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College of Law and Governance Studies

School of Law

Assessing the Laws Governing the Use of Force by the Federal Police of Ethiopia

**A Thesis Submitted to School of Law Graduate Studies in Partial Fulfillment
of the Requirements for the Master of Law in Public International Law**

By:- Lelisa Gutema

Advisor:- Girmachew Alemu Aneme(Ph.D.)

Associate Professor, School of Law, Addis Ababa University

November, 2015

Addis Ababa, Ethiopia

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Declaration

I, **Lelisa Gutema Bayisa**, hereby declare that the thesis entitled as '*Assessing the Law Governing the Use of Force by the Federal Police of Ethiopia*' is my original work and has never been presented in any University. And also, the primary and secondary sources that i used for this thesis are duly acknowledged

Declared by:-**Lelisa Gutema Bayisa**

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This dissertation has been submitted for examination with my approval as University advisor

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Approval Sheet

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Ethiopia

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Acronyms and List of Abbreviations

APCOF-----	African Policing Civilian Oversight Forum
Basic Principles-----	UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
Body of Principles-----	UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
CAT-----	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CHRI-----	Commonwealth Human Rights Initiatives
Code of Conduct-----	UN Code of Conduct for Law Enforcement Officials
FDRE-----	Federal Democratic Republic of Ethiopia
Federal Police-----	The Federal Police Officer who is a member of Ethiopian Federal Police Commission
ICCPR-----	International Convention on Civil and Political Rights
ICRC-----	International Committee of the Red Cross
International Standards on Policing-----	UN Code of Conduct for Law Enforcement Officials and UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
OAU-----	Organization of African Unity
Regulation No.268/2012---	Federal Police Officers Administration Council of Ministers Regulation No.268/2012
UDHR-----	Universal Declaration of Human Rights
UN-----	United Nations
UNCPCOT-----	UN Congress on Prevention of Crime and the Treatment of Offenders
UNECOSOC-----	UN Economic and Social Council
UNODC-----	United Nations Office on Drugs and Crime

Abstract

The Ethiopian Federal Police is permitted to use force against persons by law in order to achieve legitimate objectives. In the course of using such force for lawful purposes, the Federal Police has an obligation to respect and protect the fundamental human rights and freedoms recognized under the FDRE Constitution and international human right treaties to which Ethiopia is a party. Nonetheless, the use of force by the Federal Police has the potential to go beyond its intended legitimate purposes and violate human rights. Hence, there is a need for adequate laws governing the use of force by the police. This thesis explains the laws governing the use of force by the Federal Police and assesses the adequacy and compatibility of these laws with relevant international standards on the use of force by police.

Key Words: - *The Code of Conduct, the Basic Principles, the Use of Force and Firearms, the Federal Police, and International Standards on Policing.*

Chapter One

Introduction

1.1. Background

Police agencies, as one of the law enforcement organs of the government, have the objective of maintaining and ensuring peace and security of the public and the state by respecting and ensuring the observance of the constitution, constitutional order and other laws of the country.¹ While achieving this objective, the police officers have an obligation to respect and protect fundamental human rights and freedoms enshrined in the constitution and other laws of the country. To achieve their objective, the police officers are given the power to use force under the law.² As such, the police may use force in a range of context such as during arrest of a violent person; to protect themselves or others; or to prevent a crime from being committed.³ While using force, police officers have an obligation to act with high degree of responsibility required by their profession.⁴

The use of force may be abused by police officers and consequently it can result in serious violation of human rights such as the right to life, security of person and freedom from torture and cruel, inhuman or degrading treatment and punishment. In order to avoid such abuse of power by police officers while using force, the government has an obligation to ensure that the legal framework governing the use of force by police officers is in place and sufficiently clear.⁵ Moreover, the government has also an obligation to ensure that accountability mechanism is in place. Indeed, the government and law enforcement agencies are required to adopt and

¹ Proclamation No.720/2011, A Proclamation to Provide for Establishment of Ethiopian Federal Police Commission, entered into force on November 28, 2011, art.5. The Ethiopian Federal Police Commission is one of the law enforcement agencies entrusted with the power to protect peace and security of the public as well as maintaining the constitutional order of the country.

² Ralph Crawshaw, 'International Standards on the Right to Life and the Use of Force by Police,' (1999) Vol. 3, No. 4, The International Journal of Human Rights 67.
< <http://dx.doi.org/10.1080/13642989908406845> > accessed 21 February 2015.

³ Jim Murdoch and other, *The European Convention on Human Rights and Policing: A Handbook for Police Officers and Other Law Enforcement Officials*, (Council of Europe Publishing 2013) 24.

⁴⁴ UN General Assembly Resolution 34/169 of 17 December 1979, Code of Conduct for Law Enforcement Officials, art. 1 and 2. < www.un.org/documents/ga/res/34/a34res169.pdf > accessed 20 February 2015. The General Assembly in this resolution recommended that all UN members adopt this Code of Conduct as a framework for legislation or as principles for police officers to practice.

⁵ Murdoch and other (n 3)22.

implement rules and regulations on the use of force in order to protect the person's right to life, security of person and freedom from torture and also to criminalize arbitrary or abusive use of force by law enforcement officials.⁶ While providing the rules and regulations on use of force and firearms, the government is expected to enact law that is compatible with international standards on policing in order to balance the tension between legitimate use of force by the police and protection of human rights. Also, the government and law enforcement agencies are required to keep ethical standards associated with the use of force constantly under review.⁷

1.2. Objectives of the Research

This thesis has the following objectives. These are:

1. To explain and examine Ethiopian legal framework on the use of force by the Federal Police in the performance of their duties.
2. To assess the adequacy and compatibility of Ethiopian legal framework on the use of force by the Federal Police with international standards on policing.

1.3. Statement of the Problems and Research Questions

The Federal Police of Ethiopia is provided the mandate to use force and firearms against persons in different laws in order to achieve legitimate objectives. While using force and firearms, the Federal Police may violate basic human rights and freedoms. Because of this, there is a need for adequate legal framework to govern the use of force and firearms by the Federal Police.

However, currently the laws governing the use of force and firearms by Federal Police of Ethiopia are not clear. It is not also clear that whether these laws are adequate and compatible with international standards on the use of force and firearms by the police. Therefore, this thesis

⁶ UNCPCTO Resolution 14 of 7 September 1990, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principle 24.

<<http://www.ohchr.org/Documents/ProfessionalInterest/firearms.pdf>> accessed 20 February 2015.

The 8th UN Congress on Prevention of Crime and the Treatment of Offenders adopted this Basic Principles on 7 September 1990 to improve working condition of law enforcement officials who exercise police powers. The principle 24 puts superior officers under responsibility if they know, or should know, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.

⁷ Ibid, Principle 1.

attempts to address these issues. Based on the above problems or issues, the research questions that this thesis seeks to address are:

1. What is the national legal framework governing the use of force by the Federal Police of Ethiopia?
2. Is national legal framework on the use of force and firearms by the Federal Police adequate and compatible with relevant international standards on policing?

1.4. Significance of the Research

One of the basic significance of the study is to encourage or support Ethiopian Government and Federal Police Commission to adopt and implement adequate rules and regulations or guidelines on the use of force and firearms by the Federal Police in order to govern its application. In other words, the researcher requests Ethiopian government to give effect for UN Code of Conduct for Law Enforcement Officials and UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

The research may also contribute to increase the awareness of Federal Police of Ethiopian on international standards on policing and national legal framework on the use of force thereby enabling them to be efficient and at the same time respect human rights and constitution in the course of using force. Moreover, the thesis further serves as an important input for students, researchers and policy makers who are interested to provide legal framework on the use of force by law enforcement officials in general and by police officers in particular.

1.5. Limitation of the Research

The researcher of this thesis has faced the following problems while conducting this research.

1. Lack of research conducted in the area of the use of force and firearms by police officers in the country.
2. Lack of adequate literature and internet resources that are conducive and accessible to the researcher.
3. Lack of access to the necessary materials like reports and documents prepared by various public institutions in relation to the use of force by police officers.

1.6. Research Methodology

The researcher has employed desk research method for the purpose of conducting this research. The desk research method involves examining primary and secondary sources. The primary sources that are used by the researcher are legislations such as proclamations and regulations, international human rights conventions and UN declarations. Among the primary sources of law, the researcher has employed two international soft laws on policing, namely the UN Code of Conduct for Law Enforcement Officials (hereinafter the Code of Conduct) and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (hereinafter the Basic Principles). These international soft laws are not legally binding; but they provide the standards on policing which are given the force of law in human right treaties.⁸ Needless to say, compliance with these soft laws reinforces the protection of the right to life. The Code of Conduct also seeks to influence the practical attitudes and behavior of law enforcement officials through establishing sets of guidelines of high ethical and legal quality.⁹ Moreover, this Code of Conduct provides international minimum standards and best practices for law enforcement officials and justice system at national level.¹⁰ Due to this importance, the UN General Assembly recommended by Resolution 34/169 of 17 December 1979 that its member states should use the Code of Conduct within their national legal framework as a body of principles for observance by law enforcement officials.¹¹ Similarly, the UN Economic and Social Council also adopted guidelines for effective implementation of the Code of Conduct for Law Enforcement Officials by its Resolution 1989/61.¹² In the same ways, the 8th UN Congress on Prevention of Crime and the Treatment of Offenders adopted the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials which recommend that all states should adopt and implement rules and regulations on the use of force and firearms by police officers.¹³

⁸ Crawshaw(n 2) 91.

⁹ Ibid

¹⁰ Ibid

¹¹ Code of Conduct (n 4) preamble 14.

¹² UN Economic and Social Council Resolution 1989/61, Guidelines for the effective implementation of the code of conduct for law enforcement officials,
<<http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/cy%20activity%20Interface2006/un%20Guidelines%20CoC%20Law%20Enforcement%20Officers.pdf>> accessed 21 February 2015.

¹³ Basic Principles (n 6) principle 1.

The secondary sources that are employed for this research are books, journals, articles, unpublished materials like thesis and manuals.

1.7. Structure of the Thesis

This thesis is divided into five chapters. The first chapter provides the proposal for this research. This chapter includes the background, objectives of the research, statement of the problems and research questions, significance, limitations and methodology of the research.

The chapter two of the research deals with general overview and international legal framework on the laws governing the use of force by police officer. Under this chapter, procedures before and after the use of force and firearms are also dealt with. Furthermore, the circumstances for the use of force and obligations of the government and law enforcement agencies on the use of force have been discussed.

The chapter three of this research examines Ethiopian legal frameworks on the use of force by the Federal Police which have been dealt in depth. Under this chapter, all laws that allow the Federal Police to use force in the course of their duties are discussed.

The fourth chapter of this thesis focuses on assessing the adequacy of laws governing the use of force by Federal Police of Ethiopia. To put it specifically, this chapter will assess the adequacy of these laws in line with international standards on policing. Moreover, impacts of inadequacy of laws on the use of force on human rights have been discussed under this chapter.

Finally, the thesis comes to an end with conclusion and recommendations on fifth chapter. Lastly, the bibliography and annexes will finalize the thesis.

Chapter Two

General Overview and International Legal Framework on the Use of Force by the Police

2.1. General Overview on the Use of Force by the Police

A. Definition of the Use of Force

There is no international definition of the word ‘force’ and, but, the definitions found in main dictionaries usually refer to a variety of terms such as ‘strength’, ‘power’, ‘violence’.¹⁴ However, the word ‘force’ can be defined as ‘any verbal command or physical action to gain subject control’.¹⁵ And also one dictionary defined the word ‘force’ as ‘to compel by physical means or by legal requirement’ or as a ‘power, violence, or pressure directed against a person or thing’.¹⁶ According to these definitions, force is an exertion of a power or pressure or by verbal command directed against somebody or thing to accomplish certain purpose. In such cases, the definitions of the word ‘force’ include any physical efforts used by law enforcement agencies, e.g. police officers, to control or restrain another or to overcome the resistance of another person.

Based on these definitions of the word ‘force’, the phrase ‘use of force by police officers’ can be defined as ‘a coercive action of the police officers to make somebody do something’ or ‘exertion of power of the police officers to compel or restrain the behavior of others’.¹⁷ In simplest terms, any action taken by police officers against another, especially if against his or her will, is the use of force. Simply handcuffing a person and thereby temporarily limiting his or her freedom can be construed as use of force.¹⁸

¹⁴ UN Peacekeeping Operation, *Human Rights Standards in the Use of Force: Specialized Training Materials for Police*, (2009) 6.

<<http://peacekeepingresourcehub.unlb.org/pbps/Library/HR%20in%20the%20Use%20of%20Force.pdf>> accessed 25 February 2015.

¹⁵ Ibid

¹⁶ Bryan A. Garner, *Black’s Law Dictionary*, (7th edn, West Group Co. 1999) 656-657.

¹⁷ Rolando A. Delgado, ‘An Ideal Use of Force Model for Law Enforcement’: An Assessment of the Austin Police Department, (Master Thesis, Texas State University 2011) 2.

<<http://ecommons.txstate.edu/arp/359>> accessed 25 February 2015.

¹⁸ Ronald G. Burns and other, *Policing and Violence*, (Prentice Hall 2002) 137.

B. The Use of Force Continuum

The use of force continuum is a model that provides escalating or deescalating use of force scale used to teach police officers how to defend themselves and safely achieve legitimate purposes and also how much legal force can be used in response to action of others.¹⁹ The model describes a range of force and appropriate force response necessary to match the resistance of the subjects. The level of force options available for police may increase or decrease based on the circumstances of the situation. In other words, the police officers are required to continuously adjust their level of force in response to the level of resistance of the subjects. As such, according to this model, the police officers should escalate their level of force as the subject's resistance increases and deescalate their level of force as the subject's resistance decreases.²⁰

The police officers should employ force continuum model in order to use no more force than reasonably necessary to gain compliance. The use of force level is standardized by use of force continuum and typically the level of force start with police officers presence and ends with the use of deadly force.²¹ That means the force to be applied by police ranges from lower to higher probability of causing harm to the subjects. As such, the police officers should exhaust all non-violent means, i.e. presence of authority, verbal, and show of force,²² before resorting to violent means of force or must ensure non-practicability of these non-violent means in the circumstances before resorting to use of violent means, i.e. physical human force, handcuffs, baton/gas/water, less than lethal firearms, and lethal firearms,²³ to achieve legitimate objectives. Accordingly, there are five levels of use of force against the subjects.

Level 1: Police Officer Presence-The mere presence of the police officer is sometimes sufficient to control disturbance and restore order because the violators may have respect for police officers.²⁴ In this level, the violator knows what is likely to follow if he/she continues to disturb. And also, the presence of authority figure on the violator has an effect of controlling the situation without using force against the violator.

¹⁹ Burns (n 18) 142.

²⁰ Delgado (n 17) 19.

²¹ Wikipedia, the free encyclopedia, 'Use of Force' <http://en.wikipedia.org/wiki/Use_of_force> accessed 25 February 2015.

²² UN Peacekeeping Operation (n 14)11.

²³ Ibid

²⁴ Burns (n 18) 142.

Level 2: Verbal Commands- This is the level in which the police officer gives a command of direction to their expectation for the violators, for example, arrest.²⁵ The police officers are expected to continue to give this verbal command for the suspects even if the command is not obeyed because such continuous command serve as an evidence that the police officer gave the resistant person non-violent option.

Level 3: Open Hand Control and Restraint- This level involves techniques that are designed to gain control over the subjects and do not have high potential injury.²⁶ This level is also termed as empty hand control that involves use of empty hand to search, relieve weapons, immobilize or otherwise control a subject.²⁷ The techniques used in this level includes escort holds, wrist and joint locks, come along techniques, takedowns, multiple officer takedowns, resistant subject handcuffing and distraction techniques involving strikes with personal weapons like hands, elbows, knees, feet and so on.²⁸ These different techniques are actually painful, especially when resisted, but usually don't cause serious injury and also prevents escalation of encounter and injury of the police officer.²⁹

Level 4: Intermediate Force- This is the level in which the police officer use non-lethal chemicals, electronic or impact weapons on the violator who represents a physical threat to safety of the police officer or who attempts to use force against the police officer or another.³⁰ However, the threat posed by the subjects doesn't endanger the life and also the response of the police officer is violent action. That means the response of the police officer involves the reaction to what amounts to an attack on the police or other. At this level, the use of force by police officer can take many forms like nightsticks, clubs, saps and batons, chokeholds, stun and taser guns, tear gases, pepper spray and these weapons are vary in effectiveness and risks.³¹

Level 5: Deadly Force- This is the final level in which the police officer is allowed to use lethal firearms and, hence, this level, as its name implies, have a consequences of death or permanent

²⁵ Ibid

²⁶ Ibid

²⁷ Wikipedia, the free encyclopedia (n 21).

²⁸ Burns (n 18)143.

²⁹ Ibid

³⁰ Wikipedia, the free encyclopedia (n 21).

³¹ John Kleinig, *The Ethics of Policing*, (Cambridge University Press 1997) 99.

injury³² to the violator. These deadly forces includes: shooting a firearms at a person, a hard strike to person's head, neck, or throat with an impact weapon, and so on.³³ The use of this lethal firearm is permitted only in extreme circumstances when strictly unavoidable for self defense or defense of others against imminent threat of death or serious injury, preventing a particularly serious crime that involves a severe threat to life, and arresting or preventing the escape of a person posing such threat and who is resisting efforts to stop the threat, in every case, only when less extreme measures are insufficient.³⁴ In such cases, while defending themselves or another, the police officer can cause a substantial risk of death or serious bodily harm to the subjects. Generally, the police officer should be trained to use all levels of force based on the resistance of the violator.

C. The Principles Governing the Use of Force by the Police

There are principles that have to be considered before and after using force by police officers. These principles used to assess or evaluate the lawfulness of the use of force taken by police officers and they are known as 'PLAN Principles' (P-Proportionality, L-Legality, A-Accountability, and N-Necessity).³⁵ They are a test for justifying the use of force taken by police officers and will be discussed below.

I. Proportionality Principle

The police officers must use appropriate level of force or exercise restraint in such use and act in proportion to the seriousness of the offence and legitimate objective to be achieved.³⁶ In addition to this, the Code of Conduct under article 3 provides the standards for the use of force in the following terms: '*law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty*'. This article expressed the necessity and proportionality principle for the use of force. To be proportional, the level of force applied must reflect the totality of circumstances surrounding the situation. That is the more immediate the

³² Wikipedia, the free encyclopedia (n 21).

³³ The Seattle Police Department, Use of Force Policy, section 8.000, 8.050 (2013) 4.

<http://www.seattle.gov/police/compliance/finished_policy/Use_of_Force_Policy_11_27_2013.pdf> accessed 26 February 2015.

³⁴ Basic Principles (n 6) principle 9.

³⁵ UN Peacekeeping Operation (n 14) 9.

³⁶ Basic Principles (n 6) principle 5(a).

threat and the more likely that the threat will result in death or serious physical injury, the greater level of force may be proportional and also the reverse is true. The police officers must measure and decide an appropriate level of force to be applied based on their experience, training and assessment of the situation.³⁷ If appropriate force is applied by police officers, the damage and injury can be minimized, and also the right to life, liberty and security of person can be respected and preserved.

II. Legality Principle

The police officers must use force in order to achieve legitimate objectives and only for lawful purposes and, as such, use of this force can be justified when measured by legitimate objectives to be achieved.³⁸ While using force and firearms, the police officers are required to exercise restraint power in proportion to legitimate objective to be achieved. And also, they are allowed to use force only as much as necessary to achieve legitimate objective. In addition to this, the principle of legality must be applied even though no actual force is being used.

III. Necessity Principle

The Code of Conduct provides the standard on the use of force, under its article 3, that the necessity principle must be ensured before the use of force is applied and, consequently, the police officers may use force only when strictly necessary. According to commentary to this article, the use of force by police officers should be exceptional; and, as such, the police may be authorized to use such force as is reasonably necessary for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, and no force going beyond that may be used.³⁹ We can understand from this commentary that the purposes for which the use of force is considered as necessary are the prevention of crime and exercise of lawful powers of arrest. On the other hand, the police officers should use force only when no reasonable and effective alternative appears to exist, and only to the degree which is reasonable to effectuate a

³⁷ The Seattle Police Department (n 33) 6.

³⁸ ICRC, *To Serve and To Protect: Human Rights and Humanitarian Law for Police and Security Forces*, (ICRC Publications 1998) 276.

³⁹ Code of Conduct (n 4) commentary paragraph (a) to article 3.

lawful purpose.⁴⁰ However, if use of force is not necessary at the time, it would be arbitrary and abusive and, hence, must be punished as a criminal offence under the law.

IV. Accountability Principle

Accountability principle on the use of force involves a system of internal and external checks and balance aimed at ensuring that police perform the function expected from them to a high standard and are held responsible if they fail to do so.⁴¹ This accountability prevents the police from misusing their power and most importantly to enhance public confidence and re-establish police legitimacy. The Basic Principles include principles related to accountability in relation to the use of force and firearms by the police. For example, an availability of an ‘effective review process’ and ‘independent administrative or prosecutorial authorities’ aimed to create conducive environment for accountability of police officers for unlawful use of force.⁴² The reporting and review procedure presupposes accountability of police officers in case of misuse of their power. In addition to this, principle 23 of Basic Principle provides that the persons affected by the use of force and firearms or their legal representatives and dependents should have access to an independent process, including a judicial process. Thus, all incidents of the use of force or firearms shall be reported to and reviewed by superior officials in order to ensure accountability of police officers who engaged in the use of force. Moreover, superior officers are also responsible if they know, or should have known that their subordinates are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.⁴³ This shows us that authorizing officers, commanders and decision making bodies remain accountable for their actions. Individual police must act lawfully at all times and where they know the action expected of them is clearly unlawful, they must be allowed to refuse to obey that order and have a means of reporting such unlawful order.⁴⁴

⁴⁰ The Seattle Police Department (n 33) 2.

⁴¹ UNODC (2011), *Handbook on police accountability, oversight and integrity*, (UN Publication 2011) 9.

⁴² Basic Principles (n 6) principle 22.

⁴³ Ibid, Principle 24.

⁴⁴ Ibid, Principle 26.

2.2. The UN Code of Conduct for Law Enforcement Officials

The UN General Assembly adopted the Code of Conduct for Law Enforcement Officials by Resolution 34/169 of 17 December 1979 to provide the citizenry served by law enforcement officials with protection of all their rights and interests.⁴⁵ The General Assembly, in this Resolution, reminds that the nature of the function of law enforcement in the defense of public order and the manner in which those functions are exercised have a direct impact on the quality of life of individuals as well as of the society as a whole. While stressing the importance of the task performed by law enforcement officials, the Resolution underlined the potential for abuse which the exercise of such duties entails. Because of this, the General Assembly adopted this Code of Conduct for Law Enforcement Officials and transmitted it to governments with recommendation that favorable consideration should be given to its use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials.⁴⁶ Even though Code of Conduct is non-binding instrument, the compliance with its article reinforces the protection of the right to life and enhances the professionalism and effectiveness of police in the exercise of their power. In addition to this, the Code of Conduct also seeks to influence the practical attitudes and behavior of law enforcement officials through establishing sets of guidelines of high ethical and legal quality.⁴⁷ Moreover, this Code of Conduct provides international minimum standards and best practices for law enforcement officials; and it consists of articles that reinforce the provisions of human rights treaties;⁴⁸ and also it is a source of national police laws and reference for bodies empowered to interpret provisions of human rights treaties and to make legally binding decisions. Hereinafter we are going to discuss selected articles that related with the use of force and firearms by law enforcement officials.

The Code of Conduct consists of 8 articles with their commentaries. Article 1 of the Code of Conduct requires the law enforcement officials to fulfill the duty imposed upon them by law

⁴⁵ Code of Conduct (n 4) preambular paragraph 7.

⁴⁶ UN General Assembly Resolution 34/169(n 4) preambular paragraph 14. The General Assembly decided to transmit the text of the Code of Conduct with its recommendations to UN Members for giving effect to the Code of Conduct within the national legal framework and be applicable.

⁴⁷ ICRC(n 38)273.

⁴⁸ Crawshaw (n 2) 91.

while article 2 imposed an obligation on law enforcement officials to respect and protect human dignity of all persons in the performance of their duties.

Article 3 of the Code of Conduct authorizes the law enforcement officials to use force only when strictly necessary and to the extent required for the performance of their duties. This article emphasizes that the use of force by law enforcement officials is exceptional and never go beyond the level reasonably necessary to achieve legitimate objectives.⁴⁹ And also, it limits the use of force to situations where it is strictly necessary and to the extent required for the performance of their duties. As such, this article provides proportionality and necessity principles. Furthermore, according to commentary to this article, the use of firearms is considered as an extreme measure and should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and when less extreme measures are not sufficient to restrain or apprehend the suspected offender.

Article 5 of the Code of Conduct imposes an absolute prohibition of torture and, hence, law enforcement officials may not invoke superior order or any exceptional circumstances as a justification of acts of torture. Moreover, the Code of Conduct sets standards for law enforcement practices that are consistent with provisions on basic human rights and freedoms.⁵⁰ Generally, the Code of Conduct provides ethical and legal guidelines on the use of force and firearms for law enforcement officials in order to prevent arbitrary and abusive use of force and firearms against the persons.

2.3.The UN Basic Principle on Use of Force and Firearm by Law Enforcement Officials

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials is a soft law that was adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba, from 27 August to 7 September 1990. This instrument acknowledged both the importance of social service rendered by law enforcement officials and the vital role that the law enforcement officials play in the protection of the right to life, liberty and security of the person in its first and third preambular paragraph respectively. In addition to this, the ninth preambular paragraph of this instrument also underlined that it is appropriate for

⁴⁹ ICRC (n 38) 273.

⁵⁰ ICRC, *Violence and Use of Force*, (ICRC Publication 2011) 44.

consideration to be given to the role of law enforcement officials in relation to administration of justice, to the protection of the right to life, liberty and security of the person, to their responsibility to maintain public safety and social peace and to the importance of their qualifications, training and conduct. Moreover, the tenth preambular paragraph of the Basic Principles explained the objectives of the instrument and accordingly the instrument was formulated to assist member states of UN ECOSOC in their task of ensuring and promoting the proper role of law enforcement officials and should be taken into account and respected by governments within the framework of their national legislation and practice, and be brought to an attention of law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive branch and the legislature, and the public. In other words, this preambular paragraph underlined that the need for national governments to take the principles enshrined in this Basic Principle into account while adopting and implementing their national legislation and practice accordingly.

This instrument consists of 26 detailed principles addressed to governments and law enforcement agencies, or to law enforcement officials. It embodies not only rules which are essentially normative in character, but also rules embodying good practice on technical aspects of policing.⁵¹

Basic principle 1 requires the governments and law enforcement agencies to adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. The obligation to adopt and implement rules and regulation is further illustrated by principle 11 which stipulates several guidelines to be included in the rules and regulations on the use of force and firearms and specifically the guidelines that:

- Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;
- Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
- Prohibit the use of those firearms and ammunition that cause unwarranted injury or present unwarranted risk;

⁵¹ Crawshaw (n 2) 81.

- Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
- Provide for warnings to be given, if appropriate, when firearms are to be discharged;
- Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

Principle 2 urges the governments and law enforcement agencies that they should develop a range of means as broad as possible and to equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. Additionally, the law enforcement officials should be equipped with self defensive equipments in order to decrease the need to use weapons of any kind. Furthermore, principle 3 warns that the development and deployment of non-lethal incapacitating weapons should be carefully evaluated and controlled.

According to principle 4, law enforcement officials should apply non-violent means, as far as possible, before resorting to the use of force and firearms and, as such, they may use force and firearms only if non violent means remain ineffective. This is further illustrated by principle 5 that, when lawful use of force and firearms is unavoidable, the law enforcement officials are urged to exercise restraint and act in proportion to the seriousness of the offence and the legitimate objectives to be achieved. This principle provides the principle of proportionality, necessity and legality while using force and firearms against persons. In addition to this, while using force and firearms against persons, the law enforcement officials are required to minimize damage and injury, and respect and preserve human life; to ensure that assistance and medical aid are rendered to any injured or affected persons; and to ensure that relatives or close friends of injured or affected persons are notified. Reporting the incidents of the use of force and firearms to superiors is also another obligation of law enforcement officials who used of force and firearms.

Principle 9 provides the standards for the use of firearms by law enforcement officials against persons. The use of firearms is considered as an extreme measure and must be seen at the last resort. Under this principle, the law enforcement officials may use firearms against persons only:

- ✓ For self defense or defense of others against imminent threat of death or serious injury;
- ✓ To prevent a particularly serious crime that involves a severe threat to life;
- ✓ To arrest a person presenting such danger and resisting their authority, or to prevent his or her escape, and
- ✓ Only when less extreme measures are insufficient to achieve these objectives. In any cases, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

In addition to observing these permissible circumstances prior to using firearms, the law enforcement officials are required to identify themselves as such and give clear warning of their intention to use firearms with sufficient time for the warning to be observed unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other person, or would be clearly inappropriate in the circumstances of the incident.⁵²

The Basic Principles also provides detailed standards on the use of force and firearms under principles 12-14 that should be respected by police officers during dispersal of unlawful assemblies in both violent and non-violent assemblies and also against the person in custody or detention in principle 15 and 16. Moreover, the Basic Principle stipulates that reporting and review procedure to be established under principle 22 and et seq, accountability mechanism and selection and training procedures should be ensured as stated under principle 18 and et seq. by government and law enforcement agencies. The details of the above principles are discussed and explained under topics number 2.6 and 2.7 of this chapter.

2.4. Other Relevant Treaty and Non-Treaty Instruments on the Use of Force

The right to life is fundamental human rights that is guaranteed by UDHR under article 3 and also reaffirmed by ICCPR under article 6(1). Under article 6(1), the ICCPR declared that '*No one shall be arbitrarily deprived his life*'. Additionally, the African Charter on Human and Peoples' Rights protects the right to life and prohibits arbitrary deprivation of life under article 4. This right is an ultimate right, however, not absolutely protected under treaty law. That means there are exceptions to the general rule that 'the right to life shall be protected' are expressed in

⁵² Basic Principles (n 6) principle 10.

treaties to demarcate and limit the circumstances under which life may be taken by the state.⁵³ In addition to this right, the right to liberty and security of person were also guaranteed under various human rights instruments such as UDHR-art.3, ICCPR- art.9 (1), and art.6 of African Charter on Human and People's rights. The right to liberty and security of person is also fundamental human rights and is a necessary condition for people to be able to function as autonomous human beings, to secure their basic human needs, and to develop and lead fulfilling lives personally and within their communities.⁵⁴ Moreover, the prohibition of torture is absolute and without exception under any treaty. This prohibition is a part of customary international law and has been codified in a number of human rights and law of armed conflicts instruments.⁵⁵

To protect the right to life, liberty and security of person of citizens, law enforcement officials are required to look at the standards or restrictions placed by human right treaties. For instance, the Body of Principles provides the standards for arrest under principle 2 by stating that: '*Arrest shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose*'. In addition to this principle, ICCPR under art.9 (1) provides that: '*Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law*'. These restrictions were placed in order to avoid arbitrary arrest which deprives the liberty and security of person. Therefore, these treaties and non-treaty instruments stipulate relevant provisions which provide the standards for the use of force by police officers in the performance of their duties.

2.5. The Procedures Before and After the Use of Force and Firearms

The police officers who are going to use firearms are required to follow and respect certain procedures before using firearms. The use of firearms, even though lawful and proper under permissible circumstances, can have damaging effect on the person wanted and police himself. Because of this, the police officer should follow and respect certain procedure before using the

⁵³ Crawshaw (n 2) 67.

⁵⁴ Ralph Crawshaw, *Police and Human Rights: A Manual for Teachers, Resource Persons and Participants in Human Rights Programmes* (2nd rev edn, Martinus Nijhoff Publishers 2009) 94.

⁵⁵ ICRC, *Violence and Use of Force* (n 50) 47.

firearms. The Basic Principles provides the procedures before use of firearms under principles 10 in the following manner.

- ✓ The police officer should identify himself or herself as a police official;
- ✓ The police officer should give clear warning of their intention to use firearms;
- ✓ The police officer should allow adequate time for the warning to be obeyed, but this shall not be required if the delay would result in death or serious injury to the officer or others, or if it is clearly inappropriate in the circumstances to do so.

These procedures should be followed consecutively by police officer before using firearms against persons because an individual may opt to obey the warning and put him/her self under police control rather than placing him/herself in danger situations. This would save the life of the person from death or serious injury as well as ensures police legitimacy.

In the same manner, the police officers are also required to discharge certain responsibility after the use of force and firearms. The police officers have the responsibility to provide assistance and medical aid for all persons who have been injured and when necessary provide access to further treatment, and also should notify the relatives of injured persons at earliest possible moment.⁵⁶ In addition to this, the police officers have also the responsibility to allow investigation of incidents when requested or required by competent authorities.⁵⁷ Moreover, the police officers have the responsibility to prepare and provide a full and detailed report of the incidents to competent authorities responsible for administrative review and judicial control.⁵⁸ In such cases, the police officers who used force and firearms must discharge their responsibilities after they used force and firearms.

2.6. The Circumstances for the Use of Force by the Police

The police officer may use force in different range of context such as during arrest of violent person, to conduct a lawful search, policing unlawful assemblies and persons in custody or detention. While performing these duties, the police officer must comply with international

⁵⁶ Basic Principles(n 6) principle 5(c,d).

⁵⁷ Ibid, Principle 6, 11(f) and 22.

⁵⁸ Ibid, Principle 22.

standards on policing. Now the circumstances in which the police officer may use force will be discussed below.

2.6.1. The Use of Force During Policing Unlawful Assemblies

The Basic Principles provides the standards for the use of force that deals with unlawful assemblies under principle 13 and 14. This Basic Principle recognized the right to participate in lawful and peaceful assemblies as enshrined in UDHR⁵⁹ and ICCPR⁶⁰ under principle 12. However, in case where unlawful assemblies but non-violent occurs, the police officers are allowed to disperse it without using force; but where this is not practicable, they have to restrict the use of force to the minimum extent necessary.⁶¹ Also, the principle of proportionality and necessity are applicable while dispersing unlawful assemblies.

However, in dispersal of violent assemblies, the police officers may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary provided that the conditions for use of firearms that are stipulated in principle 9 is met.⁶² The principle 9 reminds police officials that the use of firearms against people in assemblies can only be justified if those individual persons present the threats referred to in principle 9. As explained above, the threats stipulated under principle 9 are permissible circumstances for the use of firearms against persons. According to principle 9, firearms should be used against persons in assemblies posing imminent threat of death or serious injury or grave threat to life if it is possible to distinguish between those who do pose that threat and those who do not and, however, if it is impossible to distinguish between people who do or do not pose that threat to life, the fact of participation in assembly of people which collectively presents the threat could be seen as a justification for the use of firearms against them as individual.⁶³ Unless and otherwise, indiscriminate shooting into a crowd

⁵⁹ UN General Assembly Resolution 217 A (III), Universal Declaration on Human Rights, article 20(1). The UDHR was adopted on 10 December 1948 and proclaimed by General Assembly at Paris. This declaration recognized the right to assembly under article 20(1) as 'Everyone has the right to freedom of peaceful assembly and association'.

⁶⁰ UN General Assembly Resolution 2200 A (XXI), International Convention on Civil and Political Rights, adopted on 16 December 1966 and entered into force on 23 March 1976, article 21. This Convention affirmed the freedom of assembly, which is guaranteed by UDHR under article 20(1).

⁶¹ Basic Principles (n 6) principle 13.

⁶² Ibid

⁶³ Crawshaw, 'International Standards on the Right to Life and the Use of Force by Police' (n 2) 86.

is completely unjustified when such use is unnecessary.⁶⁴ In addition to complying with the above conditions for the use of firearms while dispersing violent assemblies, the police officers must firstly attempts less dangerous means and where this less dangerous means are not sufficient, they may use firearms only to the minimum extent necessary. In this case, the proportionality and necessity are also a guiding principle during dispersal of violent assemblies.

2.6.2. The Use of Force During Policing Persons in Custody or Detention

The Basic Principle provides the circumstances in which the police officer may use force and firearms against detainees under principle 15 and 16. According to principle 15, the police officer may use force against the detainees when strictly necessary to maintain security and order within the institutions or when personal safety is threatened. In addition to using force, the police officer may use firearms in self defense or in defense of others against the immediate threat of death or serious injury or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.⁶⁵ Thus, according to principle 9, 15 and 16, the police officer may use both force and firearms against the detainees.

There are no other permissible circumstances under which the police officer may use force against the detained person.⁶⁶ This can be understood from an absolute prohibition of torture by different human rights instruments,⁶⁷ and also the right of detainees to human treatment precludes the use of force for the purpose of obtaining confessions of crime or obtaining intelligence.⁶⁸ Thus, no leeway for police officer to use force against the detainees other than those permissible circumstances expressed under principle 9, 15 and 16 of the Basic Principles.

⁶⁴ Ibid

⁶⁵ Basic Principles (n 6) principle 16.

⁶⁶ Crawshaw, '*International Standards on the Right to Life and the Use of Force by Police*' (n 2) 87.

⁶⁷ UN General Assembly Resolution 39/46 of 10 December 1984, The Convention Against Torture and Other cruel, Inhuman or Degrading Treatment or Punishment (CAT), article 2(2). The CAT was adopted by General Assembly on 10 December 1984 and entered into force on 26 June 1987. This convention declared the absolute prohibition of torture by stating that '2. No exceptional circumstances whatsoever, whether a state of war or threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. 3. An order from a superior officer or a public authority may not be invoked as a justification of torture. in addition to this,art.5 of UDHR, art.7 of ICCPR, Standard Minimum Rule, rule 31, and art. 5 of Code of Conduct prohibited act of torture.

⁶⁸ Ibid

2.6.3. The Use of Force to Make Arrest

There are circumstances in which the law enforcement officials are permitted to use force to make lawful arrest. The law enforcement officials may use force to arrest person for alleged commission of the offence only when all other non violent means of arresting have failed. In such case, the police officers may use force to arrest only as much force as necessary to effect arrest. In addition to this, the Basic Principles sets out the standards in principle 9 for law enforcement officials that they may use firearms in extreme circumstances to arrest persons who pose a danger such as imminent threat of death or serious injury, serious crime that involves a severe threat to life and resisting their authority only when less extreme means are insufficient to achieve legitimate objectives. Moreover, the commentary to article 3 of Code of Conduct also specified that the police officers may use force as reasonably necessary to make lawful arrest of offenders or suspect offenders, but no force going beyond that may be used. As such, the force used to make arrest must be to the extent required to make arrest and also must be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

2.7.Obligations of the Government and Law Enforcement Agencies on the Use of Force

2.7.1. Qualifying, Training and Counseling the Police on the Use of Force

According to principle 18 of the Basic Principles, governments and law enforcement agencies have an obligation to ensure that all police officers are selected by proper screening procedures, and have appropriate moral, psychological and physical qualities for effective exercise of their functions. In addition to this, the police officer should receive continuous and thorough professional training and their continued fitness to perform these functions is the subject of periodic review. The government and law enforcement agencies have an obligation to give training for police officers and to test their ability in accordance with appropriate proficiency standards on the use of force.⁶⁹ According to principle 19 of the Basic Principles , those police officers who are required to carry firearms should be authorized to do so only upon completion of special training in their use. In addition to this, principle 20 of the Basic Principles provides that, while giving the training for police officers, the government and law enforcement agencies

⁶⁹ Basic Principle (n 6) principle 19.

shall have an obligation to give special attention to issues of police ethics and human rights, to alternative use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behavior and the method of persuasion, negotiation and mediation, as well as to technical means with a view to limiting the use of force and firearms. And also, the law enforcement agencies are required to review their training programmes and operational procedures in the light of particular incidents. Furthermore, principle 21 of the Basic Principles provides that the governments and law enforcement agencies shall make stress counselling available to police officers who used force and firearms in their duties. In any cases, the governments and law enforcement agencies should allocate resources to meet all the requirements on selection, training and provide equipments to help the police officers discharge their responsibilities and perform their function efficiently and effectively.

2.7.2. Establishing an Effective Reporting and Review Procedures

Principle 22 of the Basic Principles requires the government and law enforcement agencies to establish effective reporting and review procedure for all incidents where death or injury is caused by the use of force and firearms by police officers and where the police officers used firearms in the performance of their duties. For all incidents to be reported, the government and law enforcement agencies must establish effective review process and independent administrative or prosecutorial authorities to exercise jurisdiction in appropriate circumstances. On the other hand, the police officers, who have caused the death and serious injury or other grave consequences, have an obligation to send promptly a detailed report of all incidents to competent authorities responsible for administrative review and judicial control.⁷⁰ That means the police officer should report the use of force incident in a narrative report and must clearly articulate the details of the event from beginning to end. Moreover, principle 23 also provides that all persons affected by the use of force and firearms or their legal representatives must have an access to independent process including judicial process.

2.7.3. Ensuring Accountability for Unlawful Use of Force

The governments have an obligation to ensure that the police accountability mechanism for unlawful use of force and firearms is in place in order to enhance public confidence towards the

⁷⁰ Ibid, Principle 22.

police itself and also to protect human rights against arbitrary and abusive use of force and firearms. In this regard, the Basic Principle requires the government to ensure that arbitrary or abusive use of force and firearms by police officers is punished as criminal offence according to the law and also the government must ensure that the superior officers are held responsible for unlawful use of force and firearms by police officers under their command.⁷¹ The superior officers are held responsible under the circumstances that if they know or should have known the incidents of unlawful use of force and firearms by police officers under their command and they did not take any preventive measures or reported such unlawful use force and firearms by police officers.⁷² According to principle 8 of the Basic Principles, the police officers and superior officers who are held responsible for unlawful use of force and firearms cannot invoke exceptional circumstances like internal political instability or any other public emergency as a justification for their unlawful use of force and firearms. This is because of the fact that an arbitrary use of force and firearms can deteriorate public confidence towards the police and, hence, must not be tolerated and also cannot be justified under any exceptional circumstances. Thus, the government must ensure that the police and superior officers are held liable for their actions or abuse of power at a disciplinary level as well as criminally liable.

2.7.4. Adopting and Implementing the Laws Governing the Use of Force

The government and law enforcement agencies have an obligation to provide the legal framework within which the police should operate and perform the function expected from them. To perform their duties and responsibilities efficiently and effectively, the police needs the legal framework that guide their action. Thus, the government and law enforcement officials are responsible to ensure that the legal framework governing the use of force by police officers is sufficiently clear in order to protect the public against arbitrary and abusive use of force and firearms and also to prevent the police from unlawful acts.⁷³ The police officer must be given a clear instruction and guidance both in legal terms and training terms as to how and when they use force and firearms. In addition to this, the legal framework promotes a continuous assessment and evaluation of each situation and helps police officers understand and make use of

⁷¹Ibid, Principle 7 and 24.

⁷² Ibid, Principle 24.

⁷³ Murdoch and other (n 3) 22.

a variety of force option to respond to potentially violent situations.⁷⁴ While enacting the laws that govern the use of force and firearms, the government and law enforcement agencies must keep the ethical issues associated with the use of force and firearms constantly under review.⁷⁵ In other words, the requirement to keep ethical issues constantly under review implies a systematic review of such issues in the light of different situations involving the use of force and firearms by law enforcement officials as they arise, and reviews of developments in techniques and equipment.⁷⁶ Generally, the government and law enforcement agencies must adopt and implement national legal framework on use of force and firearms by police officers.

⁷⁴ Ron Hoffman and others, 'Canada's National Use of Force Framework for Police Officers' <http://www.policiechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1397&issue_id=102004>accessed 23 March 2015.

⁷⁵ Basic Principle (n 6) principle 1.

⁷⁶ Crawshaw, '*International Standards on the Right to Life and the Use of Force by Police*' (n 2) 82.

Chapter Three

The Ethiopian Legal Framework on the Use of Force by Federal Police

3.1. The Constitution of the Federal Democratic Republic of Ethiopia

Even though the Constitution of the Federal Democratic Republic of Ethiopia (hereinafter the FDRE Constitution) has no specific provisions on the use of force, it has contained a number of fundamental human rights and freedoms that has to be respected and enforced by all government organs of the state, including the Federal Police, in the performance of their duties. All government organs have the responsibility and duty to respect and enforce the fundamental human rights and freedoms contained in the chapter three of the constitution as clearly stated and declared under article 13(1) of the FDRE Constitution. According to this article, the Federal Police, as one part of executive branch of the government, have an obligation to respect and enforce fundamental human rights and freedoms that are enshrined under chapter three of the FDRE Constitution and other international human rights treaties that are ratified by Ethiopia.

The FDRE Constitution protected a number of fundamental human rights that are vulnerable to violation while the police exercise their use of force power. For example, article 15 of the FDRE Constitution stated that: *‘Every person has the right to life. No person may be deprived of his life except as a punishment for a serious criminal offence determined by law’*. In addition to this, article 16 of the FDRE Constitution recognized the right to security of person by saying that *‘Everyone has the right to protection against bodily harm’*. Moreover, the right to liberty was also guaranteed under article 17 which expressed as: 1. *‘No one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law.* 2. *No person may be subjected to arbitrary arrest, and no person may be detained without a charge or conviction against him’*. Furthermore, article 18(1) of the FDRE Constitution expressed the prohibition of torture as *‘Everyone has the right against cruel, inhuman or degrading treatment or punishment’*. The prohibition of torture is absolute and without exception. The police should respect these human rights and freedoms while performing their duties.

The Federal Police have an essential role in the protection of the right to life. The state always meets its obligation under international and national law to protect life through the police

service. This is a positive aspect of the relationship between human rights and policing, police as protectors of fundamental human rights.⁷⁷ Even though the right to life is a fundamental human right, it is not given absolute protection under FDRE Constitution unlike the prohibition of torture. It can be taken away as punishment for a serious criminal offence determined by law. It is clearly known that the day to day functions of the police may involve the use of force against person to achieve legitimate objectives. Thus, the right to life must be protected by police while exercising their use of force power against person.

Moreover, the FDRE Constitution prohibited arbitrary arrest under article 17(2). There must be legal grounds for arrest, and also the arrest must be executed in a lawful manner as clearly provided procedures under article 19 of FDRE Constitution. Since the police officers are given a power to arrest, they may use force to effect lawful arrest, if necessary. Because of this, the use of force during arrest requires protection because the arrested person is vulnerable to particular forms of abuse.

3.2. The Criminal Code of Ethiopia of 2005

The Criminal Code of the Federal Democratic Republic of Ethiopia of 2005(hereinafter the FDRE Criminal Code) provides relevant provision to police function and circumstances under which the police officers, either as an individual or official capacity, are permitted to use force against persons in the performance of their duties. This law enshrined provisions that can give direction for police to use force while exercising their power. Specifically, it provides permissible circumstances for the use of force by police officers in the performance of their duties. These permissible circumstances are stated in the following articles.

Article 68. - Acts Required or Authorized by Law.

Acts required or authorized by law do not constitute a crime and are not punishable; in particular:

(a) Acts in respect of public, state or military duties done within the limits permitted by law;

According to article 68 (a) of the FDRE Criminal Code, a legal obligation or permission to do an act connected with public duties is a complete justification when the doer complies with the legal

⁷⁷ Crawshaw, *Police and Human Rights* (n 54) 78.

requirements governing doing of the act.⁷⁸ Within the meaning of this article, the acts of police officer in the performance of their duties within the limits permitted by law are lawful act under the criminal law and not punishable. For instance, the police officer is authorized under the Criminal Procedure Code of Ethiopia to use all proportionate means to make arrest if such person forcibly resists the endeavors to arrest or attempts to evade the arrest.⁷⁹ In such cases, the act of arrest is a lawful act for the police officer if the act of arrest is done within the limit permitted by law. In the same manner, the police power to use force against person in order to enforce the laws and maintain or restore order is a lawful act if such use of force is within the limits permitted by law.

Article 78.- Legitimate Defense

An act done in self-defense or the defense of another person against an unlawful attack or an imminent and unlawful attack against a legally protected right shall not be punishable if the attack or imminent attack could not have been otherwise averted and if the defense was proportionate to the needs of the case.

Article 79. - Excess in Legitimate Defense

1. When a person in repelling an unlawful attack or an imminent and unlawful attack exceeded the limits of legitimate defense by using disproportionate means or going beyond the acts necessary for averting the danger, the Court shall, without restriction, reduce the penalty.

According to the above articles, the police officer, either as an individual or in official capacity, can use force against persons in self defense or the defense of another person from unlawful attack or an imminent and unlawful attack provided that the attack or imminent attack could not have been otherwise averted. In both capacities, the police officers can use proportionate force to defend him/herself or other person or legally protected rights, for example- property, against unlawful attack if the other means to avert the danger is not available. In such case, the defense should fulfill conditions specified under article 78 of the FDRE Criminal Code to be legitimate. Consequently, the act of defense is not punishable under the criminal law.

⁷⁸ Glory Nirmala. K and other, *Criminal Law II: Teaching Material*, (Prepared under the Sponsorship of Justice and Legal System Research Institute, Unpublished 2009) 48.

⁷⁹ Proclamation No.85/1961, Criminal Procedure Code of Ethiopia of 1961, article 56(4).

However, if the act of the police officer goes beyond the acts necessary for averting the danger, it is no longer lawful but excusable as clearly stated under article 79(1) of the FDRE Criminal Code. In other words, the right of defense in no case extends to the inflicting of more harm than necessary. The force which the police officers are entitled to use must be proportionate to the unlawful attack.

3.3. The Criminal Procedure Code of Ethiopia of 1961

The Criminal Procedure Code of Ethiopia of 1961(hereinafter the Criminal Procedure Code) allowed the police to use force in order to effect lawful arrest and entry into the premises of suspected in order to conduct search in the following manner.

Art. 33(4) - Issue of search warrant

4. *In effecting a search the investigating police officer or member of the police may use such force as is necessary and may where access to premises is denied use reasonable force to effect entry.*

Art. 56(4) - Arrest how made

4. *If such person forcibly resists the endeavors to arrest or attempts to evade the arrest, such officer may use all means proportionate to the circumstances to effect the arrest.*

The power to search people and building and other private property is an essential power to prevent crime and to get relevant evidence for suspected crime. While entering into the premises, police officers must seek admittance by announcing their presence, identifying themselves as police officers, and stating their purpose.⁸⁰ In such case, search may be executed without any problem if the investigation police officers are allowed to enter into the premises by suspected person. However, if the suspected person denied an access to his/her premises and use of force is necessary under the circumstances, the investigating police officers are allowed to use reasonable force to effect entry into the premises and gather any materials evidence that may be used for the crime suspected.

Moreover, the Criminal Procedure Code also authorized the police officer to use force to effect arrest or to prevent escape of arrestee. According to this article 56(4) of the Criminal Procedure

⁸⁰ Aderajew Teklu and other, *Ethiopian Criminal Procedure: Teaching Material*, (Prepared under the Sponsorship of Justice and Legal System Research Institute, Unpublished 2009) 150.

Code, the precondition to be met for the police officers to use force against an arrestee is that the person to be arrested must either forcibly resists the endeavors to arrest or attempts to evade the arrest. When one of these preconditions is met, the police officer can use proportionate force to the circumstances. And also, the extent of force required to effect arrest is justified by the circumstance at the time of arrest. In such case, the Criminal Procedure Code has allowed the police officer to use reasonable force in order to effect entry into the premises of the suspected person when the later denied an access and also to use all means proportionate in the circumstances to effect arrest when the arrested person forcibly resists the endeavors to arrest or attempts to evade the arrest.

3.4. Anti-Terrorism Proclamation No.652/2009

The Ethiopian government has proclaimed anti-terrorism law to fight adequately, prevent and control act of terrorism thereby ensuring that all people live in peace and security. This proclamation has authorized the Federal Police or regional state police to whom the power of the Federal Police is delegated⁸¹ to use necessary and reasonable force to take samples if the suspect is not willing to give samples for medical test.⁸² The police officer may resort to use necessary force when no reasonably effective alternative appears to exist to achieve lawful purpose. The force used must be reasonable and based on the circumstances presented at the time of resistance.⁸³ The circumstances that justify the amount of force to be employed to undergo medical test is determined by, among others, the level of threat or resistance presented by the suspected. Therefore, the Federal Police, who is empowered to investigate terrorist cases, may use necessary and reasonable force to take samples in case where the suspected is not willing to give samples for medical test.

⁸¹ Proclamation No.652/2009, A Proclamation on Anti Terrorism, entered into force on August 28, 2009, article 2(11).

⁸² Ibid, article 21. According to this article the police may order a person suspected of acts of terrorism to give samples of his hand writing, hair, voice, finger print, photograph, blood, saliva and other body fluids, for investigation. Moreover, he may order the suspect to undergo medical test. If the suspect is not willing for the test, the police may use necessary and reasonable force to take samples.

⁸³ You can see 'use of force' <<http://www.cops.usdoj.gov/pdf/Use-of-Force.pdf>> accessed 6 May 2015.

3.5. The Federal Police Officers Administration Council of Ministers Regulation No.268/2012

The Council of Ministers has issued the Federal Police Officers Administration Council of Ministers Regulation No.268/2012 (hereinafter the Regulation No.268/2012) for the purpose of administering the Federal Police in 2012. This regulation is one of the legal frameworks by which the Federal Police is allowed to use force and firearms against persons⁸⁴ to maintain and ensure peace and security of the public and the state as well as enforce the laws. The only applicable provision to use of force by the Federal Police is stated in the following manner.

Article 45. Use of Force

- 1. A police officer may use proportionate force when faced with clear resistance in discharging his duties and where other options are not available.*
- 2. A police officer may use firearms pursuant to sub-article (1) of this article only where other measures short of firearms are insufficient to:*
 - a) Protect his own life or the life of others from death or from grave bodily injury;*
 - b) Apprehend the dangerous criminal suspect or to restraint a suspect or convicted prisoners from escaping.*
- 3. A police officer who has used firearms pursuant to sub-article (2) of this article shall:*
 - a) Help the injured person to get emergency medical treatment; and*
 - b) Forthwith submit a report of the incident to the concerned higher official.*

According to sub-article (1) of article 45, the Federal Police is allowed to use proportionate force when faced with clear resistance in discharging their duties and where other options are not available. The Federal Police may resort to use force which is proportionate with the circumstances only when other non-violent means are insufficient to discharge their duties or when other options are not applicable in the circumstances. In case where the use of force is unavoidable in the circumstances, the police must be guided by the principle of proportionality. The circumstances that justify the use of force by Federal Police are the clear resistance to his/her duties and unavailability of other options.

⁸⁴ Regulation No.268/2012, Council of Ministers Regulation to Provide for the Administration of Federal Police Officers, entered into force on November 19, 2012, article 45.

In addition to using force, the Federal Police may also use firearms against persons only where other means of force are insufficient to achieve legitimate objectives. Where other measures are not sufficient or not practicable in the circumstances, and where the threat of death or serious injury is directed against the life of the police officer or other's life, the police officer may use firearms to save his/her or other's life from death or serious injury. Moreover, the police may also use firearms in order to arrest dangerous criminal suspects or to prevent escape of dangerous criminal suspects and convicted prisoners. These are the two permissible circumstances that justify the use of firearms by the Federal Police against persons and no other grounds are provided under this article.

Article 45(3) of this Regulation provides an obligation of police officer who used firearms against persons that he/she must ensure the provision of medical aid to all injured persons and also must submit the report of the incidents to concerned higher official. This Regulation did not express another obligation and responsibility of police officer who used firearms against persons. Generally, the Regulation No.268/2012 allows the Federal Police to use force and firearms in order to discharge their duties and save their or others life as well as to effect arrest and prevent escape of suspected and convicted prisoners.

Chapter Four

Assessing the Laws Governing the Use of Force by the Federal Police of Ethiopia

4.1. Assessing the Laws Governing the Use of Force in line with International Standards on Policing

Having discussed the Ethiopian legal framework on the use of force by the Federal Police, this chapter will assess the adequacy and compatibility of the Ethiopian legal framework vis-a-vis international standards on policing explained under chapter two of this thesis.

A. Assessing with Respect to Governing Laws

The UN standards on policing, namely the Basic Principles and the Code of Conduct, provides the standards for law enforcement practices that are consistent with the provisions on basic human rights and freedoms. These international standards underlined that the rules and regulation on the use of force and firearms should includes several guidelines that specify the circumstances by which law enforcement officials are permitted to carry firearms, including the guidelines on the types of firearms permitted and on control and storage of firearms. Also, these instruments provide a system of effective reporting and review procedures and accountability. As such, as discussed under chapter two of this thesis, the UN standards on policing embody provisions that are given the force of laws in human rights treaties.⁸⁵ Additionally, as explained under chapter two, the UN Basic Principles and Code of Conduct should be taken into account when drafting national legislations and be brought to the attention of law enforcement officials and the public.⁸⁶

But, when we come to Ethiopian legal framework on the use of force and firearms by police, the Federal Police has insufficient legal base on the use force and firearms against persons in their duties. For example, as explained under chapter three of this thesis, Regulation No. 268/2012 has provided only one article, i.e. article 45. Article 45(1) of this Regulation allowed the Federal Police to use proportionate force when faced with clear resistance in discharging their duties and

⁸⁵ Crawshaw, '*International Standards on the Right to Life and the Use of Force by Police*' (n 2) 91.

⁸⁶ Basic Principles (n 6) preambular paragraph 10.

where other options are not available. In addition to using force, the Federal Police are also allowed to use firearms against persons under article 45(2) of the Regulation No.268/2012 to save their or other's life from death or serious injury as well as to arrest dangerous criminal suspects or to prevent escape of dangerous criminal suspects and convicted prisoners. This article 45 of Regulation No.268/2012 did not provide detailed provisions on the use of force and firearms by the Federal Police, and also it did not mention the types of firearms and ammunition permitted. So that, article 45 of Regulation No.268/2012 is insufficient to govern the use of force and firearms by the Federal Police.

Moreover, the Criminal Procedure Code of Ethiopia of 1961 also allowed the police officer under article 56(4) and 33(4) to use all means proportionate to the circumstances to effect the arrest and also to use reasonable force to effect entry respectively.⁸⁷ In similar ways, article 21 of Anti-Terrorism Proclamation No.652/2009 also allowed the Federal Police to use necessary and reasonable force to take samples from the suspects.⁸⁸ These provisions are not detailed laws and clear; and, hence, they cannot give clear instruction and guidance as to how, when and under what circumstances the Federal Police are permitted to use force and firearms against persons to achieve legitimate objectives. None of the above provisions of different laws provide specific and sufficient rules on the use of force and firearms by the Federal Police especially on effective accountability mechanism and development and deployment of weapons by the Federal Police in their duties.

Moreover, the above scattered provisions of different law couldn't help the police to protect human rights and freedoms as enshrined in the FDRE Constitution and international human rights instruments to which Ethiopia is a party in their duties especially while using force and firearms. Furthermore, police officers may not understand what level of force they are permitted to use and also they are not clear enough with various levels of force options. This is because of the fact that the Federal Police have no use of force policy, rules or regulation that can adequately govern the use of force and firearms against persons. Also, the Ethiopian government did not even give effect for UN standards on policing by adopting rules and regulations on the use of force and firearms by police officers even though both instruments stressed that the

⁸⁷ Criminal Procedure Code of Ethiopia of 1961(n 79) article 56(4) and 33(4).

⁸⁸ Proclamation No.652/2009 (n 81) article 21.

national government should enshrine the principles within the national legislations and practices. As explained under chapter three of this thesis, the above different provisions on the use of force and firearms are insufficient and scattered in different laws. This shows us that the laws governing the use of force and firearms by the Federal Police are not adequate to govern its application.

B. Assessing with Respect to an Effective Reporting and Review Procedures

Principle 22 of the Basic Principles requires the government and law enforcement agencies to establish effective reporting and review procedure for all incidents where death or injury is caused through the use of force and firearms by police officers and where the police officers used firearms in their duties. The Basic Principles also needs the national government to establish effective review process and independent administrative or prosecutorial authorities to exercise jurisdiction in appropriate circumstances. As such, the police officers who used force and firearms in their duties have an obligation to send promptly a detailed report of all incidents to competent authorities responsible for administrative review and judicial control.⁸⁹ In addition to this, the Basic Principles also requires that all persons affected by the use of force and firearms or their legal representatives must have an access to independent process including judicial process.

However, in the case of Ethiopia, article 45(3-b) of Regulation No.268/2012 has provided an obligation of police who used firearms as '*A police officer who has used firearms pursuant to sub-article (2) of this article shall: (b) Forthwith submit a report of the incident to the concerned higher official*'. According to this article, the Federal Police who used force only, but not firearms, has no obligation to submit report of the incidents to concerned higher official. That means these obligation concerns only the police who used firearms in their duties. This legal provision is not compatible with the principle 6 of the Basic Principles. This is because, according to principle 6, the police officers who used both the force and firearms have an obligation to submit a report to their superiors. Moreover, this reporting obligation lacks sufficient guidance as to the content of the report particularly the description of the force used and resistance encountered. This shows us that reporting system provided by Regulation

⁸⁹ Basic Principle (n 6) principle 22.

No.268/2012 is not sufficient to ensure accountability for unlawful use of force by the Federal Police.

Furthermore, article 45(3-b) of Regulation No.268/2012 obligates the Federal Police who have used firearms to submit a report of incidents to concerned higher official, i.e., higher officials of the Federal Police. According to this article, the power to receive report and review action of the police is given to the higher officials of the Federal Police. This shows us that an independent and competent authority responsible for review of the police action is not established by Regulation No.268/2012. Such lack of independent and competent authority responsible for administrative review of police action is a major problem because there would no checks and balance within the police agencies. Also, higher officials of the Federal Police cannot be independent and impartial to review their police action. Unlike the Basic Principles, in addition to such lack of independent and competent authorities responsible for review of police action, effective review process for incidents was not provided by Regulation No.268/2012. As such, neither Regulation No.268/2012 nor other laws have established effective review process or effective mechanism for investigation of complaints against police by higher officials of the Federal Police. Therefore, Ethiopian legal framework does not established effective reporting and review procedures and also not established independent and competent authorities responsible for administrative review and judicial control as required by the Basic Principles.

C. Assessing with Respect to Accountability of the Police on Unlawful Use of Force

The Basic Principle requires the government to ensure that arbitrary or abusive use of force and firearms by police officers is punished as criminal offence according to the law and also the government must ensure that the superior officers are held responsible for unlawful use of force and firearms by police officers under their command.⁹⁰ This Basic Principles stressed that the superior officers are held responsible under the circumstances that if they know or should have known the incidents of unlawful use of force and firearms by police officers under their command and they did not take any preventive measures or reported such unlawful use force and firearms by police officers.

⁹⁰ Ibid, Principle 7 and 24.

But, the Ethiopian legal framework did not provide specific provision on accountability for unlawful use of force and firearms against persons by police officers. However, the general provision of Criminal Law under article 68(a), 73 and 74 may give direction for the responsibility of superior officers and subordinate officers and also for acts done above the limits permitted by law. According to these articles, the Federal Police who used force and firearms unlawfully or above the limits permitted by law may be held accountable by the general provision of Criminal Law. These general provisions need a detailed law to be effective. But, Regulation No.268/2012 did not enshrine the accountability principle for unlawful use of force and firearms in it. Also, since the Regulation No.268/2012 has not established effective review process and independent administrative or prosecutorial authorities to exercise jurisdiction in appropriate circumstances, it is difficult to ensure accountability for unlawful use of force and firearms by the Federal Police. The Regulation No.268/2012 has empowered higher officials of the Federal Police to receive report with a view to review their police action. Such review by higher officials may not be effective because they cannot be independent and impartial to review their police action. Because of this, it is difficult to ensure accountability for unlawful use of force and firearms by the Federal Police. Hence, there is no sufficient legal base to ensure accountability within the police institutions and, as such, no accountability mechanism with sufficient resources and powers to make it effective. Therefore, Ethiopian legal framework is not sufficient to ensure accountability for unlawful use of force and firearms by the Federal Police because the above laws did not provide specific and clear provisions on accountability mechanism.

D. Assessing with Respect to Procedures Before and After the Use of Force and Firearms

The police can use firearms in an extreme measure as stated under Principle 9 of the Basic Principles. This is further illustrated by principle 10 and commentary paragraph to article 3 of the Code of Conduct. The police needs to observe the procedures prior to the actual use of firearms. Accordingly, police officers shall identify themselves as police official and give a clear warning of their intention to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place them at risk or would create a risk of death or serious harm to other

persons, or would be clearly inappropriate or pointless in the circumstances of the incident.⁹¹ In the same manner, the police officer who used force and firearms must provide medical assistance for persons injured in the operation, and also must inform family members or friends of the injured person.⁹² Furthermore, the police officers have an obligation to submit the report of the incidents and allow investigation of situations when requested.⁹³

However, in the case of Ethiopian legal framework, the Regulation No.268/2012 has allowed the Federal Police to use firearms without providing procedures before the use of firearms as clearly provided under principle 10 of the Basic Principles. As stated above, principle 10 of the Basic Principles provides the procedures before the use of firearms that the police officers should identify themselves as police official and give a clear warning of their intention to use firearms before using firearms in their duties. These procedures are not totally provided by the Regulation No.268/2012. In the same manner, regarding the procedures after the use of firearms, this Regulation requires the Federal Police to submit report of the incidents and also provide medical assistance for injured.⁹⁴ Unlike principle 5 of the Basic Principles, Regulation No. 268/2012 did not obligate the Federal Police to inform the family members or friends of an injured and also to allow investigation of the situation. These procedures are provided by the Basic Principles; but not specifically provided in the Regulation No.268/2012 for the Federal Police who used firearms in their duties. Hence, as discussed above, provision of the Regulation No.268/2012 is not compatible with the Basic Principles.

Moreover, the Regulation No.268/2012 did not provide the procedures after the use of force for Federal Police, i.e. no procedures after the use of force are provided at all. Unlikely, principle 5 of the Basic Principles provides the procedures that the police officer who used force and firearms must provide medical assistance for persons injured in the operation, and also must inform family members or friends of an injured person. In addition to these procedures, the Basic Principles also provides the procedures after the use of force such as an obligation to submit the report of the incidents and allow investigation of situations when requested.⁹⁵ However, the

⁹¹ Ibid, Principle 10.

⁹² Ibid, Principle 5(c,d)

⁹³ Ibid, Principle 6,11(f),22 and 23.

⁹⁴ Regulation No.268/2012(n 84) art.45(30).

⁹⁵ Basic Principle (n 6) principle 6,11(f),22 and 23.

procedures after the use of force are not totally provided by the Regulation No.268/2012 as required by principle 5(c,d) and 6 of the Basic Principles. As such, with respect to procedures before and after the use of force and firearms by police officers, Regulation No. 268/2012 has no sufficient provisions and also not compatible with the Basic Principles especially as required by principle 5(c,d), 6 and 10 of the Basic Principles.

E. Assessing with Respect to Development and Deployment of Weapons

Principle 2 of the Basic Principles urges the governments and law enforcement agencies that they should equip law enforcement officials with various types of weapons and ammunition, which includes development of non-lethal incapacitating weapons that would allow for a differentiated use of force and firearms. Additionally, this principle requires the law enforcement official to be equipped with self defensive equipments in order to decrease the need to use weapons of any kind. Furthermore, principle 3 warns that the development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled. Especially principle 11 requires law enforcement agencies to specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted and to regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them.

However, in the case of Ethiopia, there is no law that specifies the types of firearms and ammunition permitted for Federal Police and also that would allow for a differentiated use of force and firearms by the Federal Police. Also, there is no law that specifies the circumstances in which firearms can and cannot be used and also no laws that provide less violent weapons to police. Moreover, there is no law that provides a range of use of force options, including non-lethal or less than lethal weapons. Furthermore, as explained above, the Regulation No.268/2012 did not provide specific laws that limits and controls the carrying of firearms by Federal Police. Thus, the Federal Police do not have specific law that properly control the development and deployment of weapons in discharging their duties as required by the Basic Principles.

Generally, as discussed above, though the UN Basic Principles promotes enactment of domestic legislation to give effect to its framework under principle 1 and also the UN General Assembly Resolution 34/169 on Code of Conduct requested the government to give attention for its use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials, the Ethiopian government and Ethiopian Federal Police Commission did not provide the laws that give effect for both Basic Principles and Code of Conduct. Because of this, no adequate legal framework on the use of force and firearms by the Federal Police and, as such, the existing laws are insufficient and scattered in different laws. Moreover, the provisions on the use of force and firearms do not accord with the Basic Principles and Code of Conduct. Thus, the legal base for the use of force and firearms by the Federal Police of Ethiopia is not sufficiently provided in specific laws in order to govern the use of force and firearms adequately as required by both Basic Principles and Code of Conduct.

4.2. Consequences of Inadequacy of the Laws Governing the Use of Force

4.2.1. Violation of Fundamental Human Rights and Freedoms

It is clear that the use of force by police officer against persons has a potential abuse of human rights. Because of this, unless application of the use of force and firearms is efficiently and effectively governed by adequate legal framework, such use of force and firearms may cause loss of life, deprivation of liberty and security of person. As such, inadequacy of laws has the potential to be a cause for violation of human rights and freedoms. For example, the application of excessive force or unlawful use of force by police can result in serious violation of human rights including violation of the right to life.⁹⁶ In addition to this, the lack of adequate legal framework on the use of force and firearms by police can also contributes to the practice of excessive force against person while attempting to maintain public order. Furthermore, lack of adequate laws may also be a cause for weak accountability structures which can promote a culture of impunity within the police agencies.⁹⁷

⁹⁶ Crawshaw, 'International Standards on the Right to Life and the Use of Force by Police' (n 2) 79.

⁹⁷ CHRI and APCOF, *Common Standards for Policing in East Africa*, (Commonwealth Human Rights Initiatives 2010) 60.

<http://www.humanrightsinitiative.org/publications/police/common_standards_for_policing_in_east_africa.pdf> accessed 20 February 2015. This is a joint project of the Commonwealth Human Rights

4.2.2. Low Level of Awareness of the Federal Police

Lack of adequate legal framework on the use of force and firearms has also a consequence of contributing to the low level of awareness by the Federal Police on the proper use of force and firearms. Since adequate law is not in place, the police are not clear enough on their responsibility on the use of force and firearms. Hence, the Federal Police cannot get clear instruction and guidance as to how, when and under what circumstances they are permitted to use force and firearms to achieve legitimate objectives. Moreover, Ethiopian legal framework couldn't help the police to know and protect human rights and freedoms as recognized by the FDRE Constitution and other international human rights instruments to which Ethiopia is a party. Thus, lack of adequate laws on the use of force and firearms can contribute to the low level of awareness by the Federal Police on the lawful application of the use of force and firearms.

Chapter Five

Conclusion and Recommendations

5.1. Conclusion

To achieve lawful purpose, the police officers are permitted to use force and firearms against persons when necessary and unavoidable in the circumstances. While using force and firearms, the police is required to respect and protect human rights and use such force to the extent required for the performance of their duty. It is clear that the exercise of such use of force power has a potential abuse of human rights. Because of this, the police agencies must ensure that the police officers have the training and equipment to allow them to discharge their duties effectively and efficiently. Especially the police officers should be trained in all force options to employ the appropriate level of force in response to resistance of subjects and also the police agencies should provide a wide range of means of force and equip the police officers with various types of weapons and ammunition that would allow for differentiated use of force. In addition to this, the government also must ensure that the legal framework governing the use of force by police officer is adequately in place in order to protect human rights and prevent the police from abusing their power. Furthermore, in order to ensure effective application of the use of force and firearms, the government must establish an effective reporting and review procedures, and ensure accountability mechanism within the police agencies.

While exercising their use of force power, the police officers are required to consider essential principles before using force, among others; proportionality, legality, accountability and necessity principle. The police officers may use force in different range of context such as during arrest of violent person; conducting a lawful search, policing unlawful assemblies and persons in custody or detention.

The UN General Assembly has adopted the Code of Conduct for Law Enforcement Officials by Resolution 34/169 of 17 December 1979 to provide the citizenry served by law enforcement officials with protection of all their rights and interests. This Code of Conduct provides ethical and legal guidelines on the use of force and firearms for law enforcement officials in order to prevent arbitrary and abusive use of force and firearms against the persons. The General Assembly recommended that all UN members adopt this Code of Conduct as a framework of

national legislation for police officer to practice. In addition to this soft law, to address the issue of excessive force and firearms by police officers, the Eighth UN Congress on Prevention of Crime and Treatment of Offenders passed the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials in Havana, Cuba, in 1990. This Basic Principles recommend that all states adopt and implement rules and regulations on the use of force and firearms by the police officers. Though these instruments recommend an enactment of domestic legislation to give effect to its framework, the Ethiopian government and Ethiopian Federal Police Commission did not provide the laws that give effect for both instruments, i.e., Basic Principles and Code of Conduct. Because of this, the Federal Police have no adequate legal framework on the use of force and firearms.

Furthermore, there are other international human rights instruments such as UDHR, ICCPR and African Charter on Human and Peoples' Rights that provide the standards to be respected while the police officer exercise their use of force power in the performance of their duties.

The Ethiopian government did not provide specific rules and regulation to govern the use of force and firearms by the Federal Police. However, there are relevant provisions of law in different laws such as Criminal Procedure Code of Ethiopia of 1961, Anti-Terrorism Proclamation No.652/2009 and Regulation No.268/2012 and these laws permit the Federal Police to use force and firearms against person in order to discharge their duties. These existing laws are not adequate to govern the use of force and firearms by the Federal Police and also do not accord with the Basic Principles and Code of Conduct. Moreover, the legal base on the use of force and firearms by the Federal Police is not sufficiently provided in specific laws in order to govern the use of force and firearms adequately as required by both Basic Principles and Code of Conduct.

Lack of adequate laws governing the use of force and firearms by the Federal Police is the main challenge for Federal Police to exercise their use of force power effectively. Consequently, such lack of adequate laws can have the consequences of violation of fundamental human rights and freedoms of the people and low level of awareness by the Federal Police on the laws governing the use of force and firearms against persons.

5.2. Recommendations

The Federal Police of Ethiopia have the responsibility of ensuring peace and security of the state and the public, and maintaining the public order or restoring it whenever there is disorder, through enforcing the laws and ensuring compliance with laws. To enable the Federal Police perform their function effectively and efficiently, and also respect the right of citizens while exercising their use of force power, there is a need to take action urgently to address inadequacy of laws governing the use of force and firearms. Indeed, adequate legal framework should be provided to govern application of the use of force and firearms and also such laws must conform to international standards on policing. Thus, in order to address the gaps of law, the following recommendations are forwarded.

1. The Ethiopian government and Federal Police Commission should adopt and implement specific rules and regulations that govern the use of force and firearms by the Federal Police. The Federal Police should be guided by clear and detailed laws on the use of lethal and non-lethal force which strictly regulates its use. These laws should conform to international standards on policing, i.e. Code of Conduct and Basic Principles. In other words, the Ethiopian government and Federal Police Commission should give effect for these international standards on policing by preparing and adopting comprehensive use of force policy and also enacting specific rules and regulation or guidelines on the use of force and firearms by the Federal Police.
2. The Ethiopian government and Federal Police Commission should establish effective reporting and review procedures in order to ensure accountability for unlawful use of force and firearms by subordinate and superior police officers. To ensure this accountability, the Ethiopian government and Federal Police Commission should establish independent body to investigate serious bodily injury, deaths, deaths in police custody and allegations of unlawful use of force by the Federal Police. This independent body should be hierarchically, institutionally and practically independent from the police agencies, both in theory and practice. In addition to this, this independent body should be adequately empowered and resourced, where necessary, to conduct primary investigation of serious bodily injury, death or other allegation of unlawful use of force by the Federal Police and exercise jurisdiction in appropriate circumstances. In order to enable this

independent body effective, independent review mechanisms should be established to permit public scrutiny of investigations and their results. And also, the police officer who involved in the use of force and firearms in performing their duties should sent promptly a detailed report to this independent body and, in doing so, an officers must clearly articulate the details of the event from the beginning to end as well as the events that preceded it. The report should be accurate, complete (no gaps), clear, easy to read, concise and objective. Furthermore, specifically, the victim and/or parent should have an enforceable right to be involved in the investigation to the extent necessary to safeguard their legitimate interests.

3. Additionally, the upcoming specific laws on the use of force and firearms should provide the procedures before and after the use of firearms, including the procedure after the use of force. This law should be clear and accord with the Basic Principles.
4. The law should specify that the Federal Police should be equipped with a wide range of use of force options that would allow them for a differentiated use of force and firearms. In doing so, the development and deployment of non-lethal incapacitating weapons should be carefully evaluated and controlled through upcoming laws on the use of force and firearms by the Federal Police. In order to ensure officers use no more force than reasonably necessary to gain compliance, the law going to be adopted should possess force continuum model because it specify an appropriate level of force in conformity with the legal and policy requirements. Indeed, the law should focuses on non-violent and non-confrontational techniques, such as de-escalation, negotiation, retreat and containment techniques, to ensure use of force is the last resort. In addition to this, the law should specify the circumstances under which the Federal Police is authorized to carry firearms and prescribe the types of firearms and ammunition permitted to use and also to regulate the control, storage and issuing of firearms. In order to make use of these weapons, the Federal Police Commission should ensure that Federal Police Officers are extensively trained in the use of all weapons they are permitted to carry.

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Annexes

A. United Nations General Assembly Resolution 34/169

The General Assembly,

Considering that the purpose proclaimed in the Charter of the United Nations include the achievement of international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion,

Recalling, in particular, the Universal Declaration of Human Rights and International Covenants on Human Rights,

Recalling also the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in its resolution 345(XXX) of 9 December 1975,

Mindful that the nature of the functions of law enforcement in the defense of public order and the manner in which those functions are exercised have a direct impact on the quality of life of individuals as well as society as a whole,

Conscious of the importance task which law enforcement officials are performing diligently and with dignity, in compliance with the principles of human rights,

Aware, nevertheless, of the potential for abuse which the exercise of such duties entails,

Recognizing that the establishment for code of conduct for law enforcement officials is only one of several important measures for providing the citizenry served by law enforcement officials with protection of all their rights and interests,

Aware that there are additional important principles and prerequisites for humane performance of law enforcement functions, namely:

- a. That, like all agencies of the criminal justice system, every law enforcement agency should be representative of and responsive and accountable to the community as a whole,
- b. That the effective maintain of ethical standards among law enforcement officials depends on the existence of a well-conceived, popularly accepted and humane system of laws,

- c. That every law enforcement officials is part of the criminal justice system, the aim of which is to prevent and control crime, and that the conduct of every functionary within the system has an impact of the entire system,
- d. That every law enforcement agency, in fulfillment of the first premise of every profession, should be held to the duty of disciplining itself in complete conformity with the principles and standards herein provided and that the actions of law enforcement officials should be responsive to public scrutiny, whether exercised by a review board, a ministry, a procuracy, the judiciary, an ombudsman, a citizens' committee or any combination thereof, or any other reviewing agency,
- e. That the standards as such lack practical value unless their content and meaning, through education and training and through monitoring, become part of the creed of every law enforcement officials,

Adopts the code of conduct for law enforcement officials set forth in the annex to the present resolution and decided to transmit it to governments with the recommendation that favorable consideration should be given to its use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials.

106th plenary meeting

17 December 1979

Annex

Code of Conduct for Law Enforcement Officials

Article 1

Law enforcement officials shall at all times fulfill the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Commentary:

(a) The term 'law enforcement officials', includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

(b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

(c) Service to the community is intended to include particularly the rendition of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.

(d) This provision is intended to cover not only all violent, predatory and harmful acts, but extends to the full range of prohibitions under penal statutes. It extends to conduct by persons not capable of incurring criminal liability.

Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Commentary:

(a) The human rights in question are identified and protected by national and international law. Among the relevant international instruments are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Prevention and Punishment of the Crime of Genocide, the Standard Minimum Rules for the Treatment of Prisoners and the Vienna Convention on Consular Relations.

(b) National commentaries to this provision should indicate regional or national provisions identifying and protecting these rights.

Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Commentary:

(a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

(b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

(c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should 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. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

Article 4

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Commentary:

By the nature of their duties, law enforcement officials obtain information which may relate to private lives or be potentially harmful to the interests, and especially the reputation, of others. Great care should be exercised in safeguarding and using such information, which should be disclosed only in the performance of duty or to serve the needs of justice. Any disclosure of such information for other purposes is wholly improper.

Article 5

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Commentary:

(a) This prohibition derives from the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly, according to which: "[Such an act is] an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights [and other international human rights instruments]."

(b) The Declaration defines torture as follows:

". . . torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners."

(c) The term "cruel, inhuman or degrading treatment or punishment" has not been defined by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

Article 6

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Commentary:

- (a) "Medical attention", which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.
- (b) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgement of such personnel when they recommend providing the person in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.
- (c) It is understood that law enforcement officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

Article 7

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Commentary:

- (a) Any act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their agencies.
- (b) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.
- (c) The expression "act of corruption" referred to above should be understood to encompass attempted corruption.

Article 8

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

Commentary:

(a) This Code shall be observed whenever it has been incorporated into national legislation or practice. If legislation or practice contains stricter provisions than those of the present Code, those stricter provisions shall be observed.

(b) The article seeks to preserve the balance between the need for internal discipline of the agency on which public safety is largely dependent, on the one hand, and the need for dealing with violations of basic human rights, on the other. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur.

(c) The term "appropriate authorities or organs vested with reviewing or remedial power" refers to any authority or organ existing under national law, whether internal to the law enforcement agency or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.

(d) In some countries, the mass media may be regarded as performing complaint review functions similar to those described in subparagraph (c) above. Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws and customs of their own countries and with the provisions of article 4 of the present Code, they bring violations to the attention of public opinion through the mass media.

(e) Law enforcement officials who comply with the provisions of this Code deserve the respect, the full support and the co-operation of the community and of the law enforcement agency in which they serve, as well as the law enforcement profession.

B. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

Whereas the work of law enforcement officials * is a social service of great importance and there is, therefore, a need to maintain and, whenever necessary, to improve the working conditions and status of these officials,

Whereas a threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole,

Whereas law enforcement officials have a vital 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,

Whereas the Standard Minimum Rules for the Treatment of Prisoners provide for the circumstances in which prison officials may use force in the course of their duties,

Whereas 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,

Whereas the preparatory meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Varenna, Italy, agreed on elements to be considered in the course of further work on restraints on the use of force and firearms by law enforcement officials,

Whereas the Seventh Congress, in its resolution 14, inter alia, emphasizes that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights,

Whereas the Economic and Social Council, in its resolution 1986/10, section IX, of 21 May 1986, invited Member States to pay particular attention in the implementation of the Code to the use of force and firearms by law enforcement officials, and the General Assembly, in its resolution 41/149 of 4 December 1986, inter alia, welcomed this recommendation made by the Council,

Whereas it is appropriate that, with due regard to their personal safety, consideration be given to the role of law enforcement officials in relation to the administration of justice, to the protection of the right to life, liberty and security of the person, to their responsibility to maintain public safety and social peace and to the importance of their qualifications, training and conduct,

The basic principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by Governments within the framework of their national legislation and practice, and be brought to the attention of law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive branch and the legislature, and the public.

General provisions

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.
2. Governments and law enforcement agencies 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 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. For the same purpose, it should also be possible for law enforcement officials to be equipped with 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.

3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.
4. Law enforcement 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.
5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:
 - (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
 - (b) Minimize damage and injury, and respect and preserve human life;
 - (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
 - (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.
6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.
7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.
8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

Special Provisions

9. Law enforcement officials shall not use firearms 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. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.
10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials

at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

- (a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;
- (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
- (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
- (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
- (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;
- (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

Policing Unlawful Assemblies

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

Policing Persons in Custody or Detention

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.

Qualifications, Training and Counselling

18. Governments and law enforcement 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. Their continued fitness to perform these functions should be subject to periodic review.

19. 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 should be authorized to do so only upon completion of special training in their use.

20. 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, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

21. Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.

Reporting and Review Procedures

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, 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.
23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.
24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.
25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.
26. Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.

Note:

* In accordance with the commentary to article 1 of the Code of Conduct for Law Enforcement Officials, the term "law enforcement officials" includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.