

USE OF FORCE IN LAW ENFORCEMENT

Thematic Note 2

31 May 2021

This thematic note addresses the law regulating use of force in the context of law enforcement operations. In the wake of resurging violence in the Israeli-Palestinian context, the note focuses on practices of the Israeli security forces (ISF), that appear to entail a systemic breach of the law in question.

States must take all necessary measures to prevent arbitrary deprivation of life by their law enforcement officials, including soldiers charged with law enforcement missions.¹ Accordingly, they must ensure that law enforcement actions are planned in a manner consistent with the need to minimise the risk they pose to human life and that they are implemented in compliance with relevant international standards.²

AREAS OF CONCERN

Use of inappropriate legal framework: The rules regulating the use of force in law enforcement, including in response to civil unrest, are derived primarily from international human rights law (IHRL) and are distinct from the more permissive rules regulating the use of force in the conduct of hostilities, derived from international humanitarian law. Israel has sought to create a new legal framework to regulate what it calls 'law enforcement in armed conflict'. This baseless innovation, which conflates the rules regulating the use of force in law enforcement with those applicable in hostilities, is relied upon to justify force exceeding the levels permitted under IHRL thereby increasing the risk of arbitrary deprivation of life.

Failure to implement de-escalation measures: Law enforcement should be conducted with a view to mitigate and de-escalate (risks of) violence. Measures by the ISF, such as the use of roadblocks to block access of Palestinian protestors – but reportedly not Israeli settlers and their supporters – to Karm al-Jaouni purportedly based on the risk of clashes, was perceived as discriminatory repression of the rights of Palestinians to free expression through peaceful assembly and restriction of freedom of movement, thus failing to defuse tension.

Excessive use of force: The ISF have responded to protests by forceful means, including lethal force. The use of force by State officials to maintain or restore public security, law and order, is permissible only when necessary, for a limited set of legitimate aims, such as

protecting human life and against serious injury. The use of force to police assemblies, including protests, should be an exceptional measure, and not the standard response. Even where there are legitimate grounds for using force, law enforcement officials must exercise restraint, and only employ force that is necessary and proportionate. A high number of injuries and significant number of deaths of Palestinians, including children, caused in Israeli law enforcement operations,³ raise concern that excessive force was employed. The use by the ISF of rubber-coated metal bullets, and other more-lethal weapons, in response to stone throwers also constitutes excessive force.

(Intentional) use of firearms beyond strict necessity: The use of potentially lethal force is an extreme measure that should be resorted to only when strictly necessary to protect life or to prevent serious injury from an imminent threat. Every incident of such use must also be investigated. The use of live ammunition and reported positioning of snipers (including targeting so-called “main rioters”) in response to protests raise concern that the ISF is failing to respect these constraints.

¹ UN Human Rights Committee, General Comment 36.

² Such standards include the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1979 Code of Conduct for Law Enforcement Officials.

³ The most recent Flash Update #12 from the UN Office for the Coordination of Humanitarian Affairs, recorded over 6000 injuries (88 children) and 27 deaths (4 children) in the West Bank, including East Jerusalem.

Other relevant resources

- Legal brief: Resurging violence and hostilities in Israel-Palestine
- Timeline: From displacement and dispossession in Sheikh Jarrah to hostilities
- Thematic Note 1: Discrimination

This thematic note is part of a series. For all notes and a detailed analysis on the resurging violence and hostilities in Israel-Palestine, visit our website: www.diakonia.se/ihl/jerusalem/resurging-violence.

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www.diakonia.se/ihl
jerusalem-ihl@diakonia.se