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COMMISSION ON HUMAN RIGHTS  
Sub-Commission on the Promotion and  
Protection of Human Rights  
Fifty-seventh session  
Item 6 of the provisional agenda

**SPECIFIC HUMAN RIGHTS ISSUES**

**Prevention of human rights violations committed  
with small arms and light weapons**

**Note by the Secretariat**

1. In its resolution 2002/25, the Sub-Commission decided to appoint Barbara Frey as Special Rapporteur with the task of preparing a comprehensive study on the prevention of human rights violations committed with small arms and light weapons, and requested the Special Rapporteur to submit a preliminary report to the Sub-Commission at its fifty-fifth session, a progress report at its fifty-sixth session and a final report at its fifty-seventh session.
2. At its fifty-sixth session, the Sub-Commission had before it the progress report of the Special Rapporteur (E/CN.4/Sub.2/2004/37 and Add.1), and in its decision 2004/123, decided to ask Ms. Frey to submit her next report to the Sub-Commission at its fifty-seventh session, taking into account the discussions at that session.
3. In May 2005, the Secretariat was informed by Ms. Frey that she would need extra time to compile and evaluate the responses of Governments to her questionnaire. Ms. Frey requested that she be allowed to submit her final report for consideration by the Sub-Commission at its fifty-eighth session in 2006.
4. At its fifty-sixth session, the Sub-Commission also considered, as part of the Special Rapporteur's progress report, a set of draft principles on the prevention of human rights violations committed with small arms and commentary thereto (E/CN.4/Sub.2/2004/37/Add.1). Based on the Sub-Commission's discussions, the Special Rapporteur has revised the draft principles which are annexed to the present document for consideration by the Sub-Commission at its fifty-seventh session.

**Annex**

**DRAFT PRINCIPLES ON THE PREVENTION OF HUMAN RIGHTS VIOLATIONS COMMITTED WITH SMALL ARMS**

*Bearing in mind* the primacy of international human rights law as codified in the International Bill of Human Rights,

*Recognizing* that the right to life, liberty and security of the person is guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights,

*Acknowledging* that State officials, especially law enforcement agents, play a vital role in the protection of the right to life, liberty and security of the person,

*Recalling* that article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty,

*Recalling also* the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted in 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

*Recalling further* that the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 14, emphasized that the use of force and firearms by law enforcement agents should be commensurate with due respect for human rights,

*Recalling* that the Economic and Social Council, in its resolution 1986/10 of 21 May 1986, section IX, invited Member States to pay particular attention in the implementation of the Code of Conduct for Law Enforcement Officials to the use of force and firearms by law enforcement officials, and the General Assembly, in its resolution 41/149 of 4 December 1986, welcomed the Council's recommendation,

*Acknowledging* that article 2 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions requires the strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and small arms,

*Noting* the need to promote the human rights, safety and well-being of all persons by preventing foreseeable small arms violence through appropriate measures to regulate small arms possession and use by private actors, including those suggested in paragraph 5 of Economic and Social Council resolution 1997/28 of 21 July 1997 and in resolution 9 of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

*Emphasizing* the need for States to address the root causes of armed violence by taking steps to intervene in social structures that encourage violence as noted in the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects,

*Emphasizing also* the responsibility of States to promote public education and awareness about the root causes of violence and to promote alternative forms of dispute resolution, as recognized by the Economic and Social Council in its resolution 1997/28 and the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, section II, paragraph 20.

*Solemnly proclaims* these basic human rights principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper action by State officials, especially law enforcement agents, with respect to their unequivocal role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights, should be taken into account by Governments, and urges that every effort be made so that they become generally known and respected.

#### **A. Obligations with regard to State officials**

1. Governments and State officials, especially law enforcement officials, shall not use small arms to violate human rights. All State officials have the obligation to uphold and affirm human rights including the right to life, liberty and security of the person, as guaranteed in the International Bill of Human Rights.

##### **Commentary**

(a) This paragraph represents the fundamental basis of these human rights principles that Governments and State officials shall not use small arms to violate human rights and that State officials have the obligation to uphold and affirm the right to life, liberty and security of the person;

(b) This obligation on the part of Governments and State officials includes an affirmative responsibility to use due diligence to ensure that the right to life, liberty and security of the person is not violated;

(c) The right to life, liberty and security of the person is guaranteed in the Universal Declaration of Human Rights and is reaffirmed in the International Covenant on Civil and Political Rights, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Code of Conduct for Law Enforcement Officials and the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

2. Governments and State agencies shall adopt and implement rules and regulations on the use of force and small arms against persons by State officials, especially law enforcement officials.

##### **Commentary**

(a) In developing such rules and regulations, human rights norms shall be built into the organizational culture of the appropriate State agencies;

(b) Governments and State officials shall keep the ethical issues associated with the use of force and firearms constantly under review;

(c) In accordance with principle 1 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and small arms against persons by State officials.

3. In order to prevent the violation of human rights by small arms, Governments and State officials shall ensure strict enforcement of the rules and regulations they adopt, including a clear chain of command over all officials authorized by law to use force and, in particular, small arms. Governments shall ensure that arbitrary or abusive use of force carried out with small arms, including but not limited to force used by any State official or person acting at the instigation of or with the consent or acquiescence of a public official, is punished as a criminal offence.

### **Commentary**

(a) This declaration of strict enforcement is also affirmed by the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. Governments shall ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms;

(b) As stated in principles 22 and 23 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process.

4. In order to further prevent the violation of human rights by small arms, Governments and State officials shall establish and maintain adequate and detailed procedures for the proper storage and management of small arms, particularly ammunition. Governments shall actively pursue the collection, safe storage, destruction and responsible disposal of surplus small arms.

### **Commentary**

(a) The importance of effective regulation and control of small arms and ammunition cannot be underestimated. Effective accountability depends on rigorous documentation concerning the control of small arms, including to whom and when guns and ammunition are issued. Secure storage is also essential to prevent the risk of small arms being stolen;

(b) Small arms under the control of State officials shall be stored in a secure manner when not in use. Systems for recording the issuing of small arms and ammunition shall be standardized and regularly audited;

(c) This principle is affirmed by the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, section II, which articulates State responsibility for safe storage of weapons by security forces, and in conjunction

with disarmament, demobilization and reintegration programmes. The Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa affirms the importance of safe storage by holding States responsible for safe storage of small arms by law enforcement, private owners, national inventories, disarmament programmes and small arms impounded in State possession.

5. Governments and State agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training on the acceptable conditions for the use of force set out in these principles. Those State officials who are permitted to carry firearms shall be authorized to do so only upon completion of special training regarding the limitations on their use. The compliance of State officials with rules and regulations on the use of force and small arms shall be subject to regular review.

### **Commentary**

This principle is also affirmed in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms shall be authorized to do so only upon successful completion of special training in their use.

6. In the training of State officials, especially law enforcement agents, Governments and State agencies shall give special attention to the promotion and protection of human rights as a primary duty of all State officials. Governments shall design training programmes to emphasize alternatives to the use of force and small arms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to demonstrate technical means, with a view to limiting the misuse of force and small arms.

### **Commentary**

(a) Though training on mechanical skills of safe handling and proper maintenance are important, human rights concepts of proportionality and necessity are equally paramount during every stage of weapons training;

(b) While theoretical classroom study is useful in developing technical skills, just this form of exercise alone would not provide the necessary experience in applying human rights standards to “real” situations. Therefore, emphasis must be placed on practical implementation including the development of scenario-based training to develop skills in assessing proportionality and necessity with respect to procedures for arrest, crisis management, crowd control and detention;

(c) Such training shall be compulsory for both new recruits and existing law enforcement officials and shall continue throughout their entire careers;

(d) Monitoring and evaluation of training programmes shall be introduced as soon as possible. The criteria for evaluating the success of training programmes, including the evaluation of trainees' understanding of and commitment to human rights standards, shall be established at the start of the training to ensure that lessons are learnt from previous training and that those lessons are incorporated into future training initiatives;

(e) This principle is also declared in principle 20 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms.

7. For specific operations and tactical situations, Governments and State agencies shall require prior planning to include alternative means of settlement without recourse to force and small arms.

### **Commentary**

(a) In doing so, Governments and State officials should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include: the development of humane non-lethal incapacitating weapons for use in appropriate situations and the development of self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind;

(b) Governments and State officials shall recognize that even humane non-lethal incapacitating weapons pose a risk of endangering uninvolved persons. The deployment of such weapons shall be carefully evaluated and the use of such weapons should be carefully controlled;

(c) This principle is likewise affirmed in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

8. In honouring the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights, the intentional lethal use of small arms may only be made when strictly unavoidable in order to protect life. State officials, including law enforcement and other security officials, shall not use small arms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives.

### **Commentary**

(a) The right to life, liberty and security of the person is guaranteed in the Universal Declaration of Human Rights and is reaffirmed in the International Covenant on Civil and Political Rights, the Basic Principles on the Use of Force and Firearms by Law Enforcement

Officials, the Code of Conduct for Law Enforcement Officials, and the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions;

(b) State officials, especially law enforcement officials, shall recognize that the use of small arms is an extreme measure. Every effort should be made to exclude the use of small arms, especially against children, the mentally ill and other vulnerable groups. In general, small arms shall not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender;

(c) When the use of force is unavoidable, State officials shall identify themselves as such and give a clear warning, either verbal or visual, before resorting to the use of force. However, warning shots - i.e. shots in the air, shots in legs - must be prohibited because stray bullets may cause serious injury to uninvolved persons;

(d) Affirming this principle is article 3 of the Code of Conduct for Law Enforcement Officials, stating that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty;

(e) Consistent with principle 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, State officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

9. Governments and State agencies shall establish effective reporting and investigative procedures to ensure that all incidents involving the misuse of small arms by State officials, including law enforcement and other security officials, are reviewed by independent and competent authorities. There shall be thorough, prompt and impartial investigation of all cases of death, torture, other ill-treatment or injury involving small arms. In addition to determining the cause, manner and time of death, torture or injury, and the persons responsible, all investigations should identify the type of weapon(s) used in the incident.

### **Commentary**

(a) An independent civilian oversight mechanism for law enforcement shall be established to investigate incidents involving alleged violations of human rights committed with small arms. It shall have powers to receive complaints, investigate incidents on its own volition and carry out research into issues related to policing. It should have authority to refer complaints for prosecution where criminal actions are suspected. Mechanisms should also be established to ensure that its recommendations on other issues are acted upon;

(b) This principle is affirmed by the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Code of Conduct for Law Enforcement Officials, and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

## **B. Due diligence to prevent human rights abuses by private actors**

10. In order to ensure the protection of human rights by preventing small arms violence by private actors, Governments shall incorporate into their national laws licensing requirements to prevent possession of arms by persons who are at risk of misusing them. Possession of small arms shall be authorized for specific purposes only; small arms shall be used strictly for the purpose for which they are authorized. Before issuing a licence Governments shall require training in proper use of small arms, and shall take into consideration, at a minimum, the following factors: age, mental fitness, requested purpose, prior criminal record, and prior acts of domestic violence. Governments shall require periodic renewal of licences.

### **Commentary**

(a) This principle recognizes that States are bound to act with due diligence to protect human rights by reducing arms-related violence committed by private actors. The international criminal justice community has expressed serious concerns about the public safety implications of unregulated access to small arms. In addition to public safety, States also shall take specific steps to meet their obligations to protect basic human rights by preventing easy access to weapons by persons most likely to use them to harm individuals and communities;

(b) This principle is supported by existing principles designed to promote the safety and well-being of persons and to ensure freedom from fear of crime, including Economic and Social Council resolution 1997/28, paragraph 5, on firearm regulation for purposes of crime prevention and public health and safety, and resolution 9 of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. A report of the Secretary-General on measures to regulate firearms (E/CN.15/1998/4) summarized the findings of four regional workshops on issues involved in national legislation on firearm regulation and elaborated the elements for a declaration of principles, including the requirement that States take appropriate measures to regulate the civilian possession and use of firearms. The Nairobi Protocol, article 3, binds States parties to enact national systems under law to licence, monitor and audit possession of small arms by all persons.

11. Governments shall incorporate into their national laws measures ensuring that proper controls are exercised over the manufacturing of small arms. For the purpose of identifying and tracing small arms, governments shall require that at the time of manufacture, each small arm has a unique permanent mark providing, at a minimum, the name of the manufacturer, the country of manufacture and the serial number.

### **Commentary**

(a) A requirement for appropriate marking of small arms at manufacture is critical to assist criminal investigations, to discourage theft and to ensure that firearms are distributed only to persons who may lawfully possess them. States parties to the 2001 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 are obliged to require unique marking of specific identifying information on manufactured firearms. The principle is also found in the Nairobi Protocol;



(b) According to the Secretary-General (see A/58/138), systematic tracing of small arms from their source depends on adequate marking, accurate and comprehensive record-keeping and international cooperation and exchange of information.

12. Governments shall incorporate into their national laws measures ensuring the investigation and prosecution of persons responsible for the illegal manufacture, possession, stockpiling or transfer of small arms. Governments shall enact serious penalties for crimes involving the misuse of small arms, especially to commit domestic violence, and for the unlawful possession of small arms.

### **Commentary**

(a) National laws must be adequately enforced to deter human rights violations caused by the transfer or misuse of small arms and light weapons. Individuals who misuse small arms to commit human rights violations, whether or not they are claiming to act on behalf of the State, shall be prosecuted and penalized under the State's criminal laws. This principle is supported by Economic and Social Council resolution 1997/28, paragraph 5, and the Nairobi Protocol, article 4 (a);

(b) Individuals, such as brokers, who knowingly transfer small arms into situations where they are used to commit serious human rights violations shall be prosecuted as accomplices to those crimes.

13. With the cooperation of the international community, Governments shall develop and implement effective disarmament, demobilization and reintegration programmes, including the effective collection, control, storage and destruction of small arms, particularly in post-conflict situations. Governments may consider granting immunity from prosecution to encourage voluntary disarmament. Governments should implement public awareness and confidence-building programmes, in cooperation with civil society and non-governmental organizations, to prevent a return to armed violence and to encourage alternative forms of dispute resolution. Governments should incorporate a gender perspective in their peacekeeping and public awareness efforts to ensure that the special needs and human rights of women and children are met, especially in post-conflict situations.

### **Commentary**

(a) Governments must take specific steps in post-conflict situations to minimize human rights violations caused with small arms. Those steps must include immediate and effective controls over deadly firearms and confidence-building measures to prevent a return to armed violence;

(b) Post-conflict situations are especially dangerous times for women and children, who are often subject to increased domestic violence at the hands of combatants who have returned to their homes. It is of particular importance, therefore, that States involve women at all levels in conflict resolution and peacekeeping processes, as required by Security Council resolution 1325 (2000) on women, peace and security;

(c) This principle is consistent with Economic and Social Council resolution 1997/28, which encouraged States to consider granting exemptions from criminal responsibility, amnesty or similar programmes to encourage civilians to surrender illegal, unsafe or unwanted firearms as part of a regulatory approach to civilian use of firearms.

14. Governments shall prohibit international transfers of small arms which would violate their obligations under international law, including in circumstances in which such arms are likely to be used to commit serious human rights violations.

### **Commentary**

(a) Governments shall not authorize the transfer, in any form, of small arms to persons or States that are likely to use those small arms to commit serious human rights violations. To this end, Governments shall establish and maintain effective systems to monitor exports, imports and international transit related to small arms. Governments shall take steps to ensure that no small arms are transferred across their borders into situations that would be expressly illegal, such as violations of Security Council arms embargoes;

(b) Governments shall exercise heightened scrutiny to avoid transfers of weapons to other Governments or to individuals or groups that may use the small arms to commit human rights violations. This principle is based on the State's obligation not to participate in the internationally wrongful acts of another State, as articulated in article 16 of the articles on responsibility of States for internationally wrongful acts (General Assembly resolution 56/83, annex) developed by the International Law Commission;

(c) Governments shall carefully assess each weapons transfer for the risk of diversion. Governments shall establish an effective system of authenticated end-user certificates and enforcement to ensure that small arms are not being transferred to human rights violators. Parties to the 2001 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, under article 10, are required to maintain an effective system of export and import licensing and authorization for the transfer of firearms, their parts and components and ammunition. End-user authorization is also required by the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, section II, and the Nairobi Protocol, article 10, as well as in various regional codes of conduct on arms transfers.

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