

DEADLY FORCE

POLICE USE OF LETHAL FORCE IN THE UNITED STATES

EXECUTIVE SUMMARY



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Hundreds of men and women are killed by police each and every year across the United States. No-one knows exactly how many because the United States does not count how many lives are lost. The limited information available however suggests that African American men are disproportionately impacted by police use of lethal force. While the majority of the unarmed African Americans killed by police officers are men, many African American women have also lost their lives to police violence.¹ Police officers are responsible for upholding the law, as well as respecting and protecting the lives of all members of society. Their jobs are difficult and often dangerous. However, the shooting of Michael Brown in Ferguson, Missouri and countless others across the United States has highlighted a widespread pattern of racially discriminatory treatment by law enforcement officers and an alarming use of lethal force nationwide.²

Indeed, just 10 days after Michael Brown was fatally shot in Ferguson, Missouri, on August 9, 2014, St. Louis police officers shot and killed a young black man, Kajieme Powell, 25, who was reportedly holding a knife. Police claims that he was brandishing a knife were not borne out by the available video footage of the shooting.³ Some of the individuals killed by police in the United States include the following: Rekia Boyd, an unarmed 22 year old black woman was shot and killed by a Chicago police officer on March 21, 2012; Eric Garner, a 43 year old black man, died after being placed in a chokehold by New York Police Department officers after being approached by an officer who attempted to arrest him for selling loose, untaxed cigarettes on July 17, 2014; Ezell Ford, 25, an unarmed black man with a history of mental illness, was shot and killed by Los Angeles police officers on August 11 2014; Tamir Rice, a 12 year-old black boy, was shot and killed by officers in Cleveland, Ohio while playing in a park with a toy gun on November 22, 2014; Walter Scott, a 50 year old unarmed black man, was fatally shot in the back after a traffic stop for a broken light on his car in North Charleston, South Carolina on April 4, 2015; and Freddie Grey, a 25 year old black man, died from a spinal injury after being taken into police custody in Baltimore, Maryland on April 19, 2015. These are all cases that have received national media attention; however, there are many more including Hispanic and Indigenous individuals from communities across the country who have died at the hands of the police.

The use of lethal force by law enforcement officers raises serious human rights concerns, including in regard to the right to life, the right to security of the person, the right to freedom from discrimination and the right to equal protection of the law. The United States has a legal obligation to respect, protect and fulfill these human rights and has ratified the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, which explicitly protects these rights.⁴

One of a state's most fundamental duties which police officers, as agents of the state, must comply with in carrying out their law enforcement duties, is to protect life. In pursuing ordinary law enforcement operations, using force that may cost the life of a person cannot be justified. International law only allows police officers to use lethal force as a last resort in order to protect themselves or others from death or serious injury. The United Nations (UN) Basic Principles on the Use of Force and Firearms provide that law enforcement officials shall not use firearms against persons except in self-defence or the defence of others against the imminent threat of death or serious injury, and that, in any event, "intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life." Furthermore, international law enforcement standards require that force of any kind may be used only when there are no other means available that are likely to achieve the legitimate objective. If the force is unavoidable it must be no more than is necessary and proportionate to achieve the objective, and law enforcement must use it in a manner designed to minimise damage or injury, must respect and preserve human life and ensure medical aid are provided as soon as possible to those injured or affected.

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“States are required to respect and to protect the right to life The police in any society will at some point be confronted with a situation where they have to decide whether to use force and, if so, how much. Enacting an adequate domestic legal framework for such use of force by police officials is thus a State obligation, and States that do not do this are in violation of their international obligations.”

UN Special Rapporteur on extrajudicial, summary or arbitrary executions⁵

The first step to securing the right to life, according to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, is the establishment of an appropriate legal framework for the use of force by the police, which sets out the conditions under which force may be used in the name of the State and ensuring a system of responsibility where these limits are transgressed. Furthermore, the UN Special Rapporteur notes that, “The specific relevance of domestic law in this context stems from the fact that the laws of each State remain the first line and in many cases effectively the last line of defence for the protection of the right to life, given the irreversibility of its violation. National and local laws play an important role in defining the understanding by law enforcement officials and the population alike of the extent of the police powers, and the conditions for accountability. As such, there is a strong need to ensure that domestic laws worldwide comply with international standards. It is too late to attend to this when tensions arise.”⁶

Amnesty International reviewed US state laws – where they exist – governing the use of lethal force by law enforcement officials and found that they all fail to comply with international law and standards. Many of them do not even meet the less stringent standard set by US constitutional law. Some state laws currently allow for use of lethal force to “suppress opposition to an arrest”; to arrest someone for a “suspected felony”; to “suppress a riot or mutiny”; or for certain crimes such as burglary. A number of statutes allow officers to use lethal force to prevent an escape from a prison or jail. Others allow private citizens to use lethal force if they are carrying out law enforcement activities. Amnesty International found that:

- ❖ All 50 states and Washington DC fail to comply with international law and standards on the use of lethal force by law enforcement officers;
- ❖ Nine states and Washington DC currently have no laws on use of lethal force by law enforcement officers; and
- ❖ Thirteen states have laws that do not even comply with the lower standards set by US constitutional law on use of lethal force by law enforcement officers.

Many of the nationwide protests in the wake of recent police killings have demanded accountability and international law requires it. All cases of police use of lethal force must be subject to an independent, impartial and transparent investigation and if the evidence indicates that the killing was unlawful, the police officer responsible should be criminally prosecuted. However, accountability for police use of lethal force is severely lacking in the United States. The officer’s own police agency usually conducts the investigation before handing the case over to the local prosecutor for review, who, depending on the jurisdiction, either convenes a grand jury or decides directly whether to file charges against the officer.⁷ The fact that investigations are handled internally and that prosecutors have to maintain good working relationships with the police as well as fulfill their duty to investigate and prosecute police use of lethal force, has led to calls being made for independent investigations and prosecutors. While this report only examines whether specific accountability measures are provided for in a state’s use of lethal force statute, Amnesty International has previously documented concerns with oversight mechanisms in the United States and the need for independent and effective oversight bodies to be established.⁸

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Another concern related to accountability is the overly broad statutes governing the use of force, in particular the use of lethal force: If the facts of the case established during an investigation indicate that police used lethal force despite officers having other – less harmful – options at hand to counter a threat or that there was no threat to the life of officers or members of the public at all, this would have to be considered as a violation of international human rights law and standards and - in cases where it has resulted in death - an arbitrary deprivation of life under international law. However, if statutes allow for a use of lethal force below the threshold and outside the strict criteria established by international law, then such statutes actually prevent holding law enforcement officials accountable for violations of human rights.

The majority of deaths at the hands of police are the result of an officer using a firearm. The pervasiveness of firearms among the general population in the US means that officers have to be prepared for the worst when confronting a suspect. An unexpected movement can be mistaken as someone reaching for a firearm even if the suspect is unarmed. However, any use of a firearm - i.e. a weapon designed to kill - by law enforcement must be regulated by specific provisions of the law, establishing a more specific set of rules than for other forms of use of force, and should only be authorized when there is no other way of protecting against a serious threat of death or serious injury.

A key concern in recent cases involving firearms has been the number of shots fired by officers. Michael Brown, for instance, was shot six times, and Kajieme Powell was shot nine times. The firing of so many shots in an urban environment would often be reckless and puts bystanders at risk, and indicates an intentional lethal use of a firearm which under international law and standards may only ever be employed when strictly unavoidable to protect life.

There are a wide range of “less lethal” weapons and other tools available for use in law enforcement which carry less risk of death and injury than that inherent in police use of firearms. However, it should also be recognized that these so-called “less lethal” weapons can also result in serious injury and sometimes death. For example, at least 540 people in the United States died after being shocked with Tasers from 2001 through 2012.⁹ Also, even without the use of weapons, as recent cases have demonstrated, chokeholds or other forms of physical force can also be deadly.¹⁰ As such, any other type of force that implies likelihood or high risk of death must also be subject to the same strict restrictions and only be allowed for the purpose of preventing death or serious injury.

While this report focuses on the use of lethal force by law enforcement officers in the United States – that is, principally the use of firearms – an overall change in approach to all aspects of use of force by law enforcement is needed, as at present, police consider use of force to be a normal part of policing operations rather than the exception. International standards clearly require that force should not be used by law enforcement officials unless there are no other means available that are likely to achieve the legitimate objective. If the use of force is unavoidable, it must be the minimum amount of force necessary to achieve the objective, and the use of lethal force should only be used as a last resort; if the use of force is unavoidable, they should minimize damage and injury and ensure those affected receive prompt medical and other assistance. International standards also emphasize the need for law enforcement to use other means before resorting to the use of force, and to be trained in alternatives to the use of force, including the peaceful settlement of conflicts, understanding of crowd behavior, and skills of persuasion, negotiation and mediation.¹¹

What is urgently needed is a nationwide review and reform of existing laws, policies, training and practices on police use of lethal force, as well as a thorough review and reform of oversight and accountability mechanisms. As this demonstrates, one of the steps that needs to be taken is for state laws to be thoroughly reformed or, in some cases, replaced with new laws to ensure that police are not permitted to use lethal force except where it is necessary to protect against an imminent threat of death or serious injury.

KEY FINDINGS & RECOMMENDATIONS

- ❖ **The United States has failed to track how many people are killed by law enforcement officers.** No-one knows exactly how many people are killed each year but estimates range from **400** to over **1,000**.
- ❖ **African Americans are disproportionately impacted by police killings**, according to the limited data available. While blacks represent 13.2 per cent of the US population, they represent 27.6 per cent of the total deaths at the hands of police (6,338) included in the data on violent deaths recorded by the Center for Disease Control between 1999 and 2013.
- ❖ **The United States has failed to respect and protect the right to life by failing to ensure that domestic legislation meets international human rights law and standards on the use of lethal force by law enforcement officers.**
 - ❖ **All 50 states and Washington, D.C. fail to comply with international law and standards on the use of lethal force by law enforcement officers.**
 - ❖ **Nine states and Washington, D.C. have no laws on use of lethal force by law enforcement officers:** Maryland; Massachusetts; Michigan; Ohio; South Carolina; Virginia; West Virginia; Wisconsin, Wyoming; and the District of Columbia.
 - ❖ **Thirteen states have laws that do not comply even with the lower standards set by US constitutional law on the use of lethal force by law enforcement officers¹² :** Alabama; California; Delaware; Florida; Mississippi; Missouri; Montana; New Jersey; New York; Oregon; Rhode Island; South Dakota; and Vermont.
 - ❖ **None of the state statutes require that the use of lethal force may only be used as a last resort with non-violent and less harmful means to be tried first.**
 - ❖ **No state limits the use of lethal force to only those situations where there is an imminent threat to life or serious injury to the officer or to others.**
 - ❖ **Nine states allow for the use of lethal force to be used to suppress a riot:** Arizona; Delaware; Idaho; Mississippi; Nebraska; Pennsylvania; South Dakota; Vermont and Washington.
 - ❖ **Twenty two states allow for law enforcement officers to kill someone trying to escape from a prison or jail:** Alabama; Colorado; Delaware; Georgia; Hawaii; Idaho; Indiana; Kentucky; Maine; Mississippi; Montana; Nebraska; New Hampshire; New Jersey; New Mexico; New York; North Carolina; North Dakota; Oklahoma; Pennsylvania; South Dakota and Washington.¹³
 - ❖ **Only eight states require that a warning be given (where feasible) before lethal force is used, however no state meets the requirement for a warning under international standards:** Connecticut; Florida; Indiana; Nevada; New Mexico; Tennessee; Utah and Washington.
 - ❖ **Only three states provide that officers should create no “substantial risk” to bystanders when using lethal force:** Delaware; Hawaii and New Jersey.

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- ❖ **Twenty states allow for private citizens (non-state actors) to use lethal force if they carry out law enforcement activities, for example assisting an officer in making an arrest:** Alabama; Arizona; California; Colorado; Connecticut; Indiana; Kansas; Kentucky; Louisiana; Maine; Mississippi; Nebraska; New Hampshire; New Jersey; New York; North Dakota; Pennsylvania; South Dakota; Texas and Washington.¹⁴
- ❖ **Only two states provide by statute for training on the use of lethal force:** Georgia and Tennessee.¹⁵
- ❖ **None of the states' "use of lethal force" statutes include accountability mechanisms,** including for example the requirement of obligatory reporting for the use of force and firearms by law enforcement officers.

KEY RECOMMENDATIONS

- ❖ All state legislatures should introduce or amend statutes that authorize the use of lethal force to ensure that they are in line with international standards by limiting the use of lethal force by law enforcement to those instances in which it is necessary to protect against the threat of death or serious injury. The statutes should be brought into compliance with the U.N. Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- ❖ The president and Department of Justice (DOJ) should support the creation of a national commission (National Crime and Justice Task Force) to examine and produce recommendations on policing issues, including a nationwide review of police use of lethal force laws, policies, training and practices, which is urgently needed, as well as a thorough review and reform of oversight and accountability mechanisms. These laws, policies and practices must be brought in line with international standards.
- ❖ The Department of Justice must ensure the collection and publication of nationwide statistics on police shootings in accordance with the Violent Crime Control and Enforcement Act (1994) and the Death in Custody Act (2014). The data collected should be disaggregated on the basis of race, gender, age, nationality, sexual orientation, gender identity and indigenous status.
- ❖ Congress should take legislative action to ensure that all federal, state and local law enforcement officials restrict their use of lethal force in compliance with international law and standards. This should include enacting legislation requiring all law enforcement agencies to review and amend their policies by limiting the use of lethal force to those instances in which it is necessary to protect against the threat of death or serious injury. Congress should also pass the Police Reporting Information, Data, and Evidence Act and the End Racial Profiling Act.

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ENDNOTES

1. See: African American Policy Forum, Say Her Name: Resisting Police Brutality Against Black Women, May 20, 2015 available at: <http://www.aapf.org/say-her-name-report/>
2. See: Amnesty International, Threat and Humiliation: Racial Profiling, Domestic Security, and Human Rights in the United States, 2004; Amnesty International, United States of America: Rights for All, 1998; and Amnesty International Race, Rights and Police Brutality, 1998
3. Ford, Dana, "Man shot and killed by St. Louis Police", CNN, 20 August 2014, available at <http://www.cnn.com/2014/08/19/us/missouri-police-shooting/index.html>
4. The United States ratified the ICCPR in 1992 and CERD in 1994. Articles 6 and 9 of the ICCPR protect the right to life and security of person respectively. States parties to the ICCPR are obliged to ensure these and other rights set out in the ICCPR to everyone within their jurisdiction without discrimination and Article 26 of the ICCPR underlines that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. Article 5 of the CERD underlines the state obligation to respect and protect the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution, and Article 6 underlines the state obligation to assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate their human rights.
5. Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 1 April 2014, A/HRC/26/36.
6. Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 1 April 2014, A/HRC/26/36.
7. According to a recent study, only 54 police officers have been charged over the past decade for fatally shooting someone, representing a small fraction of the thousands of fatal shootings that have taken place. See: Study conducted by the Washington Post and Bowling Green State University. Kindy, Kimberly and Kimbriell Kelly, "Police officers charged in fatal shooting while on duty: 54 in the past decade", The Washington Post, 12 April 2015, available at: <http://www.washingtonpost.com/news/post-nation/wp/2015/04/12/police-officers-charged-in-fatal-shootings-while-on-duty-54-cases-in-the-past-decade>
8. See: Amnesty International, United States of America, Rights for All, AI Index: AMR 51/35/98
9. Amnesty International, Annual Report: United States of America 2013, available at <http://www.amnestyusa.org/research/reports/annual-report-united-states-of-america-2013?page=2> documenting at least 540 deaths in the USA from 2001 through 2012, see also Amnesty International, "Less than Lethal: The Use of Stun Weapons in US Law Enforcement", AMR 0/010/2008
10. All police departments should ban chokeholds and ensure that such bans are implemented.
11. See: UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 20 and the UN Code of Conduct for Law Enforcement Officials, Article 3.
12. Amnesty International has reviewed for compliance with the US Supreme Court decision in *Tennessee v Garner*.
13. Only two of these states (Idaho and New Mexico) require a threat for lethal force to prevent a prison escape however neither of them require that threat to be imminent.
14. States that allow citizens use force if they aid, assist or are directed by a law enforcement officer: California; Kansas; Kentucky; Nebraska; New Jersey; North Dakota; Pennsylvania; South Dakota; Texas; Washington. States that allow citizens to use lethal force make arrests without the involvement of law enforcement: Arizona; Indiana; Louisiana. States that allow for citizens to use lethal force in both scenarios i.e. if directed by law enforcement or on their own without law enforcement involvement: Alabama; Colorado; Connecticut; Maine; Mississippi; New Hampshire; New York
15. Tennessee requires that all law enforcement "shall receive instruction" and Georgia requires that it should be "offered" as part of at least one in-service training program each year.