

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 agents, especially law enforcement officials, play a vital role in the protection of the right to life, liberty and security of 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 under the law 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 paragraph 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 promote and assist with the pursuit of negotiated solutions to conflicts, including by addressing their root causes 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, section III, paragraph 4,

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 the human rights principles set forth below, formulated to assist Member States in their task of ensuring and promoting the proper action by State agents, especially law enforcement officials, with respect to their unequivocal role to protect 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, and urges that every effort be made so that the principles become generally known and respected.

A. Obligations with regard to State Agents

1. Governments and State agents, especially law enforcement officials, shall not use small arms to violate human rights. All State agents have the obligation to uphold and affirm human rights including the right to life, liberty and security of person, as guaranteed in the International Bill of Human Rights. A State agent includes any person or persons acting at the instigation of or with the consent or acquiescence of a public official.
2. Governments and State agencies shall adopt and implement rules and regulations on the use of force and small arms against persons by State agents, especially law enforcement officials.
3. In order to prevent the violation of human rights committed with small arms, Governments and State agents 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 agent, is punished as a criminal offence.
4. In order to further prevent the violation of human rights committed with small arms, Governments and State agents shall establish and maintain adequate and detailed procedures for the proper storage and management of small arms, including ammunition. Governments shall actively pursue the collection, safe storage, destruction and responsible disposal of surplus small arms.
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 in conformity with these principles. Those State agents who are permitted to carry small arms shall be authorized to do so only upon completion of special training regarding the limitations on their use. The compliance of State agents with rules and regulations on the use of force and small arms shall be subject to regular review.
6. In the training (at national or international level) of State agents, especially law enforcement officials, Governments and State agencies shall give special attention to the promotion and protection of human rights as a primary duty of all State agents. Governments shall design training programmes to emphasize alternatives to the use of force and small arms, including the peaceful settlement of disputes, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, with a view to limiting the use of force and small arms.
7. In the planning of specific operations and tactical situations, Governments and State agents shall include alternative means of settlement without recourse to force and small arms.
8. In honouring the right to life, liberty and security of 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 agents, including law enforcement 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.
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 agents, including law enforcement officials, are reviewed and acted upon by independent and competent authorities. There shall be a thorough, prompt and impartial investigation, and appropriate corrective measures taken, in all cases of death, torture, other ill-treatment or injury involving the use of small arms by State agents. 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.

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 enact 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 or record of misuse, and prior acts of domestic violence. Governments shall require periodic renewal of licences.

11. Governments shall ensure that proper controls are exercised over the manufacturing of small arms through incorporation into national law and by other measures. 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.

12. Governments shall ensure the investigation and prosecution of persons responsible for the illegal manufacture, possession, stockpiling or transfer of small arms. Governments shall impose penalties for crimes involving the misuse of small arms, including to commit domestic violence, and for the unlawful possession of small arms.

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 should take steps 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.

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.

15. In light of the obligation of a State, under international human rights law, to prevent human rights violations, States are required under international law to provide, upon request, assistance, for the purposes of judicial proceedings in other States, in the provision of information regarding the ownership or purchase of small arms and light weapons in the former State.