



September 18, 2019

Rep. Jerrold Nadler
Chair

Rep. Doug Collins
Ranking Member

House Judiciary Committee

Re: Amnesty International Statement for September 19th Oversight Hearing on Policing

Dear Chairman Nadler and Ranking Member Collins:

Amnesty International USA (AIUSA) respectfully submits this statement for the record in connection with the above referenced hearing before the House Judiciary Committee. We respectfully request that this statement be included as part of the official hearing record.

Amnesty International is a global movement of more than 7 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights. We have over one million supporters, members and activists in the U.S. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

Accountability

During the past several years, the use of force by law enforcement has come under increased public scrutiny. Whether it is the deaths of Eric Garner, Michael Brown, Stephon Clark, Rekia Boyd, Laquan McDonald, or Anthony Lamar Smith—where the acquittal of St. Louis police officer Jason Stockley ignited days of protests, these deaths have forced the public to take a closer look at the laws and policies that provide law enforcement with the authority to use lethal force.

In 2015, Amnesty International released a ground-breaking report on this issue, [*Deadly Force: Police Use of Lethal Force in the United States*](#). The report contains a review of each state's statute on the use of lethal force, and establishes that none of the 50 states or Washington, D.C. comply with international law and standards.

Police officers are responsible for upholding the law, as well as respecting and protecting the lives of all members of society. Their jobs are difficult and often dangerous. We entrust them with the authority to use lethal force in certain, limited situations. That authority must be narrowly defined, and when transgressed there needs to be accountability. However, the use of lethal force by law enforcement officers raises serious human rights concerns, including in regard to the right to life, the right to security of the person, the right to freedom from discrimination and the right to equal protection of the law. The United States has a legal obligation to respect, protect and fulfill these human rights and has ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which explicitly protect these rights. One of a state's most fundamental duties which police officers, as agents of the state, must comply with in carrying out their law enforcement role, is to protect life. The United Nations' (UN) Basic Principles on the Use of Force and Firearms provide that law enforcement officers may use firearms only as a last resort when strictly necessary to protect themselves or others against the imminent threat of death or serious injury, and only after non-violent and less harmful means are tried first.

While there are several other components that are required for a statute to meet international law and standards, the most damning result of Amnesty International's review in the Deadly Force report is that no state statute requires that the use of lethal force only be used as a last resort and only after less harmful means have been exhausted, and that no state limits the use of lethal force to only those situations where there is an imminent threat to life or serious injury to the officer or to others. Statutes that allow for a use of lethal force below the threshold and outside the strict criteria established by international law actually work to prevent holding law enforcement officials accountable for violations of human rights.

While individual law enforcement policies may restrict officers' use of lethal force to such circumstances or beyond the requirements of a state's use of lethal force law, these policies do not provide real accountability. A violation of a policy will only result in an administrative violation – for instance, an officer loses vacation time or pay, is suspended or even fired. However, that is not true accountability. The state can only provide accountability for those who have been wrongfully shot or killed by limiting the legal authority to use lethal force by law enforcement officers to those instances when they are faced with an imminent threat of death or serious injury to themselves or others, and only as a means of last resort.

Equally important to state statutes is the notion that this body take the initiative to enact federal law that is in alignment with international standard for the use of force. On September 17th, [the Police Exercising Absolute Care with Everyone or "PEACE" Act](#) was introduced to limit federal law enforcement's use of force, to only that which is necessary and proportional to effectuate an arrest, and such force should only be used as a last resort after exhausting reasonable options. Further, the bill would direct the U.S. Attorney General to create guidance for the use of force against certain vulnerable populations as well as the authority to withhold funds that a state or jurisdiction

would receive via the Byrne JAG Program (34 U.S.C. 10151 et seq.). Amnesty International USA supports this bill and sees it as vital step in preserving life and providing for real accountability when force is used negligently.

Oversight

The 2014 Reauthorization of the Death in Custody Reporting Act (Public Law No: 113-242) (“DICRA”) in Congress occurred in light of the deaths of Michael Brown in Ferguson, MO and Eric Garner in New York City, NY and the protests that ensued not only in those cities but across the country in 2014. Amnesty International’s Deadly Force report, cited earlier in this statement, highlights the inadequacy of existing data by the government on the number of people killed each year during interactions with law enforcement. Before 2015, when media outlets like the Washington Post and the Guardian began documenting this data, we had no context for knowing the true number of people killed by law enforcement each year, because previous attempts to collect and publish data that were undertaken by the Federal Bureau of Investigations (FBI) through the Uniform Crime Reports were inadequate. We would also call into question the most recent efforts of the FBI to collect this data via the National Use of Force Data Collection in a voluntary manor. While the federal government has been working to develop a system to comply with DICRA, more than five years later, the reporting and documenting by media and activists is still all we currently have to rely upon.

The UN Human Rights Committee is the expert body established under the ICCPR to monitor implementation of this core human rights treaty. The U.S. ratified the ICCPR in 1992. In its General Comment 6 on the right to life under the Covenant, the Committee stated that “The deprivation of life by the authorities of the State is a matter of the utmost gravity” and that states must take measures to prevent arbitrary killing by their own security forces. All states must ensure compliance with international law and standards including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. In regard to incidents where officers use firearms, the UN Basic Principles state, in part:

Basic Principles on the use of Force and Firearms by Law Enforcement Officials, Principle No. 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.

Principle No. 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;

Principle No. 11:

Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:...Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty;

Principle No. 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.”

For years, the monitoring of lethal force by police has been hampered by the failure of the US Department of Justice to collect accurate, national data on police use of force, including the number of people killed by police. The DOJ has been required to ensure the collection and publication of nationwide statistics on police use of force (including all police fatal shootings) since the passage of the Violent Crime Control and Enforcement Act (1994); however, it has failed to do so. As you know, an estimate of the number of deaths caused by law enforcement officers used to be provided by the Bureau of Justice Statistics, which until March 2014 collected data about “arrest-related” deaths, defined as deaths that occur during law enforcement officers’ attempt to detain an individual. However, after an internal evaluation of the data’s reliability, the Bureau of Justice Statistics concluded that its figures likely did not capture all deaths and decided to suspend data collection until this most recent endeavor under DICRA.

Due to the failure of government agencies to collect reliable and complete data, a number of media outlets, such as The Counted platform on the Guardian website and the Washington Post, have tried to fill in the gaps related to the number of people who die in interactions with law enforcement each year. While the Guardian focused on all uses of force and the Washington Post only documents deaths due to use of firearms, in 2016 they documented at least 1093 deaths and 963 deaths, respectively. However, their documentation presented discrepancies: for instance, the Guardian documented nearly 20 more incidents where an individual was killed by a law enforcement officer using a firearm as compared to the Washington Post (1011 compared to 963, respectively). The Washington Post has documented at least 637 deaths so far in 2019. While the documentation undertaken by media outlets has been helpful, it is not a lasting solution. For instance, the Guardian ceased the documentation of these types of deaths in 2017, creating greater urgency for the DOJ to roll out the data collection system under DICRA.

Under DICRA, the Department of Justice was to begin to collect and report state arrest-related death data by fiscal year (FY) 2016, however, according to a 2018 report by the Office of the Inspector General, the Department does not expect to begin its collection of this data until the beginning of FY 2020. Beyond the requirement of the DOJ to collect data on deaths from all states, DICRA provides the Attorney General with the discretion to withhold as much as ten percent of federal funding for law enforcement agencies that they normally would receive under the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.). This committee should do everything within its power to stop the Attorney General from obfuscating this responsibility.

The US Department of Justice must conduct a review of state statutes on the use of lethal force in order to bring them in line with international law and standards, as well as implement the data collection system as required under DICRA as first steps in meeting the government's obligations under international law.

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Respectfully,



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