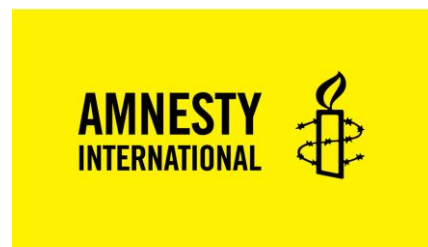


**Comments by the
University of Chicago Law School
International Human Rights Clinic
and Amnesty International USA
on the proposed
Federal Bureau of Investigation,
Department of Justice
pilot project for a
National Use of Force Database
5 December 2016**



Amnesty International USA and the University of Chicago Law School International Human Rights Clinic welcome this opportunity to jointly submit comments to the Federal Bureau of Investigation regarding the agency's proposed pilot program for a National Use of Force Data Collection Program. The data collection system should incorporate the suggested points outlined below in regards to the information collected for subject of the use of force, the officers who use force, and the incident. In order to be effective, any finalized program must become a mandatory reporting tool for all law enforcement agencies across the country.

International Standards

Article 6 of the International Covenant on Civil and Political Rights ("ICCPR"), to which the United States is a party, places an obligation on states to ensure that the right to life is protected by law.ⁱ The UN Human Rights Committee—the expert body established under the ICCPR to monitor implementation of the treaty—has stated that, "[t]he deprivation of life by the authorities of the State is a matter of the utmost gravity."ⁱⁱ It further declared that states must take measures to prevent arbitrary killings by their own security forces.ⁱⁱⁱ

A state must therefore ensure its law enforcement agents—notably, the police—protect and respect individuals' right to life, both when it is threatened by others and when agents use force themselves. An essential step in securing the right to life is the establishment of an appropriate legal framework for the use of force by the police that sets out the conditions under which force may be used and ensures a system of responsibility when these limits are transgressed.^{iv} The failure of the state to properly investigate instances of death following the use of force itself may constitute a violation of the right to life.^v

During the course of their duty, law enforcement officers must "maintain and uphold the human rights of all persons."^{vi} Toward this end, international standards provide that the intentional lethal use of firearms is justified only when "strictly unavoidable in order to protect life."^{vii} Law enforcement officers must only use force when there are no other means available to achieve a legitimate objective.^{viii} The amount of force used must be proportionate to the seriousness of the harm it aims to prevent and designed to minimize damage and injury.^{ix} Officers may use firearms only as a last resort when strictly necessary to protect themselves or others against an imminent threat of death or serious bodily injury.^x

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.^{xi} In regards to incidents where officers use force and firearms, the UN Basic Principles state, in part:

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

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

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.

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

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

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle No. 11 (f):

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.

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

Recommendations for National Use of Force Data Collection Program

The currently proposed pilot project for Data Collection would track information on the (1) “subject of use of force,” (2) “officer that applied force,” and (3) “characteristics of incident.” Data that we believe should be included in the categories, and points needing clarification in each, are outlined below, with the primary categories and issues in italics.

1. Subject of use of force

The “subject of use of force” category should include *collaterals*—i.e., a person who is not the target of police fire, but is harmed by stray gunfire. This category should also include *both subjects who are hit and subjects who are missed* when shot at by police, as it is important to capture when police use force, but miss the target. This category should include information on *whether the use of force was fatal or non-fatal*. It should include *details on the subject’s conduct prior to the use of force*, such as whether the subject was armed or unarmed, whether a weapon was visible, and whether the subject was approaching the officer in an aggressive manner, standing still, or fleeing. This category should also include *subjects’ demographic information*, like race and gender. While it would be useful to include additional demographic information, such as sexual orientation or immigration status, there are legitimate privacy concerns and implementation difficulties that complicate the collection of this kind of data. Any

information collected from the subjects should be self-identified or based on any use of force incident reports that may capture this information.

2. *Officer that applied force*

The “officer that applied force” category should capture information on two sets of individuals: *officers who used force* and *officers who were significantly involved but did not use force themselves*. *Details about the officers should be collected*, including: number of years on the force; number of complaints against the officer, the basis of complaints, and how any complaints were resolved; number of times the officer has used force prior to the incident; and, if available within the incident report, the officer’s subjective state of mind at the time of the incident.

Furthermore, it is imperative that the pilot program include not only the largest police departments in the country and specific federal law enforcement agencies, but also the U.S. Border Patrol of the U.S. Department of Homeland Security. It is one of the largest federal law enforcement agencies, with expansive territorial jurisdiction and a documented history of abuses in its use of force and firearms.

3. *Characteristics of incident*

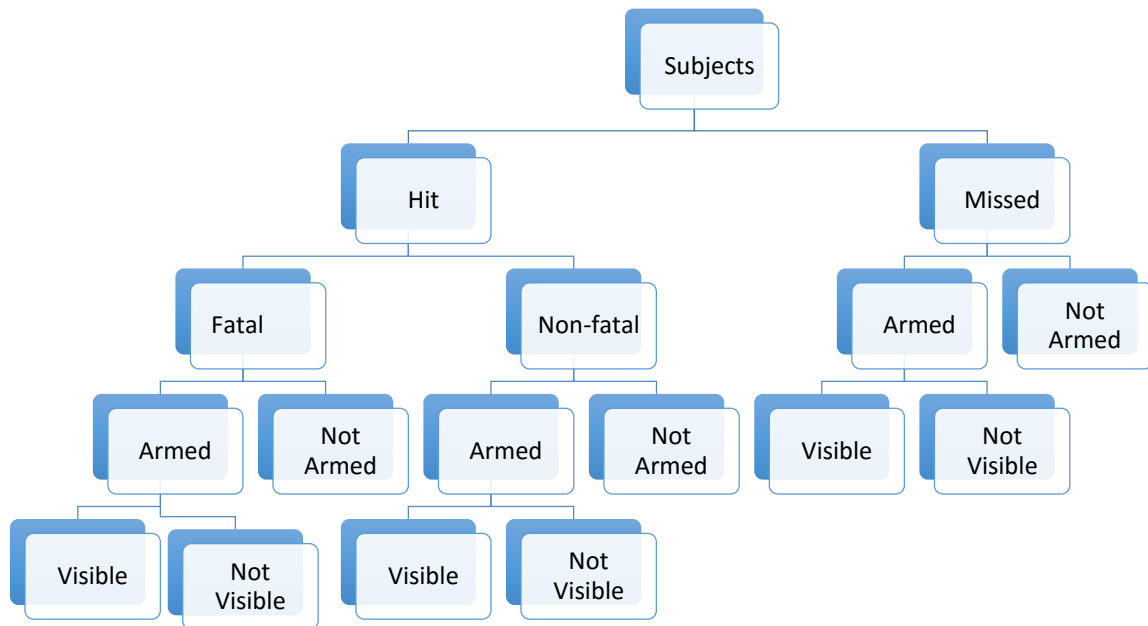
The “characteristics of incident” category should include *information about whether use of force resulted in a subject being killed, injured, or missed*. If the use of force involved the discharge of a firearm, this category should include *the total number of shots fired during the incident*. *The steps of escalation* involved in the use of force incident should be documented, including the *issuance of verbal warnings* or any other efforts by the officer to deescalate the situation. It is also important to include as much specific information as possible about *where the incident occurred, the weather, time of day, etc.*

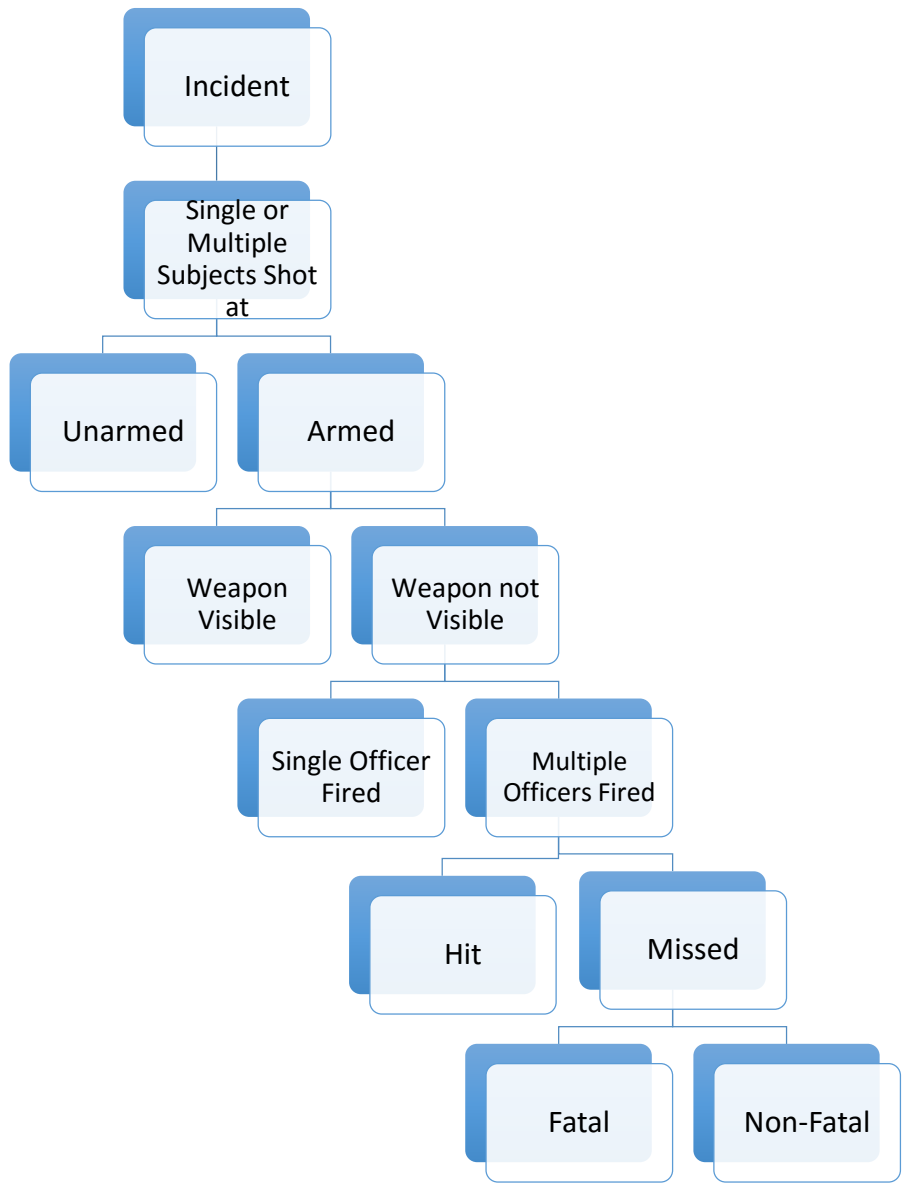
All uses of conducted electrical devices (CEDs), commonly referred to by the brand-name Tasers, should be documented through the data collection program. Arguably, being shocked by 50,000 volts of electric current that paralyzes you is a traumatic event that should be included in this documentation. Amnesty International has documented more than 700 cases where people have died following the use of a CED since 2001, and we recommend that all CED use should be documented through this process, just like firearms. While such instances of death following the use of a CED will likely be captured in the data collection program, the other traumatic outcomes that can occur just by being shocked should also be included.

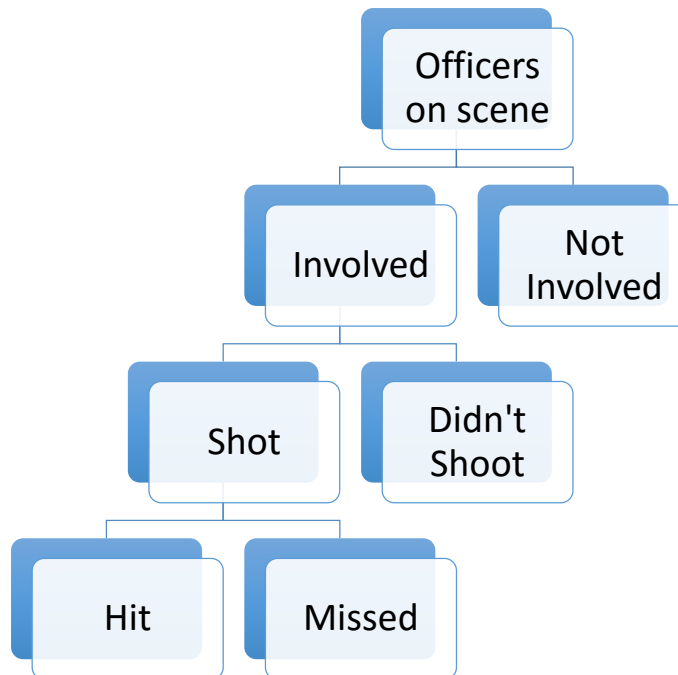
A documentation program that includes all of the information and requirements set forth above would help bring the United States more in line with its obligations under international law when it comes to accountability regarding the use of force. We thank you again for this opportunity to submit these comments during the development of the documentation program and would welcome any opportunity to discuss the information contained in these comments further.

Appendix

The diagrams below help illustrate the information that, at a minimum, should be included in the database with regards to the documentation of the use of firearms. They can also be adapted to conceptualize the information critical to other uses of force, such as CEDs. The diagrams do not display all possible information paths, due to space constraints. For instance, a complete "Incident" diagram would include information paths for "Unarmed," "Weapon Visible" and "Single Officer Fired" similar to the full path displayed for "Armed" > "Weapon Not Visible" > "Multiple Officers Fired."







ⁱ U.N. Human Rights Comm., *Gen. Comment 6, Article 6*, U.N. Doc. HRI\GEN\1\Rev.1 at 6, at ¶ 3 (1994).

ⁱⁱ *Id.*

ⁱⁱⁱ *Id.*

^{iv} Report of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Protection of the right to life during law enforcement*, U.N. Human Rights Council, U.N. Doc. A/HRC/26/36, at ¶ 26 (Apr. 1, 2014) (by Christof Heyns).

^v *Id.* at ¶ 79.

^{vi} Code of Conduct for Law Enforcement Officials, G.A. Res. 34/169, U.N. Doc. A/34/46, at art. 2 (Dec. 17, 1979) [hereinafter Code of Conduct].

^{vii} Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth U.N. Congress on Prevention of Crime and Treatment of Offenders, U.N. Doc. A/CONF.144/28/Rev.1, at principle 9 (Sept. 7, 1990) [hereinafter Basic Principles]; Heyns, *supra* note iv, at ¶¶ 69-72.

^{viii} Code of Conduct, *supra* note vi, at art. 3; Heyns, *supra* note iv, at ¶¶ 58-59.

^{ix} Basic Principles, *supra* note vii, at principle 5(a); Code of Conduct, *supra* note vi, at art. 3(b); Heyns, *supra* note iv, at ¶¶ 65-73.

^x Basic Principles, *supra* note vii, at principles 4,5; Heyns, *supra* note iv, at ¶¶ 69-72.

^{xi} Basic Principles, *supra* note vii.