's safety controls to ensure that blindness is not caused by such weapons, for example by the inclusion of a range-finder or by the use of non-injurious lasers, but this is not the case with every model on the market.

### **SPECIFIC RISKS**

8.6.3 Dazzling weapons may burn the eyes or even cause permanent blindness. When used against drivers, the outcome may be that the vehicle is crashed. Consequently, they should only be considered for use in exceptional circumstances, such as in counterterrorism operations. There may also be particular risks from strobe lighting.

### **UNLAWFUL USE**

8.6.4 Dazzling weapons shall not be used with intent to blind or where permanent blindness is a likely outcome.

## **8.7 WATER CANNON**

### **UTILITY AND DESIGN**

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<sup>92</sup> A. Mahajna *et al.*, 'Blunt and penetrating injuries caused by rubber bullets during the Israeli-Arab conflict in October, 2000: a retrospective study', *The Lancet*, Vol. 359, No. 9320 (2000), pp. 1795–1800.

8.7.1 Water cannon are vehicles designed to project water at a variety of pressures and forms for the purpose of dispersal of groups, to protect property, or to put an end to violent behaviour. Malodorants or substances that are hazardous to health are sometimes mixed with the water used in water cannon.

## **CIRCUMSTANCES OF POTENTIALLY LAWFUL USE**

8.7.2 In general, water cannon should only be used in situations of serious public disorder where there is the potential for violence that may cause loss of life, serious injury, or widespread destruction of property. In order to meet the requirements of necessity and proportionality, the deployment of water cannon should be carefully planned and managed with rigorous command and control at a more senior level.<sup>93</sup>

## **SPECIFIC RISKS**

8.7.3 Water cannon should not be used against persons in elevated positions where there is a risk of significant secondary injury. Other risks include hypothermia and cold-water shock in cold weather (especially if the water is not heated) and the risk of slipping or being forced by the jet against walls and other hard objects. Certain water cannon are indiscriminate in their effects as they are unable to target groups of individuals accurately.

## **UNLAWFUL USE**

8.7.4 Water cannon shall not target a jet of water at the face of an individual or group of individuals at short range owing to risk of causing permanent blindness or secondary injuries. They should also not be used against restrained individuals.

# **8.8 ACOUSTIC WEAPONS AND EQUIPMENT**

## **UTILITY AND DESIGN**

8.8.1 Certain acoustic warning devices are sometimes used as sonic weapons.<sup>94</sup>

## **CIRCUMSTANCES OF POTENTIALLY LAWFUL USE**

8.8.2 In the maritime environment, the risks of indiscriminate effects from acoustic weapons are substantially reduced and their use during counterpiracy operations may dissuade potential pirates from continuing an attack. The warning mode of an acoustic weapon may be useful during an assembly, subject to the risks set out below.

## **SPECIFIC RISKS**

8.8.3 A number of serious health risks are associated with the use of these weapons, particularly at close range, loud volume, and/or excessive lengths of time. Such risks range from temporary pain, loss of balance, and eardrum rupture, to deafness. To mitigate the risks, an appropriate decibel limit and a minimum range should be set in advance for

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<sup>93</sup> UNODC and OHCHR, *Resource Book on the Use of Force and Firearms in Law Enforcement*, New York, 2017, p. 90.

<sup>94</sup> INCLO and PHR, *Lethal in Disguise: The Health Consequences of Crowd-Control Weapons*, United States, 2015, pp. 70–77; J. Altmann, 'Acoustic Weapons – A Prospective Assessment', *Science & Global Security*, Vol. 9 (2001), pp 165–234.

all use of warning devices to avoid injury, especially where the device does not have a rangefinder and automatic cut-off.

8.8.4 The 'alert' function on at least existing acoustic weapon has indiscriminate effects, targeting sections of the crowd instead of focusing on individuals within it.<sup>95</sup> This increases the risk that uninvolved persons may be affected.<sup>96</sup>

## **UNLAWFUL USE**

8.8.5 Use of an acoustic weapon at a range where the decibel output is likely to cause permanent hearing damage would be unlawful.<sup>97</sup>

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<sup>95</sup> CCLA, *Factum of the Moving Parties*, 2010, at: <https://bit.ly/2NbL7IE>.

<sup>96</sup> Evidence of Dr. Harrison in *Canadian Civil Liberties Assn. v. Toronto (City) Police Service* [2010] O.J. No. 2715 2010 ONSC 3525 Court File No. CV-10-404640.

<sup>97</sup> NATO, *Non-Lethal Weapons and Future Peace Enforcement Operations RTO Technical Report*, Doc. TR-SAS-040, 2004; see *Canadian Civil Liberties Assn. v. Toronto (City) Police Service* [2010] O.J. No. 2715 2010 ONSC 3525 Court File No. CV-10-404640p8.

## **9. DISSEMINATION, REVIEW, AND IMPLEMENTATION**

- 9.1 The present Guidelines shall be disseminated as widely as possible, in particular to law enforcement agencies and officials, relevant government departments, judges, prosecutors, manufacturers, the military, United Nations peacekeepers, private security companies, and health workers.
- 9.2 The Guidelines should be reviewed by experts every five years.
- 9.3 At domestic level, States and law enforcement agencies are encouraged to take the Guidelines into account in developing policies, training manuals, and standing operating procedures related to less-lethal weapons and related equipment. In addition, these policies, manuals, and procedures should be under continual review to ensure that lessons learned are effectively fed back into practice.