



General Assembly

Distr.
GENERAL

A/HRC/Sub.1/58/27/Add.1*
8 August 2006

ENGLISH ONLY

HUMAN RIGHTS COUNCIL
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-eighth session
Agenda item 6

SPECIFIC HUMAN RIGHTS ISSUES

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

**Final report submitted by Barbara Frey, Special Rapporteur,
in accordance with Sub-Commission resolution 2002/25****

Addendum

* Pursuant to General Assembly resolution 60/251 of 15 March 2006 entitled “Human Rights Council”, all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights, including the Sub-Commission, were assumed, as of 19 June 2006, by the Human Rights Council. Consequently, the symbol series E/CN.4/Sub.2/_ , under which the Sub-Commission reported to the former Commission on Human Rights, has been replaced by the series A/HRC/Sub.1/_ as of 19 June 2006.

** The annex to the present document is reproduced in the language of submission only.

Annex

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

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

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

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

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

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

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

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

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

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

by taking steps to intervene in social structures that encourage violence as noted in the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects,

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

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

A. Obligations with regard to State officials

1. Governments and State officials, especially law enforcement officials, shall not use small arms to violate human rights. All State officials have the obligation to uphold and affirm human rights including the right to life, liberty and security of the person, as guaranteed in the International Bill of Human Rights.
2. Governments and State agencies shall adopt and implement rules and regulations on the use of force and small arms against persons by State officials, especially law enforcement officials.
3. In order to prevent the violation of human rights by small arms, Governments and State officials shall ensure strict enforcement of the rules and regulations they adopt, including a clear chain of command over all officials authorized by law to use force and, in particular, small arms. Governments shall ensure that arbitrary or abusive use of force carried out with small arms, including but not limited to force used by any State official or person acting at the instigation of or with the consent or acquiescence of a public official, is punished as a criminal offence.
4. In order to further prevent the violation of human rights by small arms, Governments and State officials shall establish and maintain adequate and detailed procedures for the proper storage and management of small arms, particularly ammunition. Governments shall actively pursue the collection, safe storage, destruction and responsible disposal of surplus small arms.
5. Governments and State agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and

thorough professional training on the acceptable conditions for the use of force set out in these principles. Those State officials who are permitted to carry firearms shall be authorized to do so only upon completion of special training regarding the limitations on their use. The compliance of State officials with rules and regulations on the use of force and small arms shall be subject to regular review.

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

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

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

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

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

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

purpose, prior criminal record, and prior acts of domestic violence. Governments shall require periodic renewal of licences.

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

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

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

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

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