

REGIONAL EXPERTS MEETING ON SECURITY, POLICING, AND USE OF FORCE

Buenos Aires, Republic of Argentina, 8–9 May 2014

Summary of discussions and main recommendations

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Introduction

More than 40 experts from Latin America and beyond met in Buenos Aires, Argentina, on 8–9 May 2014 in the first of a series of regional experts meetings on police use of force convened by the Geneva Academy of International Humanitarian Law and Human Rights in cooperation with the United Nations Office on Drugs and Crime (UNODC). The meeting in Argentina was organized by the Centre for Legal and Social Studies (CELS) and held under the auspices of the Argentinian Ministry of Security and the Ministry of Foreign Affairs.

Discussions focused on use of force by police forces and other law enforcement agencies in the framework of international law, and dealt with a number of issues of particular concern in the region such as management of demonstrations and social protests, police intervention in complex territories (e.g. those with a high incidence of gang violence), and oversight mechanisms.

The meeting and debates were held in confidence in accordance with two of the ‘Villa Moynier’ Rules.¹ This summary seeks only to capture key points made by participants during the discussions and possible conclusions. It does not necessarily reflect the views of the organisers or any of the participants.

Main security challenges and concerns

- 1.** As a result of a complex political, social, and economic situation, a number of Latin American countries are struggling to find effective, lawful solutions to crime-related problems, including gangs and other forms of violent crime. In a region where the police often contribute by their actions to heightened levels of violence and criminality, the efficacy and adequacy of current security policies and law enforcement operatives remain a major challenge.
- 2.** The region is going through a period of important legislative changes in relation to security and the use of force by law enforcement officials. A number of participants indicated that many states do not fulfil their duty under international human rights law to protect citizens against unlawful use of force. In fact, regional reality includes frequent abuses by law enforcement personnel in the fight against organized crime or while carrying out counterterrorism or counternarcotic operations. Police interventions to forcibly disperse social protests are another typical situation where norms on the use of force are not always respected.
- 3.** A common feature of the region is the recurrent involvement of the armed forces in law enforcement, a practice that is undermining the main role police should play in citizen security. In most of the situations considered, military forces are allowed to support police in internal security matters, and not only in exceptional situations. However, experience clearly shows that the armed forces are generally ill prepared and insufficiently trained to deal with such tasks.
- 4.** The perpetuation of repressive approaches to police action along with corruption are among the factors that contribute to forging a framework of institutionalized violence favouring impunity for human rights violations. Police brutality and arbitrary violence specifically targeting vulnerable persons and marginalized social groups tend to exacerbate the endemic character of this problem.
- 5.** Lack of public confidence in the police alongside a generally weak and inadequate institutional framework supporting its action has paved the way for a worrying tendency: the widespread hiring of private security companies to perform state law enforcement tasks. The high levels of violence,

¹ Rule 1. Discussions during and on the margins of the meeting are strictly confidential. A participant is free to report his/her own comments but may not cite or summarize remarks by any other participant. Rule 2. A summary report is prepared by the organizers of the sense of the discussions. A draft is circulated to the participants for comment before being finalized. Once the summary report has been made public it may be freely quoted.

coupled with the incapacity of the state to guarantee security and oversee private security services, has led to a confusion of roles and functions between such companies and the state's security forces in many instances. This is a major concern given that security companies are very frequently involved in the commission of human rights abuses and violations which usually go unpunished.

6. The situation of persons deprived of liberty stands out as a specific area of concern. The unhealthy and overcrowded situation of prisons across the region has resulted in a climate of violence within many prisons and other custodial centres. Case law from the Inter-American human rights system dealing with violations committed by security forces while repressing prison riots demonstrates that prisoners remain vulnerable to excessive, arbitrary acts of coercion and disproportionate use of force. Further, experts observed that social stigmatization of those deprived of liberty leads public opinion to tolerate or even turn a blind eye to abuses in this context.

National legislation and practice on the use of force

7. There is a need to foster and enhance understanding of the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF). Additional efforts are needed across the region to disseminate its core principles and standards, particularly in relation to the strict and restricted circumstances under which intentional use of lethal force is allowed during law enforcement operations. Experts referred to the importance of setting up a clear normative framework for those responsible for law enforcement, also by incorporating the regional standards set down by the Inter-American Human Rights System.

8. Not all states in the region have enacted laws regulating the lawful use of force. The lack of any formal mention or incorporation of the BPUFF in national laws, regulations, and operational manuals contributes to distancing current police practice from compliance with international standards on the use of force. Experts recalled the need to translate such standards into operative principles capable of permeating domestic law at all levels. Particular difficulties for enacting adequate legislation were encountered in federal states, where autonomy in regulation leads often to a lack of uniformity among regulations and practices.

9. Several experts expressed particular concern regarding national laws on the use of police force that exempts law enforcement officials from criminal responsibility.² It was also observed that, in too many cases, accountability is also undermined by a lack of transparency and publicity of operational protocols containing relevant information such as the type of situations where the use of lethal force is authorized, or regarding the weapons to be legitimately used in different circumstances.

10. Experts referred to a number of factors contributing in practice to lack of respect for the principles governing use of force by law enforcement officials, namely: laxity in interpretation of legal constraints on use of lethal force; lack of adequate training and equipment for the police in use of 'less-lethal' weapons, and a persistent culture of impunity in relation to police abuse of power and police violations of human rights.

11. National practice across the region reveals that resort to firearms is frequently made by law enforcement officials as a first choice and on a routine basis, without due consideration of the principles of necessity, proportionality, and graduated and differentiated use of force. The use of firearms while off duty is also a concern, although experts recognized that under such circumstances law enforcement officials may often be exposed to higher risk of being attacked.

12. A pattern of police extrajudicial executions among targeted groups of citizens can be found in some countries. As reflected in the BPUFF, use of lethal weapons must be truly exceptional and, in general, only when confronting a real and imminent threat to life or of serious injury, as opposed to a potential future danger that an individual may be deemed to pose. The case law of the Inter-American

² Particular mention was made of Peru's existing legislation: Legislative Decree 1095 establishing rules on the use of force by the armed forces on the national territory (2010).

Court of Human Rights has further endorsed that use of force against those who do not pose a direct threat is unnecessary, even when resulting in the loss of opportunity to capture.³

13. The exponential rise of private security companies over recent years in the region poses concern for the level of respect for the applicable legal framework, and specifically the BPUFF. Experts recalled that states have a duty to enact adequate legislation addressing the functions private security services can perform, and the type of weapons and materials they are authorized to use. States must regulate and oversee private security companies' activities (i.e. by creating a licensing system and demanding compliance with selection and training requirements). However, regulation cannot lead to state's renounce to the monopoly over legitimate use of force nor to responsibility deriving from any unlawful resort to thereof.

Policing of protests

14. A number of recently enacted or draft national laws (as well as its practical implementation and judicial interpretation) show a worrying tendency to criminalize and overregulate legitimate exercise of the right to protest in the region. In stressing the particular importance attached to the exercise of these rights, experts warned that repressive police action and excessive use of force often deviate into increasing levels of violence and human rights violations.

15. Experts noted the relevance of police receiving specific training on facilitating and managing the policing of protests in accordance with programmes where human rights concerns are effectively and systematically integrated. Many cases were identified in practice where resort to lethal force was made without prior planning or the taking of precautionary measures or without a clear understanding of the normative framework. Frequently, police officers are neither adequately trained in crowd management and crowd control techniques nor equipped or trained in use of 'less-lethal' weapons.

16. With the aim of avoiding cases of unnecessary, arbitrary, or excessive use of lethal force, national laws and regulations should explicitly exclude use of firearms by law enforcement officials in policing protests. States should also guarantee that no police officer or other law enforcement official acts as 'agent provocateur' to provoke violence. The requirement that law enforcement officials be clearly and visibly identified during the policing of protests was also underscored.

17. Constraints on use of force apply to both peaceful and violent protests. Experts agreed that the tendency to automatically disperse non-'authorized' protests often results in violation of the right to freedom of peaceful assembly. It was particularly noted that the fact that some demonstrators commit violent acts does not per se allow the entire protest to be qualified as violent, nor render it automatically subject to dispersal.

18. It was explained that containment techniques ('kettling'; referred to in Spanish across the Americas as 'encapsulamiento') are sometimes used to prevent protests taking place. Protestors are nevertheless usually given the possibility of leaving the containment areas. Some experts challenged the European Court of Human Rights' specific case law on the issue,⁴ expressing the view that in certain cases such techniques may amount a violation of the right to liberty and security of the person.

The appropriate role of police forces in citizen security and accountability

19. Experts agreed on the urgent need for states to commit themselves to processes that effectively drive towards democratization, modernization, restructuring, and reinforcement of the security forces. It was considered that national policies that include more social and 'proactive' action, taking into account the particularities of each situation, have generally been more effective in combatting crime and widespread violence than 'reactive' policies involving repression and increased resort to force. Experts referred to the pacifying police units in Brazil and the proximity police units in Argentina as

³ See: *Nadege Dorzema et al. v. Dominican Republic*, Judgment, 24 October 2012, §85.

⁴ European Court of Human Rights, *Austin and others v. UK*, Grand Chamber, Judgment, 15 March 2012.

examples of actions oriented to community security in marginalized urban areas. Efforts need to be greatly strengthened to avoid these new police bodies incorporating traditional practices that have seen widespread use of excessive violence in law enforcement operations.

20. Professionalism and the normal functioning of the police require the precarious conditions under which law enforcement officials are compelled to perform their tasks in the region to be tackled. Experts recalled that states must provide law enforcement officials with adequate and regularly updated training (both in content and duration), as well as suitable protection, equipment and psychological support. Concerns were expressed about the practice in some states of employing lower-ranked and inexperienced officials in the management and conduct of operations that require a high degree of professionalism and expertise, such as counterterrorism or counternarcotic operations. Lack of effectively functioning command structures, inadequate operational planning, and insufficiently clear instructions were also mentioned as factors leading to increased levels of lethality.

21. A cataloguing of the rights of law enforcement officials should be conducted. Experts considered that an effective integration of women into police forces is urgently needed in order to break with traditional masculine-oriented policing approaches. Favouring access to the police or the military's high ranks for traditionally discriminated groups such as indigenous peoples is also seen as a precondition for a democratic and modern police service. It was further felt that fundamental changes in training programmes (and the personnel who conduct them) are also required to overcome biased corporate interpretations of when force is legitimate.

22. In light of past experiences, resort to the military in support of the police in citizen security was felt to be generally inappropriate. Armed forces personnel are specifically trained in use of lethal force and their use for law enforcement has proven to result in higher levels of violence and lethality. National legislation should establish a clear cut-off line between internal security and national defence and the different situations requiring police or military action. In many cases, the army is used to avoid responsibility for unlawful use of lethal force by deferring investigation of these cases to military courts that usually do not meet with impartiality and independency requirements.

23. The strict principles with regard to the use of force, in particular the exceptionality of use of lethal force, continue to apply to military forces that do participate in law enforcement operations. This specifically includes operations taking place in a broader context of armed conflict but without the necessary nexus with armed hostilities. Under such circumstances, it is essential to provide military forces with adequate equipment according to the circumstances and to train them on use of 'less-lethal' weapons as well as on the graduated and differentiated use of force in conformity with the principles of necessity and proportionality.

24. Socially marginalized persons and other groups such as street children, migrants, persons deprived of liberty, and indigenous people are particularly vulnerable to abusive and excessive force, including arbitrary use of lethal force by law enforcement officials. Women and children (both girls and boys) are frequently victims of acts of sexual harassment or violence and other forms of institutionalized violence and must be specifically protected. Experts referred to the need of implementing actions specifically aimed at protecting these particularly vulnerable persons in the context of protests.

25. Effective accountability demands the setting up of credible external and independent oversight mechanisms. Investigations into alleged violations by the security forces are often not genuinely independent since they involve use of officials that took part in the execution or planning of the operation in question. According to experts, more stringent standards of investigation should be required by the judiciary in the investigation of these cases.

26. Particular importance was accorded to preventive actions. Police evaluation of its own acts and policies was seen as a best practice leading to a significant reduction in illegitimate police action at institutional level. The development of indicators was suggested as one way to further enhance police accountability. A number of experts argued that in addition to individual responsibility, corporate responsibility focusing on the responsibility of the police service as an institution should also be engaged in cases of violations committed by or attributable to police officers.

27. While setting targets for the police may not always lead to positive outcomes (the case of the so-called ‘false positives’ in Colombia was mentioned), incentives to reduce use of lethal force were seen as a best practice that could usefully be followed. Some experiences, such as offering economic compensation for meeting reduction targets for crimes and acts of violence, including police homicides, were seen as effective ways in practice to reduce police violence.

Role of national human rights institutions, civil society, and international organizations

28. Independent national human rights institutions and civil society play a key role not only in oversight and denunciation of unlawful police actions and human rights violations but also in promoting human rights-oriented policies and practices. Dissemination of international standards is essential to fostering progress and reforms at national level too.

29. Experts commended the important role international and regional human rights bodies are playing in this field, not only in supervising the state’s compliance with international obligations but also in exercising political pressure to trigger the required reforms. Such actions are necessary in order to stimulate countries in the region to effectively modify their agendas on citizen security and human rights, breaking with the dominant model of authoritarian and violent-oriented police.

30. At regional level, recommendations by the Inter-American Commission on Human Rights in its 2009 landmark report on ‘Citizen Security and Human Rights’ remain a primary source of guidance for states in the Americas.⁵ Other complementary initiatives aiming to promote institutional mechanisms and strategic actions to support human rights in public safety policies are being taken in the framework of Mercosur as well.

31. At global level, of particular relevance comes from the work the Special Rapporteur on the Extrajudicial, Summary or Arbitrary Executions has undertaken to promote alignment of domestic legislation with international standards on use of force.⁶ The Human Rights Council resolutions on ‘The Promotion and Protection of Human Rights in the Context of Protests’ that have been adopted since 2011 were also seen as an important way to recall states obligations to respect minimum standards and of promoting best practices to be followed.⁷

32. Finally, experts suggested that statistical data with numbers of police homicides, the alleged causes, as well as outcomes of official investigations should be compiled by UNODC. The forthcoming Thirteenth UN Congress on Crime Prevention and Criminal Justice, to be held in Doha in April 2015, may be the right moment for states to make this request, as well as to adopt a long-term strategy to update, promote, and implement the 1990 BPUFF standards.⁸

⁵ Inter-American Commission on Human Rights, *Report on Citizen Security and Human Rights*, OEA/Ser.LV/II. Doc. 57, 31 December 2009, at: <http://www.oas.org/en/iachr/>.

⁶ See, in particular: ‘Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns’, UN doc. A/HRC/26/36, 1 April 2014.

⁷ See, for example, Human Rights Council Resolution 25/38 on ‘The promotion and protection of human rights in the context of peaceful protests’, 28 March 2014.

⁸ See: ‘Report of the Asia and Pacific Regional Preparatory Meeting for the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, held in Bangkok from 22 to 24 January 2014’, UN doc. A/CONF.222/RPM.1/1, 29 January 2014, §14.