

**THE FAILURE OF THE WORLD'S
WEALTHIEST COUNTRIES TO
SUFFICIENTLY RESTRAIN LAW
ENFORCEMENT USE OF LETHAL FORCE IN
LAW AND POLICY**

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**(SUBMITTED FOR WORKSHOP #3 – PANEL ON USE
OF FORCE POLICIES AND FUNDAMENTAL
INTERNATIONAL HUMAN RIGHTS LAW)**

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Global Human Rights Clinic

When and How do Police Officers Use Lethal Force?

On paper:

- ▶ National laws
- ▶ Sub-national (state, municipalities) laws
- ▶ Police department policies

Research on Individual and Environmental factors:

- ▶ Officer's gender, personality, level of education and policing experience
- ▶ Stress level
- ▶ Individual life experiences
- ▶ Mental state of the subject
- ▶ Gender of the subject
- ▶ Perceived behaviors of the suspect
- ▶ Biases based in religious identity and ethnicity
- ▶ Racial stereotypes and biases

UChicagoLaw GHRC Studies: Review Use of Lethal Force Directives

“**Lethal force**” or “**deadly force**” refers to physical force (the use of body, irritants, instruments, special equipment, or firearms) to potentially or intentionally inflict serious bodily injury or death.

- ▶ **Use of lethal force directives** provide (often only) guidance to law enforcement for when, how and under what circumstances lethal force can be used.
- ▶ Our question: ***Do these directives comply with basic international human rights standards on the protection of and respect for human life?***

Why International Human Rights Standards?

- ▶ Protection of basic rights of individual: rights to life, equality, liberty and security of person; freedom from torture and cruel, inhuman or degrading treatment; and freedom from discrimination.
 - ▶ Universal Declaration of Human Rights (UDHR)
 - ▶ International Covenant on Civil and Political Rights (ICCPR)
 - ▶ Convention Against Torture (CAT)
- ▶ Holds States accountable, requiring restraint in the context of policing.

Principles and Legal Authority - IHR Standards

- ▶ Three main sources for contemporary international standards:
 1. 1979 U.N. Code of Conduct for Law Enforcement Officials
 2. 1990 U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
 3. 2014 report by the U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions on protection of the right to life during law enforcement
- ▶ Four key international human rights law principles on use of deadly force, which should all be applied in a non-discriminatory manner:
 1. Legality
 2. Necessity
 3. Proportionality
 4. Accountability

Principle: Legality

A use of lethal force policy must be:

- A) Based on a law** enacted by a legislature at the national or subnational level; and
- B) That law must comply with international human rights** standards and authorizes but clearly limits police use of deadly force.

Principle: Necessity

Lethal use of force must be necessary, meaning it is responsive to an **immediate, particularized threat** and is only used as a **last resort**.

- ▶ **Immediacy:** threat must be immediate, imminent or current
- ▶ **Particularized:** threat or risk must be specific and heightened
- ▶ **Last Resort:** lethal force must only be used as a last resort and after less extreme measures are ineffective

Principle: Proportionality

The use of force must always be **proportionate to the threat the officer confronts** and weighed against the fundamental human rights of the individual.

- ▶ Lethal force must only be used in response to an equal threat of death or serious bodily injury to the officer or other people.

Principle: Accountability

- ▶ Law enforcement must issue a **full report** to an **independent, external oversight body** for each instance of the use of lethal force, *regardless* of the outcome.
- ▶ Police departments must be **transparent** about use of force policies and practices.

Deadly Discretion Report: Analysis of Use of Lethal Force Policies in the 20 Largest Cities in the U.S.

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Legality

- **All 20 cities fell short** of having an IHR-compliant state law
- Columbus, OH had **no state law** that granted authorization for use of lethal force

Necessity

- **8 cities failed to meet necessity** - Austin, Charlotte, Denver, El Paso, Houston Jacksonville, Phoenix and Indianapolis.
- Indianapolis failed all three prongs of necessity

Proportionality

- **3 cities failed** - San Jose, TX; Denver, CO; and Indianapolis, IN with exceptions to the requirements that force be proportional, e.g. fleeing felon exception

Accountability

- **18 cities** have some accountability mechanism
- Only LA and Chicago were compliant
- Austin, Charlotte, El Paso, Houston, Indianapolis, San Antonio, San Diego, Seattle only required internal reporting

Global Impunity Report: Overview

- ▶ **Study:** Review of lethal use of force directives (laws and policies) for the police departments in the largest cities by population of the 29 wealthiest countries by GDP against a grading system developed using international human rights standards.
- ▶ **Purpose:** To better understand global efforts to restrain and guide state use of lethal power.
 - ▶ Conducted in 2020
 - ▶ 29 wealthiest countries (excluding United Arab Emirates)
 - ▶ Largest Cities (scope)
 - ▶ Directives: Laws and policies

Global Impunity Report: Methodology

- ▶ An evaluation of the largest cities in the 29 wealthiest countries
 - ▶ Studied structure of the police forces in each country;
 - ▶ Used *The Law on Police Use of Force Worldwide* database for overview of applicable police use of force laws and policies;
 - ▶ Identified the use of force laws and policies for each country's most populous city;
 - ▶ Communicated with attorneys, academics or policing experts in each country, as needed to collect and interpret; and
 - ▶ Applied grading system to evaluate each country's laws and policies for compliance with IHR standards.

Use of Lethal Force Policy Grades and Ranking

1	United States (New York City)	72
2	Mexico (Mexico City)	70
2	Argentina (Buenos Aires)	70
4	Nigeria (Lagos)	65
4	Indonesia (Jakarta)	65
6	Canada (Toronto)	63
7	South Korea (Seoul)	45
8	Netherlands (Amsterdam)	40
8	Belgium (Brussels)	40
8	Sweden (Stockholm)	40
11	United Kingdom (London)	38
12	Norway (Oslo)	33
13	Turkey (Istanbul)	30
14	Austria (Vienna)	28
15	Japan (Tokyo)	25
15	Spain (Madrid)	25
15	Poland (Warsaw)	25
18	Switzerland (Zurich)	23
18	Iran (Tehran)	23
20	Australia (Sydney)	20
20	Germany (Berlin)	20
22	Brazil (São Paulo)	20
23	Thailand (Bangkok)	20
24	China (Shanghai)	15
25	Russia (Moscow)	15
26	Italy (Rome)	5
26	India (Mumbai)	5
26	France (Paris)	5
29	Saudi Arabia (Riyadh)	0

Global Analysis: Grading Overview



Legality: 20 points

20 points: Policy is based on law and law is IHR compliant

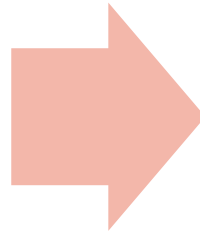
5 points: Policy is based on law and law is not IHR compliant

5 points: Only law exists (no policy) and law is not IHR compliant

Legality Example

“Therefore, in accordance with the Criminal Code and the Police Services Act, it is the policy of the Board that...2. The Chief of Police will ensure that force options used by Service members meet all requirements and standards established by Regulation 926 of the Police Services Act...”

(Toronto Police Services Board, Use of Force Policy) Toronto, Canada

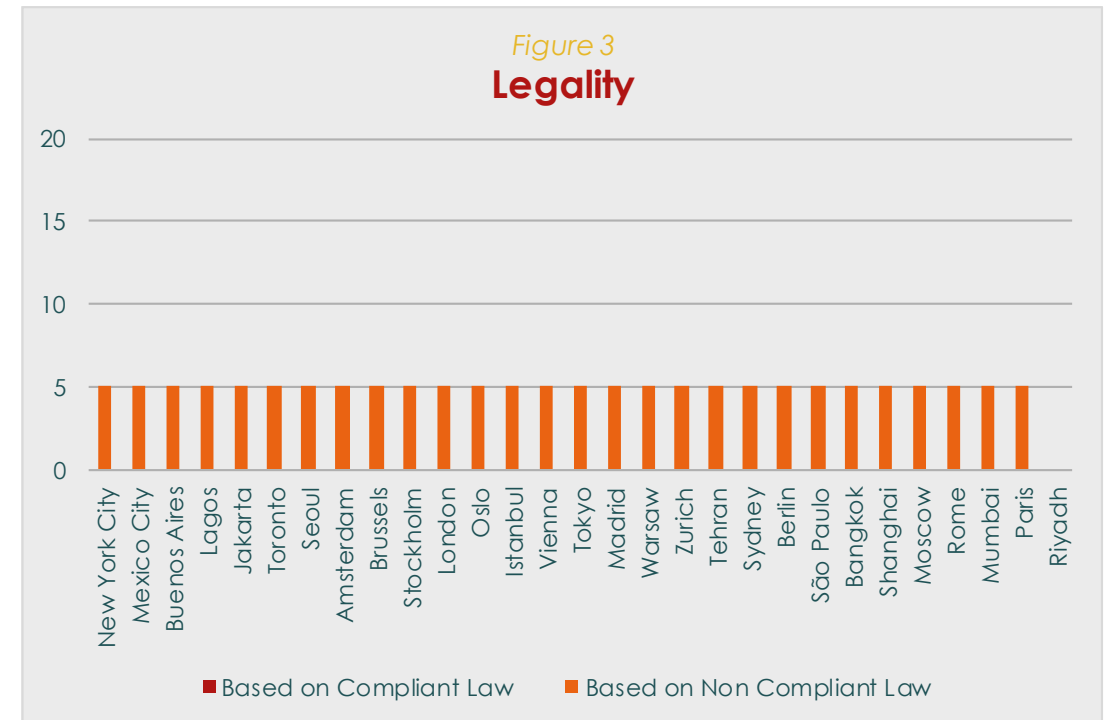


5 points

- Policy **cites to law** as its authority
- However, that **law is not compliant** with international standards

Legality - Trends/Observations

- ▶ No jurisdiction had compliant laws.
- ▶ 28/29 had non-compliant laws.
- ▶ Riyadh, Saudi Arabia receive 0 points with no laws that set standards on use of lethal force.



Necessity: 30 points

10 points: Deadly force may only be used when a subject presents an *immediate* or *imminent threat*

5 points: Generally requires immediacy, but contains an exception that allows use of deadly force in certain circumstances, such as against a fleeing suspect, without requiring the threat posed to be immediate.

10 points: Deadly force may only be used in response to a *specific* and *heightened risk* or *threat*

10 points: Deadly force may only be used after non-deadly options have been considered or where otherwise unavoidable as a *last resort*

Immediacy Example

"Thus, a Police Officer may **use firearms/lethal or potentially lethal force** under the following circumstances: (a) When attacked and there is **an imminent threat that the police officer will be killed or seriously injured, and no other means are available to avert or eliminate the danger of saving his/her life...**"

(Rules of Guidance in the Use of Firearms by the Police, Police Force Order 237)
Lagos, Nigeria



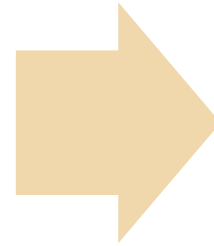
10 points

- Policy states that the officer **may use lethal force in response to an *imminent threat*** that the officer will be killed or seriously injured

Fleeing Felon Exception Example

"[Law enforcement] can fire warning shots to detain a fleeing criminal for a 'serious crime' or **shoot at nonvital body parts if fleeing criminal is in possession of a weapon capable of causing serious damage**"

(Instructions on the Use of Firearms for Members of State Security Forces)
Madrid, Spain



5 points

- Policy states that the officer **may use lethal force in response to stop a fleeing criminal** without requiring that the fleeing criminal pose an ***immediate threat*** of death or serious injury

Particularized Threat Example

“(2) Firearms may only be used by officers:...b. **for self defense against threat of death and/or serious injury**; c. **for the defense of others against threat of death and/or serious injury**”

(Regulation of the Chief of the Indonesian National Police, Number 8) Jakarta, Indonesia



10 points

- Regulation states that firearms may only be used in response to a **specific and heightened threat of “death and/or serious injury”**

Last Resort Example

“Police officers must only resort to the use of force or firearms if other means remain ineffective or there is no realistic prospect of achieving the lawful objective without exposing police officers, or anyone whom it is their duty to protect, to a real risk of harm or injury.”

(College of Policing: Authorised Professional Practice for Armed Policing Policy) London, United Kingdom

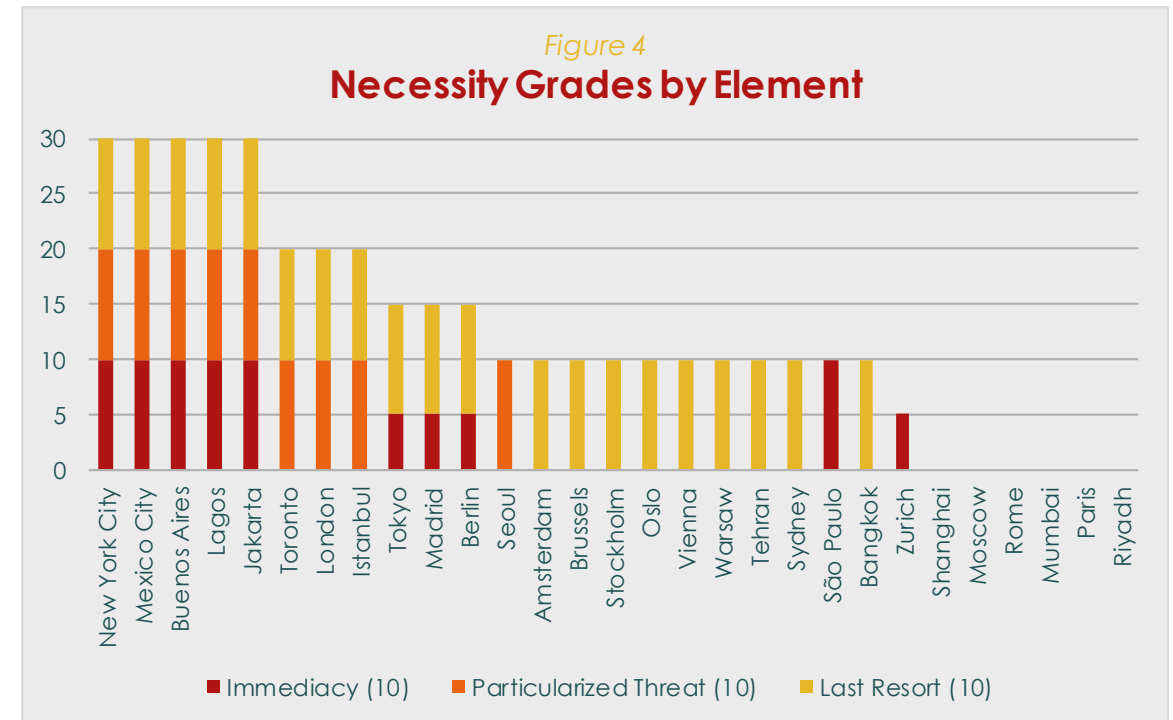


10 points

- Policy reflects the standard that **firearms**, as a form of lethal force, **may only be used as a last resort**

Necessity Trends/Observations

- ▶ Only 5/29 met all three elements and 6/29 failed all three elements
- ▶ Berlin, Tokyo, Madrid and Zurich allowed lethal force to be used against a fleeing felon without requiring the person pose an immediate danger.



Proportionality: 25 points

25 points: Deadly force may only be used in response to an **equal threat of death or serious bodily injury** to the officer or others

Proportionality Example

"A member of a police force shall not draw a handgun, point a firearm at a person or discharge a firearm unless he or she believes, on reasonable grounds, that to do so is necessary to protect **against loss of life or serious bodily harm**"

(Regulation 926, R.R.O., of the Police Services Act) Toronto, Canada

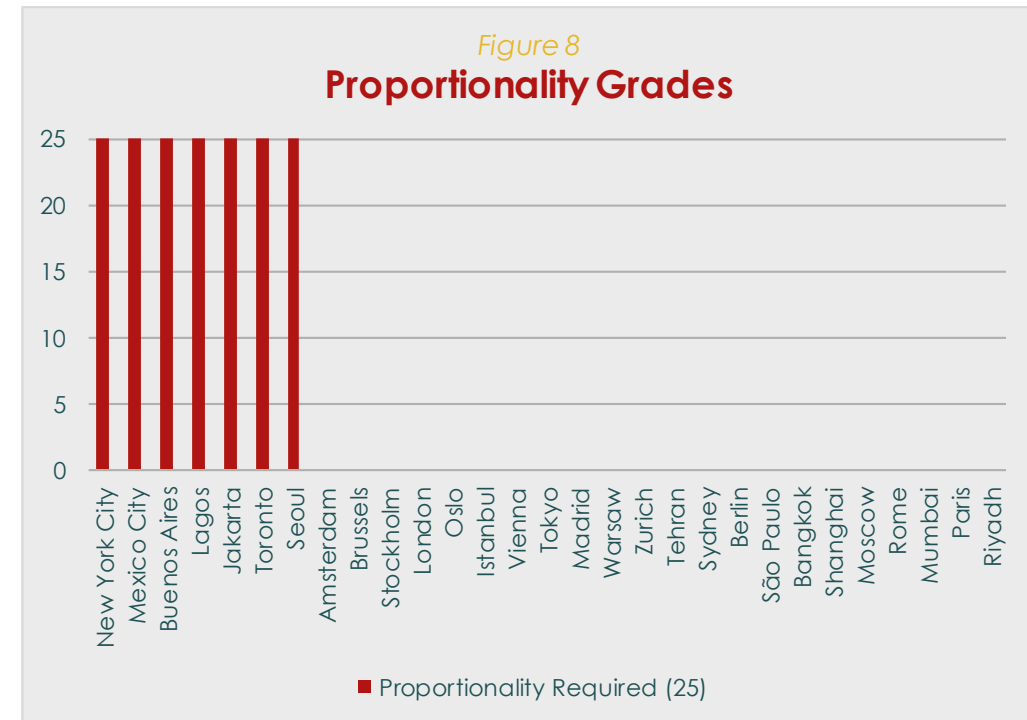


25 points

- Regulation states use of lethal force (in the form of use of firearms) may only be used in **response to an equal threat of death or serious bodily harm**

Proportionality Trend/Observations

- ▶ 80% of the States **Failed** to Satisfy Proportionality
- ▶ Stockholm and Mumbai allow police to use lethal force when they believe the suspect has committed a serious crime *regardless of whether suspect is a threat*.
- ▶ In Moscow, police can use lethal force to defend objects - "buildings, premises and structures or other objects of state and municipal bodies".



Accountability: 25 points

5 points: Mandatory internal reporting for all instances

5 points: Mandatory external contact when death or injury occurs

7 points: Mandatory external contact for all instances

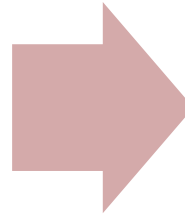
8 points: Mandatory external reporting when death or injury occurs

25 points: Mandatory external reporting for all instances

Accountability Example

"The people's policemen shall, **after using the gun, immediately report to the main person in charge of the gun distribution department** in oral form and submit a written report to the gun distribution department within 24 hours"

(Regulations on the Carry and Use of Guns by the People's Police of Public Security Organs) Bangkok, China



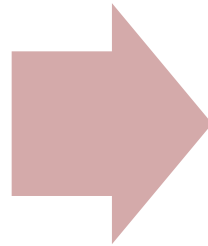
5 points

- Regulation requires the officer to report each use of firearm, regardless of the result of that use of lethal force, to an **internal police entity**

Accountability Example

“The civil servant who has used force **must report in writing** the nature of force, including the means of violence used, and the consequences thereof...**to the assistant public prosecutor** who...is responsible for registering the violence used...[and] the **notification shall be registered by the assistant public prosecutor...if (a) the use of force has caused death or physical injury...(b) use has been made of a firearm**, or (c) the use of force in the opinion of the assistant public prosecutor gives cause to do so”

(Official Instruction for the Police) Amsterdam, the Netherlands

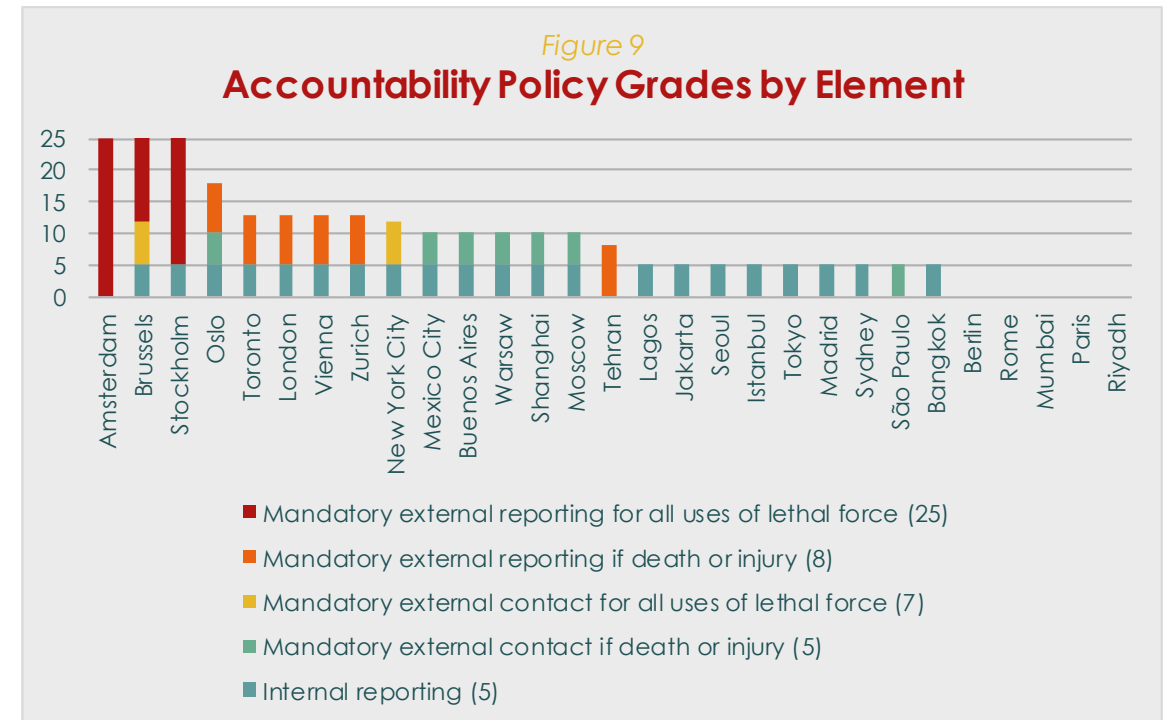


25 points

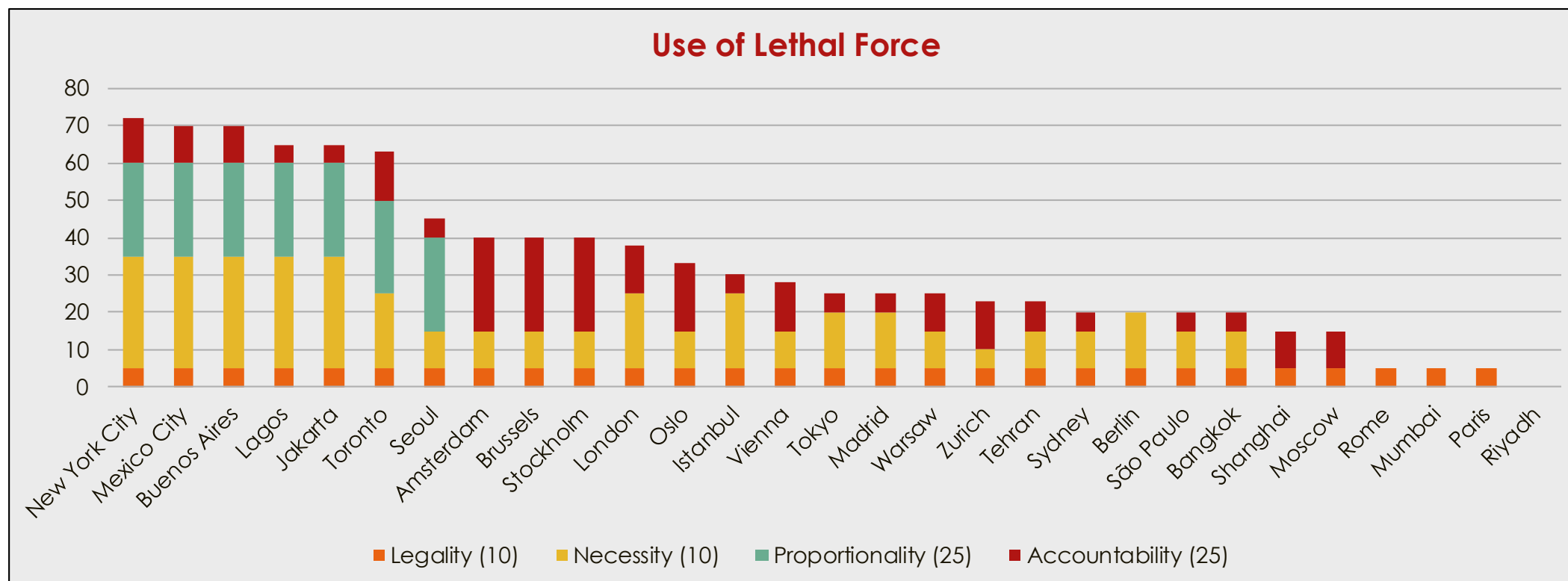
- Policy requires the officer to report each use of a firearm to **an external body**, even when that use of lethal force did not result in death or injury

Accountability Trends/Observations

- ▶ Only Amsterdam, Brussels and Stockholm received full points for accountability.
- ▶ 8 jurisdictions only required internal departmental reporting with no external contact or reporting.
- ▶ External accountability varied - public prosecutors vs. independent oversight bodies.



Overall Ranking



Interpretation and Implications

What does the ranking mean?

- ▶ Limits of the study: It does NOT mean one police department is better than another (but it might)
- ▶ It does mean the government has issued a written mandate on the limits to the use of lethal force (importance of laws and policies as written rules)
- ▶ It does mean police officers have a clear written mandate available to them (to direct and cabin discretion)

Observations: Not a Single Jurisdiction Analyzed Has a IHR-Compliant Law

Each of the 29 jurisdictions reviewed failed the legality principle.

- ▶ None had legislation that:
 - A) Limited the use of lethal force to when an officer confronts an imminent threat of death or serious injury; **and**
 - B) Required police to report every use of lethal force to an external oversight body.

Observations: Antiquated Directives

Laws and policies of some countries are decades-old

- ▶ Fail to reflect contemporary and evolving standards on restrictions of State-sanctioned violence.
- ▶ May reflect a lack of political will to prioritize the regulation of the security and policing sector.
- ▶ **Example:** Japan's law on lethal use of force is more than 70 years old and employs permissive language on use of lethal force.

Observations: Regulation of the Use of “Firearms” Rather than Use of “Lethal Force”

20 cities regulate firearms but not use of force more broadly

- ▶ Broad regulation is crucial to human rights compliance
 - ▶ Other methods besides firearms can result in serious injury or death
- ▶ **Example** (of a good law): South Korea restricts police use of “high-risk physical force” defined as both the use of firearms and other physical attacks.

Observations: Use of Lethal Force for a Non-Threatening Suspect

Directives may allow for the use of lethal force upon mere suspicion that a suspect has committed a crime

- ▶ Some countries authorize use of lethal force when there is suspicion of past criminal behavior.
- ▶ **Example:** Swedish police officers are permitted to use lethal force to arrest anyone suspected of murder, treason, and serious drug offenses, irrespective of the nature of the threat posed.

Observations: Overlapping and Conflicting Policies

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Jurisdictions may employ overlapping use of force directives

- ▶ Some countries have overlapping policies, each containing language that pertains to different standards or aspects of a standard.
- ▶ Compromises the clear messaging necessary to guide police action.
- ▶ **Example:** In Madrid, three policies enacted between 1983 and 2010 concurrently regulate police use of force and each contains provisions absent in the others.

Observations: Expansive, Unclear Language Authorizing Lethal Force

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Vague provisions and terms in directives

- ▶ Numerous jurisdictions provide a list of instances where lethal force is authorized that include threats to places or to imprecise interests, such as “national security” or “public order.”
 - ▶ **Example:** Article 7 of Austria’s Weapons Use Act allows the use of a firearm “to suppress a rebellion or a riot.”
- ▶ Other jurisdictions include a general reference to principles without properly defining how that principle should cabin force. This allows for overly broad officer discretion in employing force.
 - ▶ **Example:** The Metropolitan Police in the United Kingdom must use “what force may be necessary, proportionate and reasonable,” but are not informed what type of force counts as “necessary,” “proportionate,” or “reasonable” in any given situation.

Observations: Failure to Require Accountability for Each Use of Lethal Force

Jurisdictions may only require accountability mechanisms in certain circumstances

- ▶ Several jurisdictions have some type of external oversight organ, but they fail to **require** that police report to those when lethal force is used.
- ▶ **Example:** The Defender of Rights in France has the authority to review complaints from the public, but no publicly available policy requires the police to report use of lethal force to this or any other independent oversight body.

Observations: Lack of Transparency

Directives may not be publicly accessible

- ▶ Many states fail to make key laws and policies on use of force and accountability mechanisms publicly available.
 - ▶ Vital to ensure not only better and more rights protective practices, but also the rule of law.
- ▶ **Example:** UAE could not be graded because laws and policies are not accessible.
- ▶ **Example:** For Italy, all legislation, directives, and meeting minutes are in a single database. It is unreasonably onerous to locate relevant laws and policies.

Final Thoughts

- ▶ Our fundamental constitutional and human rights rely on appropriate exercise of state police power.
- ▶ States have not made a sufficient effort to ensure clear, transparent and accountable restrictions on law enforcement use of lethal force.
- ▶ What is next for reform of law enforcement?

Thank you! cmflores@uchicago.edu