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### Police lethal force and accountability

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# Police Lethal Force and Accountability: Monitoring Deaths in Western Europe

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In memory of Anneke Osse, the inspirational driving force behind this report.

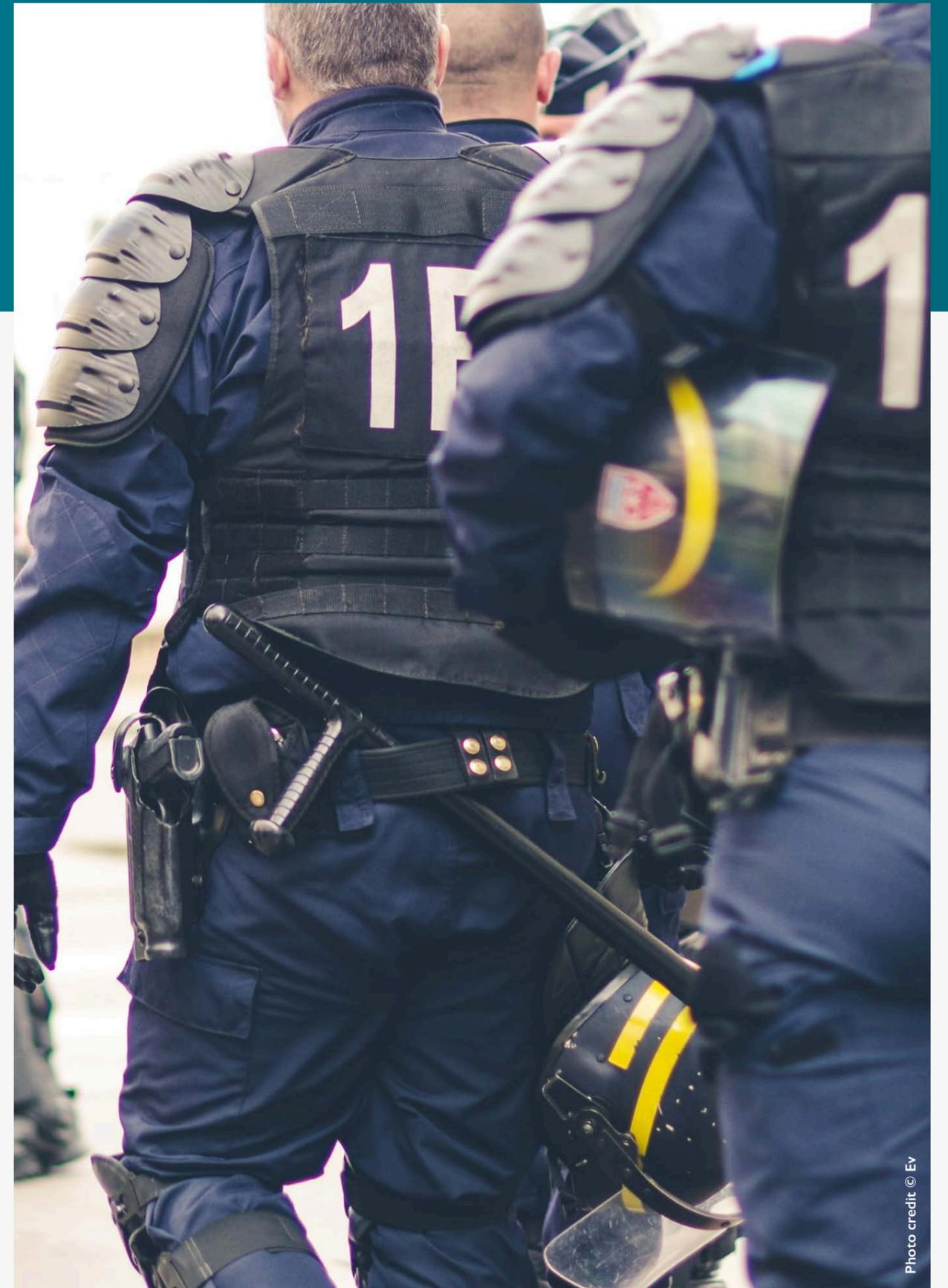
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## Executive Summary

The use of force by the police and other law enforcement officers has long been a significant topic of concern, especially when it results in death. This issue and the controversies around it have recently been highlighted by a series of high-profile deaths in 2020.

*Police Lethal Force and Accountability* assesses the frequency of deaths, and the availability and reliability of information regarding deaths, associated with the application of force by law enforcement agencies in four jurisdictions: Belgium, England & Wales, France and the Netherlands.

By adopting a common set of considerations for assessing the policies and practices within these individual jurisdictions, this report enables comparisons to be made across them. In doing so, we look to provide those in policing agencies, campaigning groups, government ministries and others, with sound information with which they can identify priorities to ensure uses of force are being accurately recorded and investigated. By enabling those concerned to understand how uses of force are recorded and addressed in comparison with other jurisdictions, we hope this report will help them to build a stronger case when holding public institutions accountable and identifying points for improvement.

As documented, while deaths from the use of force appear relatively rare across these four jurisdictions when compared to countries such as the US<sup>1</sup>, the procedures

and policies for recording, investigating and disclosing details associated with deaths are wanting. The availability of official information on the number of deaths associated with the use of force, its reliability, and the extent of details collected on those that die at the hands of the state vary from country to country. While there are elements of good practice, the procedures and policies are often lacking in critical respects. As a result of such deficiencies, it is difficult to assess many important dimensions of policing, including whether some communities are disproportionately subjected to the lethal use of force.

Ultimately, reducing the extent of police force requires addressing underlying societal conditions associated with employment, health, housing and education. However, more can be done by law enforcement agencies, as well as by their oversight bodies and government ministers. Assembling data and evidence that is accessible, relevant and useful to those concerned with lethal force is a necessary step to enhance accountability for, and possibly prevent, deaths. In the context of democratic societies, the police and police-related bodies not only need to act on what they know in order to learn lessons, but also to demonstrate they are doing so to the populations they are meant to serve. Every death associated with the use of force by law enforcement officials should be recorded, recognised and investigated. No one's death should go unacknowledged and unexamined.

**Our overall conclusion is that the agencies considered in this report, in Belgium, England & Wales, France and the Netherlands, all need to enhance data collection, publication and analysis of deaths following the use of force in their respective systems. Further, they need to act upon lessons from previous experiences, so as to help prevent future deaths and ensure different communities are not disproportionately subjected to the lethal use of force.**

As the detailed findings of this report demonstrate, it is apparent that while each of the jurisdictions discussed has some data recording and accountability processes in place for their law enforcement agencies, when considered comparatively there are notable disparities among them, and some processes are incomplete and imprecise. The key points to note are that:

- Data collection and publication is a common concern in all four jurisdictions. Belgium, England & Wales and the Netherlands have developed fairly detailed reporting and data recording processes for deaths relating to police uses of force, but each could enhance these through simple steps. For instance, in Belgium there is scope for better information sharing and coordination among agencies. In England & Wales, multiple systems are in place and there is a need to enhance the accessibility and navigability of data, and to compile data from additional sources, such as inquests and court cases. In the Netherlands there is scope for an enhanced level of detail in data collected and improved public availability. France has the most serious need for improvement, due to its systematic lack of a rigorous approach to data collection and publication across both of its two main national law enforcement agencies, the National Police and National Gendarmerie. Although progress has been made by the National Police, which now publishes the number of “injuries and deaths” it registers each year, these data are partial and lack precision. For its part, the National Gendarmerie does not publish any data on the number of people injured or killed during its operations.

- Data quality similarly raises concerns in all four systems, albeit to different degrees. In Belgium, the Netherlands and England & Wales (where two different systems operate), the main need is to clarify the requirement for recording data on deaths to achieve greater thoroughness and consistency. In France, the principal concern is the lack of precision about the methodology used by the National Police in its data recording, and the absence of such data for the Gendarmerie. All four jurisdictions need to consider and where necessary enhance their recording and publishing of demographic data so that the impact of the use of force on different communities can be monitored effectively.
- Data analysis and the scope for learning lessons from incidents of fatalities are the most serious concerns across the board. Whereas Belgium, England & Wales and the Netherlands have some processes in place for learning from past deaths and adjusting strategies and policies, the extent to which this happens in practice is questionable and each still has room for improvement. Law enforcement agencies in France need to introduce appropriate policies and processes in the first place and conduct analysis to generate evidence-based recommendations and to prevent future deaths.
- Independence and impartiality in the investigation of deaths are inconsistent across these four jurisdictions. While all of them have some sort of apparently independent investigative bodies for examining police uses of force, in Belgium and France the degree of independence raises questions due to ongoing investigative reliance on the personnel and systems of their law enforcement agencies, which raises concern about the degree of practical independence in real terms.

<sup>1</sup> In the US, roughly 1,110 police killings have taken place annually over recent years, see <https://mappingpoliceviolence.org/nationaltrends>, (accessed 4 December 2020).

# Executive Summary

To illustrate these conclusions, Table 1 below provides a summary overview of the classifications made of key procedures, policies and practices in place to monitor, investigate and report lethal force by major law enforcement organisations in the four systems covered in this report. The categories and colour coding were developed on the basis of the process explained in the introduction to the Country Report section below. Further details are provided in the individual reports themselves.

	Belgium	England & Wales	France (Police)	France (Gendarmerie)	Netherlands
<b>Are the number of deaths following any police use of force (be it firearms, 'less lethal' weapons or other force):</b>					
Collected?	P	G	G	U	P
Publicly available?	L	G	G	N	P
Is this a legal requirement?	P	N	N	N	N
Can such information be requested from the authorities via FOI laws?	P	G	N	N	G
If published, to what extent is the number of deaths readily identifiable from official statistics? What work needs to be done to pull these out?	L	P	G	N	P
Are the deceased identified by name?	G	P	N	N	N
<b>Is demographic and other information for the deceased (including ethnic background, age and gender):</b>					
Collected?	P	G	U	U	N
Publicly available?	N	G	N	N	N
Is this a legal requirement?	N	N	N	N	N
Can such information be requested from the authorities via FOI laws?	L	G	N	N	N
<b>Is demographic and other information for LEOs:</b>					
Collected?	P	G	U	U	N
Publicly available?	N	N	N	N	N
Is this a legal requirement?	L	N	N	N	N
Can such information be requested from the authorities via FOI laws?	L	G	N	N	N
<b>Is information about the type(s) of force used:</b>					
Collected?	G	G	U	U	G
Publicly available?	N	G	N	N	G
Is this a legal requirement?	N	N	N	N	N
Can such information be requested from the authorities via FOI laws?	L	G	N	N	G

**Key**

<span style="background-color: #28a745; color: white; padding: 2px 5px;">G</span>	<span style="background-color: #ffc107; color: white; padding: 2px 5px;">P</span>	<span style="background-color: #dc3545; color: white; padding: 2px 5px;">L</span>	<span style="background-color: #343a40; color: white; padding: 2px 5px;">N</span>	<span style="background-color: #6f42c1; color: white; padding: 2px 5px;">U</span>	<span style="background-color: #e9ecef; color: white; padding: 2px 5px;"> </span>
Good, Robust	Partial, Medium	Limited, Poor	None	Unknown	Not relevant

	Belgium	England & Wales	France (Police)	France (Gendarmerie)	Netherlands
<b>Data Quality of Official Sources</b>					
How reliable are the sources used to produce official statistics about deaths?	P	P	L	N	P
Internal quality assurance / verification conducted	L	G	U	N	G
Methodology for data collection publicly specified	N	G	P	N	G
How reliable are the overall figures produced?	P	P	P	N	P
<b>Data Analysis and Lessons Learnt</b>					
State / police agencies analyse data to generate evidence-based recommendations / lessons learnt, in order to prevent future deaths	L	P	U	U	P
Evidence that state / police agencies act on the results of their analysis, including applying lessons learnt	P	L	N	N	P
External bodies are able to reuse data for their own analyses	P	P	N		P
External, non-governmental agencies collect, and are able to publish, their own statistics on deaths following police use of force	P	G	G	G	G
<b>Investigations by Official Agencies</b>					
Is there a legal requirement for deaths to be independently investigated?	G	G	N	N	G
How independent and impartial are the official investigations?	P	P	N	N	G
<b>Investigation reports into deaths are:</b>					
Publicly available?	L	P	N	N	L
Do they give reasons for the conclusions they have reached?	U	P	N	N	G
Is this a legal requirement?	N	N	N	N	N
Can such information be requested from the authorities via Freedom of Information laws?	L	G	N	N	G
Information available on legal proceedings against agents / officials pursuant to deaths	N	L	N	N	P
Number of prosecutions against agents / officials involved in the last ten years?	L	N	N	N	N

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## Acronyms

BAME	Black, Asian and Minority Ethnic	IRR	Institute of Race Relations
CADA	Commission D'accès aux Documents Administratifs (Commission for Access to Administrative Documents)	IGGN	Inspection Générale de la Gendarmerie Nationale (General Inspectorate of the National Gendarmerie)
CPCP	Centre Permanent pour la Citoyenneté et la Participation (Permanent Centre for Citizenship and Participation)	IGPN	Inspection Générale de la Police Nationale (General Inspectorate of the National Police)
ECHR	European Convention on Human Rights	IOPC	Independent Office for Police Conduct
ECtHR	European Court of Human Rights	IPCC	Independent Police Complaints Commission
GIS	General Inspection Service (Algemene Inspectie van de Federale Politie en van de Lokale Politie/ Inspection Générale de la Police Fédérale et de la Police Locale)	ISS	Internal Supervision Service (Dienst Intern Toezicht / French: Service Contrôle Interne)
HMICFRS	Her Majesty's Inspectorate of the Constabulary and Fire and Rescue Service	NGO	Non-governmental Organisation
IAP	Independent Advisory Panel on Deaths in Custody	NPCC	National Police Chiefs' Council
		PCC	Police and Crime Commissioner
		UK	United Kingdom



# Introduction

**In democratic societies, good policing depends on public consent and an acceptance of the legitimacy of the police. As events around the globe in 2020 have made evident, consent and legitimacy can be eroded when force is seen as unnecessary or excessive. The killing of George Floyd on 25 May after his arrest in Minneapolis initiated extensive media coverage of the use of force in policing across Europe, North America and beyond.**

As well, the need to resort to force can be affected by the degree of support among the public. When the use of force results in death, and when members of certain communities disproportionately die at the hands of the state, then questions about the justifications for force become particularly pronounced. The finality of death, as well as its potentially traumatic toll for individuals and groups, raise vital and sensitive issues about bereavement, potential infringements of the most fundamental human right, the right to life, and the importance of learning lessons to prevent future deaths, where possible.

The collection, recording and publicising of data about the use of force is a basic step toward ensuring the accountability of the police under the rule of law. International standards and principles, most notably the *UN Code of Conduct for Law Enforcement Officials*<sup>2</sup> and the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*<sup>3</sup>, task states to effectively report incidents of force, especially when they result in death. The UN Special Rapporteur on Torture, and other cruel, inhuman or degrading treatment or punishment, has recommended that 'States should establish effective systems for monitoring and reporting on the use of force, and relevant information should be made accessible to the public, including statistics on when, against whom and through which means force is used and on the resulting harm'<sup>4</sup>. The United Nations' *Guidance on Less Lethal*

*Weapons in Law Enforcement* notes that states should consider requiring 'all law enforcement agencies to document every use of force involving less lethal weapons or related equipment... (and) should identify any lessons learned from the incident'<sup>5</sup>.

And yet, apart from high-profile cases that garner media attention, it is too often the case that little is known publicly about the situations in which the police use force, as well as how often such force leads to death. Although law enforcement agencies may keep records of incidents, access to such documentation can be restricted or difficult to obtain. This lack of information is in itself a sign of weak accountability. It raises serious questions about the compliance with international human rights standards and principles and is often incompatible with public expectations for the police. Beyond access to records, there is often a reluctance to identify (let alone address) patterns of discriminatory or disproportionate use of lethal force against vulnerable or marginalised groups.

In the years prior to 2020, notable national efforts had been made to compile figures on the number of deaths following the use of force by law enforcement officials. In the US, for instance, the lack of reliable data on the number of persons killed by the police has been recognised for some time<sup>6</sup>. Based on initial work undertaken by *The Guardian* newspaper<sup>7</sup>, the campaigning group *We the*

*Protesters* has assembled a wide-ranging database on deaths of people killed by the police in the US<sup>8</sup>.

Whilst there have been such initiatives focusing on deaths following police use of force within specific countries, relatively few efforts have been undertaken to compare deaths in the context of law enforcement across jurisdictions (examples include Chevigny<sup>9</sup> and Osse & Cano<sup>10</sup>). This omission is surprising, as violence, which includes violence by law enforcement officials, is recognised internationally by a range of actors and texts – including the UN Secretary General<sup>11</sup>, the Geneva Declaration (signed by 100 countries<sup>12</sup>) and the World Health Organisation<sup>13</sup> – as a key issue. In that light, international efforts have been made to assess civilian deaths within armed conflicts<sup>14</sup> as well as total deaths from violence worldwide<sup>15</sup>. However, comparative analysis of violence by law enforcement officials, which impacts not only on human rights but also on public health and social development more broadly, is still lacking.

Against that backdrop and with the support of a grant from the Open Society Foundations, in 2019 the authors of this report began a project titled 'Toward a Lethal Force Monitor', building on work by the late Anneke Osse. Our goal is to enhance the policies and practices of law enforcement agencies with the ultimate aim of reducing unnecessary deaths and injuries. To do so, we set out to assess the availability and reliability of information relating to deaths following any use of force by policing and law enforcement officials. This report undertakes this assessment in relation to four jurisdictions: Belgium, England & Wales, France and the Netherlands. It is our intention to support current debate,

research and policies that improve practices associated with the use of force and to enhance state accountability. It is also our intention to complement, not detract from, longer term, more ambitious efforts to reimagine how policing takes place.

This report is underpinned by a set of guiding principles:

- Every death associated with the use of force by law enforcement officials<sup>16</sup> should be recorded, recognised and investigated. No one's death should go unacknowledged and any lessons should not go unexamined.
- Producing detailed, reliable, and publicly accessible information for each individual death and deaths overall in a jurisdiction is a necessary step in ensuring the accountability of law enforcement agencies, ministries and governments. Such information is also vital in understanding whether particular groups in society are not disproportionately affected by police use of force.
- Lessons should be promptly acted upon in order to help prevent future deaths.
- Surviving family members and others directly affected by bereavement should be engaged in a meaningful way with investigation processes and subsequent outcomes.
- State agencies need to establish and publicise systematic procedures for monitoring and reducing harms (especially deaths) associated with the use of force.
- Ensuring practices are in line with the letter and spirit of relevant national and international laws, codes and standards is an important part of achieving these objectives, but so too is the willingness to recognise how such laws, codes and standards need to be improved.

<sup>2</sup> Office of the United Nations High Commissioner for Human Rights. UN Code of Conduct for Law Enforcement Officials adopted by UN General Assembly Resolution 34/169 of 17 December 1979, <https://www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx>, (accessed 4 December 2020).

<sup>3</sup> Office of the United Nations High Commissioner for Human Rights. *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (1990). Note Principles 6, 11, 22, <https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>, (accessed 4 December 2020).

<sup>4</sup> UN Secretary-General. *Extra-custodial Use of Force and the Prohibition of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* /A/72/178, 2017: paragraph 70, <http://undocs.org/A/72/178>, (accessed 4 December 2020).

<sup>5</sup> Office of the United Nations High Commissioner for Human Rights. *Guidance on Less Lethal Weapons in Law Enforcement* HR/PUB/20/1, 2020, para 3.3 - 3.4, [https://www.ohchr.org/Documents/HRBodies/CCPR/LLW\\_Guidance.pdf](https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf) (accessed 4 December 2020).

<sup>6</sup> N. Krieger et al., 'Police Killings and Police Deaths Are Public Health Data and Can Be Counted', *PLoS Med*, vol. 12, no. 12, 2015, e1001915, <https://doi.org/10.1371/journal.pmed.1001915>, (accessed 4 December 2020).

<sup>7</sup> <https://www.theguardian.com/us-news/series/counted-us-police-killings>, (accessed 4 December 2020).

<sup>8</sup> <http://www.wetheprotesters.org>, (accessed 4 December 2020).

<sup>9</sup> P. Chevigny, 'Police Deadly Force as Social Control', *Criminal Law Forum*, vol. 1, no. 3, 1990, pp.389-425.

<sup>10</sup> A. Osse and I. Cano, 'Police Deadly Use of Firearms: An International Comparison', *The International Journal of Human Rights*, vol. 21, no. 5, 2017, pp.629-649, DOI: 10.1080/13642987.2017.1307828.

<sup>11</sup> See for example, UN General Assembly, A/64/228, 5 August 2009, Para 6, on the State's monopoly on the legitimate use of force, and its responsibility to determine the circumstances in which individuals can lawfully use force, <https://undocs.org/A/64/228>, (accessed 4 December 2020).

<sup>12</sup> <http://www.genevadeclaration.org/the-geneva-declaration/who-has-signed-it.html>, (accessed 4 December 2020).

<sup>13</sup> WHO. *International Statistical Classification of Diseases and Related Health Problems* 10th Revision, 2010, <http://apps.who.int/classifications/icd10/browse/2010/en#/Y35-Y36>, (accessed 4 December 2020).

<sup>14</sup> <https://www.everycasualty.org>, (accessed 4 December 2020).

<sup>15</sup> <https://grevd.org>, (accessed 4 December 2020).

<sup>16</sup> As defined in the UN Code of Conduct for Law Enforcement Officials (commentary to Section 1), law enforcement officials include: '(a) [a]ll officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. (b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.' In light of the policing situation in each of the countries examined in this report, we treat the terms 'law enforcement officials' and 'police officers' as synonymous, <https://www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx>, (accessed 4 December 2020).

## Scope

### In investigating the availability and reliability of information relating to deaths associated with the use of force by law enforcement officials, it is important to be precise about which deaths are included and excluded from study.

The focus of this report is Western Europe, and specifically the jurisdictions of Belgium, England & Wales, France, and the Netherlands. These systems are of interest in their own right, but also because of the legal standards in place. All these states adhere to the European Convention on Human Rights (ECHR)<sup>17</sup>. The ECHR is often held up as the most robust international human rights law framework. Article 2 ECHR on the right to life states that:

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
  - (a) In defence of any person from unlawful violence;
  - (b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - (c) In action lawfully taken for the purpose of quelling a riot or insurrection.

Article 2's scope regarding the use of force has been extended by the European Court of Human Rights (ECtHR) since the ruling in *McCann and Others v UK* (1995)<sup>18</sup>, by reading Article 2 in conjunction with Article 1, the obligation to respect the rights and freedoms in the ECHR, and with the ECtHR's general requirement that rights are secured in practical and effective ways.

The core objectives of Article 2 are to achieve state accountability under the rule of law, to restrict the use

of lethal force, and to ensure that states learn from lethal incidents. Article 2 now covers:

- Intentional and unintentional deaths.
- Deaths (as well as serious threats to life) caused by any agent of the state.
- Deaths resulting from any form of conduct involving any use of force against another and not just 'the use of weapons or physical violence' (*McShane v UK* (2002)<sup>19</sup> para 101). The Court has held that 'in assessing evidence, the general principle applied in cases has been to apply the standard of proof "beyond reasonable doubt"... However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control while in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation.' (*Velikova v Bulgaria* (2000)<sup>20</sup> para 70).
- The compatibility of the state's legal framework with Article 2.
- The state's positive obligation to minimise risk to life in its planning and control of all activities.
- The duty to carry out an effective official investigation 'when individuals have been killed as a result of the use of force' (*McCann and Others v UK* (1995) para 161)<sup>21</sup>. Under this duty investigations must be:

- ♦ adequate and effective, i.e. capable of establishing cause of death and responsibility for it<sup>22</sup>
- ♦ independent and impartial
- ♦ transparent and open to public scrutiny, including family involvement, within limits of feasibility and security
- ♦ reasonably prompt and expeditious.

In *Police Lethal Force and Accountability*, we share the fundamental principles and goals of Article 2 ECHR, but we are not solely focused on issues of compliance with it, or potential liability under it. Our work is also motivated by awareness of the problematic limits, gaps and silences within and around Article 2 law. For example:

- Not all potential claimants under Article 2 can bring a case before the ECtHR due to lack of access to legal representation or due to procedural restrictions.
- Article 2 law has a broad scope and can produce strict standards for state conduct, but it is 'a floor not a ceiling' and allows flexibility in states' recourse to force and their policing and investigatory practices. Article 2 standards and state practices can therefore in some instances be challenged and improved.
- Despite a generally broad approach to interpreting potential causal connections between state control processes, state agents' conduct and a victim's death, in some cases a reductive and restrictive approach by the ECtHR can exclude state decisions and conduct from scrutiny under Article 2 ECHR<sup>23</sup>.
- The ECtHR underlines the importance of Article 2 by declaring that it 'enshrines one of the basic values of the democratic societies making up the Council of Europe' (*McCann and Others v UK* (1995) para 147), but the analysis of lethal force is case-specific and does not address

broader trends within or among contracting states, or internationally, in relation to wider democratic values.

- Issues of discrimination (e.g. regarding sex, race, ethnicity) in state practices tend to fall outside Article 2 case law and remain invisible due to a general lack of available data.

In light of the above, this report seeks to assess the availability and reliability of data relating to:

- all deaths (intended and unintended);
- resulting from (i.e. apparently caused by) or associated with (i.e. occurring in the context of, during or after) any application of force (including but not limited to physical force, the use of batons, firearms and other 'less lethal' weapons, firing warning shots, and the use of restraint techniques and apparatus) by state agents with responsibility for policing and law enforcement;
- in situations including the apprehension of suspected offenders, defence of self or others against perceived threats, restraint of suspects or arrestees (during an incident or in custody), control and management of public order including suppressing violent assemblies, and the fulfilment of other relevant duties of state agents<sup>24</sup>.

<sup>17</sup> The European Convention on Human Rights is the name most commonly used to refer to the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf), (accessed 5 December 2020).

<sup>18</sup> *McCann and Others v United Kingdom*, 27 September 1995 (Application no. 18984/91).

<sup>19</sup> *McShane v United Kingdom*, 28 May 2002 (Application no. 43290/98).

<sup>20</sup> *Velikova v Bulgaria*, 18 May 2000 (Application no. 41488/98).

<sup>21</sup> In finding the duty to investigate in Article 2 the ECtHR was indirectly influenced by the UN *Basic Principles on the Use of Force and Firearms* (1990) and the UN *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Economic and Social Council Resolution 1989/65*, <https://www.ohchr.org/Documents/ProfessionalInterest/executions.pdf>, (accessed 5 December 2020).

<sup>22</sup> In developing these requirements under Article 2 the ECtHR acknowledged the so-called 'Minnesota Protocol' or UN Manual (1991) that gave further effect to the UN *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, <https://www.ohchr.org/en/issues/executions/pages/revisonoftheunmanualpreventionextralegalarbitrary.aspx>, (accessed 5 December 2020) and the conjoined judgments in *McKerr v United Kingdom*, *Hugh Jordan v United Kingdom*, *Shanaghan v United Kingdom*, and *Kelly and Others v United Kingdom*, all 4 May 2001 (Application nos. 28883/95, 24746/94, 37715/97 and 30054/96).

<sup>23</sup> Such as where the ECtHR's configuration of evidence excludes aspects of operational planning and control, or its acceptance of state discretion leaves a state's choice and deployment of weaponry unexamined.

<sup>24</sup> Some consideration is given to the use of official weapons or equipment while officers are off duty, but this is done unevenly across the countries. For reasons of feasibility, we **exclude** deaths resulting from road traffic accidents; deaths occurring in the prison system or immigration detention facilities; deaths that are self-inflicted following contact with a state agent; and deaths caused by private individuals acting to support state agents or state services (such as privatised transportation of detainees or private security guards supporting policing functions).

## Country Reports

### Note on Content and Approach

The individual country reports that follow examine a number of issues, including:

- Official statistics on extent of use of lethal force by law enforcement officials;
- The procedures for collecting and publishing official data;
- The quality of such official data;
- How lessons are or are not learnt from the analysis of deaths;
- The characteristics of investigations by official agencies;
- The availability of relevant data from unofficial sources in each system.

These issues were derived from an initial comparison of the procedures, policies and practices in each of the four jurisdictions covered, as well as through drawing on secondary literature about the police use of force. Each of the authors related to a specific system provided a provisional classification of those policies and practices according to the schema set out at the start of each country report. Subsequently, all of the authors of *Police Lethal Force and Accountability* discussed these initial classifications and adjusted them where necessary to ensure that they were consistently calibrated relative to each other. Consultations were also made with a number of key stakeholder organisations and experts for comments on the factual accuracy of the country reports.

The colour coding in Table 1 (see pp.6-7 above) and in the tables appearing at the start of each country report reflects the outcomes of the process. In the absence of any international benchmarking standards, the classifications given in the tables are intended as indicative, headline summations of the evidence presented. The individual country reports should be consulted for specific detail about the procedures, policies and practices in each system, as well as recommendations for particular jurisdictions.



# Belgium

## Data Collection and Publication by Official Agencies

Based on the 2018 reporting period (calendar year)

	Belgium
1. Are the number of deaths following any police use of force (be it firearms, 'less lethal' weapons or other force):	
Collected?	P
Publicly available?	L
Is this a legal requirement?	P
Can such information be requested from the authorities via FOI laws?	P
2. If published, to what extent is the number of deaths readily identifiable from official statistics? What work needs to be done to pull these out?	L
3. Are the deceased identified by name?	G
4. Is demographic and other information for the deceased (including ethnic background, age and gender):	
Collected?	P
Publicly available?	N
Is this a legal requirement?	N
Can such information be requested from the authorities via FOI laws?	L
5. Is demographic and other information for LEOs:	
Collected?	P
Publicly available?	N
Is this a legal requirement?	L
Can such information be requested from the authorities via FOI laws?	L
6. Is information on the circumstances:	
Collected?	L
Publicly available?	L
Is this a legal requirement?	N
Can such information be requested from the authorities via FOI laws?	L
7. Is information about the type(s) of force used:	
Collected?	G
Publicly available?	N
Is this a legal requirement?	N
Can such information be requested from the authorities via FOI laws?	L

### Key

<b>G</b>	<b>P</b>	<b>L</b>	<b>N</b>	<b>U</b>	
Good, Robust	Partial, Medium	Limited, Poor	None	Unknown	Not relevant

	Belgium
<b>Data Quality of Official Sources</b>	
8. How reliable are the sources used to produce official statistics about deaths?	P
9. Internal quality assurance / verification conducted	L
10. Methodology for data collection publicly specified	N
11. How reliable are the overall figures produced?	P
<b>Data Analysis and Lessons Learnt</b>	
12. State / police agencies analyse data to generate evidence-based recommendations / lessons learnt, in order to prevent future deaths	L
13. Evidence that state / police agencies act on the results of their analysis, including applying lessons learnt	P
14. External bodies are able to reuse data for their own analyses	P
15. External, non-governmental agencies collect, and are able to publish, their own statistics on deaths following police use of force	P
<b>Investigations by Official Agencies</b>	
16. Is there a legal requirement for deaths to be independently investigated?	G
17. Is there an authority, separate from the one involved in the incident, which conducts investigations into deaths? If so, which organisation(s) conduct these investigations?	★
18. How independent are the investigations conducted by the organisation(s) named above? Please consider the extent to which they are independent and separate in terms of a) legal structure, b) hierarchy, c) investigative activity and personnel, d) operational ability (or 'self-reliance') e) oversight and control	P
19. Involvement of close relatives in the investigations	U
20. Investigation reports into deaths are:	
Publicly available?	L
Do they give reasons for the conclusions they have reached?	U
Is this a legal requirement?	N
Can such information be requested from the authorities via FOI laws?	L
21. Information available on legal proceedings against agents / officials pursuant to deaths	N
22. Information available on legal proceedings against state agencies pursuant to deaths	N
23. Information available on disciplinary proceedings against agents/ officials pursuant to deaths	N
24. Number of prosecutions against agents / officials involved in the last ten years?	L
25. Number of convictions against agents / officials involved in the last ten years?	L
26. Number of prosecutions against agencies involved in the last ten years?	N
27. Number of convictions against agencies involved in the last ten years?	N
28. How readily available is information about prosecutions and convictions?	L

★ Committee P, General Inspection Service, judicial authorities

## Belgium

Since 1 January 2002, the integrated police in Belgium consist of both the federal police and the local police<sup>25</sup>. The federal police have around 14,500 employees, including 11,000 operational staff and 3,500 civilian employees. Local police consist of 185 different local police forces with diverging ranges of operational territory and amounts of personnel. The total of personnel of all local police forces is approximately 34,100 employees, including 28,300 operational staff and 5,800 civilian employees. This means Belgium has 4.2 police officers (operational staff) per 1,000 inhabitants<sup>26</sup>. The federal police and local police differ in terms of territory and specialisation. For example, the local police forces are involved in general policing activities within their allocated zone, whereas the federal police forces are mostly concerned with specific tasks and/or supporting the local police. Certain tasks can overlap which leads to a less than clear distinction between the two levels of police in Belgium<sup>27</sup>.

The Internal Supervision Service (ISS), the General Inspection Service (GIS) and Committee P control both federal and local police forces. The *Internal Supervision Service* is charged with three main tasks: handling complaints, proactive research and supporting policy<sup>28</sup>. There is an ISS in every local police force and one ISS for the federal police in general. This means that the Internal Supervision Service is a part of the (internal) police

hierarchy. By contrast, the *General Inspection Service* is a form of ombudsman service, which investigates complaints and reports against an individual police officer or a police force. It is an independent agency situated outside the police hierarchy and falls directly under the responsibility of the Minister of Internal Affairs and the Minister of Justice or even the local authorities (mayor or police college<sup>29</sup>) when a local police force is involved<sup>30</sup>. The GIS will also conduct research into the operations of local or federal police forces, either on its own initiative or when directed to do so by the Minister of Internal Affairs. This research leads to recommendations with the aim of improving the general policing activities. Committee P assists parliament in its constitutional oversight of the executive powers. The main emphasis here lies in the supervision of the police function as a whole, and in particular the coordination, effectiveness and efficiency of police (services) and officials, as well as the way in which they deal with the protection of rights. Committee P carries out control and oversight activities and conducts complaint investigations<sup>31</sup>. For the purposes of this country report, these three control bodies will be assessed as one because the data collection and transparency of procedures are common between them.

## Data Collection and Publication by Official Agencies

According to the administrative circular GPI 62, the use of force by police is defined as: 'any event accompanied by acts of violence involving the use or non-use of police weapons, intervention techniques or tactics'<sup>32</sup>. Any use of force by police (both local and federal) should be immediately reported to the Directorate of Administrative Police Operations (a department of the federal police), which collects such information for the operational support of the federal and local governments, federal police and local police<sup>33</sup>. In practice this first brief report will only be written and transferred if the incident has a large impact on the police organisation or society, meaning that minor incidents (e.g. an accident due to a lack of safety measures) will not be reported through this first type of report. It is therefore expected that lethal force will be reported through both a brief and an extensive report<sup>34</sup>.

An extensive report on individual instances of the use of force is made to the General directorate of resource management and information (a department of the federal police). This second type of report supports the supervision, management and production of qualitative and quantitative analyses by the Internal Supervision Services, the General Inspection of the Federal and Local Police and Committee P. It is also transferred to the Directorate of the Service for Prevention and Protection at Work, the Training Directorate and 'Use of Force & Sports' department of the national police academy for internal consideration. For example, the report can be used as a basis for making changes to training carried out in the national police academy. It contains at least the

following information: description of the facts (nature and circumstances, injured persons/victims; and if the incident involves the use of weapons, their type, brand and calibre); location, date and time; member(s) of staff involved (surname, first name, rank, the police force to which the agent belongs, identification number); and the coordinates of the contact person (for any additional information). Any use of firearms must also be reported to the Ministry of Internal Affairs. Reporting any loss or theft of a firearm is also part of this reporting obligation<sup>35</sup>.

Data can also be retrieved through complaints. A civilian can file a complaint with the Internal Supervision Services, the General Inspection Service or Committee P. These complaints can be accessed through the database of the three supervision services mentioned above. The information obtained through the complaint does not significantly differ from the information retrieved through the reporting obligation of both the first operational report and the extensive report of the police forces<sup>36</sup>. Even though it might be expected that the extensive report could contain more information than the complaint form, the amount of information depends on the individual officer filling in the form. The main difference lies in the change of perspective. Whereas the reporting obligation is conducted by a police officer, complaints are filled in by civilians who were directly involved in certain situations. Just like the reporting obligation (both the 'basic' form and the 'extensive' form), the complaint form is event-based. This implies that different complaints about police uses of force are bundled when they are about the same event (for instance, police use of force during a protest by the Black Lives Matter movement)<sup>37</sup>.

<sup>25</sup> H. Berkmoes, E. De Raedt, and F. Goossens, *De Belgische reguliere politie. I: Een dwarsdoorsnede van haar wetgeving, organisatie, taken en bevoegdheden [The Belgian regular police. I: A cross-section of its legislation, organization, tasks and powers]*. Mechelen, Wolters Kluwer, 2009.

<sup>26</sup> Rekenhof, *Werving en selectie bij de federale politie*, Brussels, 2015, [https://www.courttofaudit.be/Docs/2015\\_10\\_WervingSelectieFederalePolitie.pdf](https://www.courttofaudit.be/Docs/2015_10_WervingSelectieFederalePolitie.pdf), (accessed 8 August 2020). Open VLD. *Lahaye-Battheu: Nog steeds 3.707 politieagenten tekort*. <https://www2.openvld.be/lahaye-battheu-nog-steeds-3-707-politieagenten-tekort>, (accessed 8 August 2020).

<sup>27</sup> B. De Ruyver, 'Tien jaar politiehervorming: een proeve tot evaluatie van de evaluatie', in W. Bruggeman, E. Devroe, and M. Easton (eds.), *Evaluatie van 10 jaar politiehervorming: Terugkijken in het verleden en vooruitkijken in de toekomst [Evaluation of 10 years of police reform: Looking back in the past and looking ahead in the future]*, Antwerpen Apeldoorn, Maklu, 2010, pp.115-129. FedPol [Federal Police], (2018). Jaarverslag 2018 van de Federale Politie, <http://rapportannuel.policefederale.be/index-nl.html>, (accessed 5 July 2020).

<sup>28</sup> Administrative circular POL48 of 06 July 1994 concerning the establishment of an 'internal supervision' service for municipal police forces. Local Police, 11 January 2005. Internal supervision. Permanent note, p.1.

<sup>29</sup> A police college is a Belgian executive body on the local level that exercises authority in police zones consisting of several municipalities. The police college is formed by the mayors of the affiliated municipalities in the police zone. It is up to the college to decide what materials and resources are to be procured in order to carry out tasks.

<sup>30</sup> General Inspection Act 2007.

<sup>31</sup> G. Van de Walle, P. Ponsaers, and E. De Pauw, *Zakboekje Politiefunctie [Police Function Pocketbook]*, Mechelen, Kluwer, 2009. Administrative circular POL 56 of 20 December 1996 concerning the supervision of the use of force by police officers.

<sup>32</sup> Royal Decree of 3 June 2007. Administrative circular GPI 62 29 February 2008.

<sup>33</sup> Royal Decree of 3 June 2007. Administrative circular GPI 62 29 February 2008.

<sup>34</sup> Vico Cockx (Head of the Use of Force & Sports department), Personal Communication (28 September 2020): 'Artikel 4.3 van de GPI62 bepaalt dat "enerzijds, vanuit dwingend operationeel standpunt, ..." (voorbeeld noodzaak Heli, patrouillehond, stressteam, ...). Het was de uitdrukkelijke visie/vraag van de Vaste Commissie van de Lokale Politie om niet steeds ASAP de Federale Politie in te lichten voor minder belangrijke incidenten (vb. ongeval veiligheidsmaatregelen, ...). Wel indien de impact groot is (operationeel standpunt). Je kan dus wel vermoeden dat er bij letaal politiegeweld altijd ASAP wordt gemeld aan DAO.'

<sup>35</sup> Royal Decree of 3 June 2007. Administrative circular GPI 62 29 February 2008.

<sup>36</sup> The complaint form is clearly structured, whereas the compulsory form used by the police is different for each police force. The complaint form explicitly asks if there were any witnesses.

<sup>37</sup> Committee P, *File a complaint*, <https://comitep.be/klacht-indienen.html>, (accessed 5 August 2020).

## Belgium

The complaint form and reporting obligation do not necessarily indicate whether there is a connection between the use of force and the death of a civilian and/ or a police officer. To find this out, one must consult reports of the judicial authorities. Yet judicial authorities will only publish the description of certain cases and the decision of a court in respect of individual cases only, which means this is qualitative data. There is no readily available quantitative data on lethal force. Quantitative data has to be compiled from information contained in individual files, to the extent that they have been the object of judicial reports, which are themselves not publicly available. Research on lethal force has not been publicly published or noted so far, including quantitative analysis. However, in 2019 Committee P published a report examining individual judicial decisions concerning members of the police in 2015, 2016 and 2017, as well as instances of police violence (*politiegeweld*) from 2013 to 2017. This report offered a cumulative analysis of different judicial decisions and case descriptions<sup>38</sup>.

The three modes of generating data (through the reporting obligation, complaint forms and judicial cases) are not proactively published by the authorities involved. Yet anyone interested can consult these documents due to the Belgian constitution, which states: 'Everyone has the right to consult and receive a copy of each administrative document, except in the cases and under the conditions determined by law'<sup>39</sup>. The term 'administrative documents' is interpreted broadly to include datasets, policy documents or even messages between government executives. This emphasis on transparency has been further elaborated in the Federal law on openness of government. This law states certain exceptions, for example information on personal affairs<sup>40</sup>.

## Data Quality

Despite the obligation to report violent incidents and the use of firearms, this requirement is not always complied with and is not fully implemented. This is partly due to the reporting process itself, as the content, scope and analytical precision of a report depend on the subjective interpretation of its author. All this means available data is unreliable. Committee P emphasized the need for a standardized form for reporting firearms use. It argued that a standard form and a standard procedure combined with better compliance with the reporting obligation would be a major step forward<sup>41</sup>. The advice of committee P has resulted in the creation of a standard form. In June 2019 it was introduced in the Belgian local police zones and some departments of the federal police. In July 2020 the standard form was introduced in the remaining departments of the federal police. It will be filled in automatically when an official report with a certain classification is drawn up but can also be filled in independently as a reporting document. Within this standard form the following elements must be described: reasoning of the use of force, description of the situation, identification of the main civilian involved<sup>42</sup>, behaviour of the suspect, signs of aggression of the civilian involved, attempted disarmament of an agent, tactical considerations, type of communication by police, use of physical force, use of weapons, following actions taken by involved police officer, medical evaluation and the name of the police officer involved<sup>43</sup>. It must be mentioned, that in 2016 the Directorate of the Service for Prevention and Protection at Work already distributed a standard form to all departments of the Belgian integrated police. Yet this form had a broad scope, as it should have been used to report all types of 'accidents' on the workplace including

the reporting of a bodily injury, any event involving acts of violence, an explosion or fire in a police building and loss or theft of a weapon, parts of armaments, ammunition and bulletproof vests<sup>44</sup>.

According to Willy Bruggeman, chair of the Belgian Federal Police Council, 'Practices are quite different between police zones. There are of course the classic forms concerning the reporting obligation, but some elements within this form are without obligation. Because of these differences, we can speak of rather subjective data'<sup>45</sup>. This suggests that, in practice, police forces will pay varying attention to the use of force by their personnel. For example, referring to police zone Rhode Schelde, a middle-sized police force, spokesperson Ronny De Cuyper stated:

We do not have a monitoring system as such used for violence by the police. Only violence against the police, but even then, our people do not always report this. This only happens in the event of professional incompetence. That does not alter the fact that violence is followed up by the police. Every day we have a debriefing of the past 24 hours and a briefing of the next 24 hours. If excessive violence has been used, we can respond immediately<sup>46</sup>.

These quotations indicate that there is a limited amount of data on the use of force by the Belgian police. In addition, the present available data is marked by a certain amount of subjectivity and variability. This is because the reporting obligation is not always complied with and the reports themselves are not filled in consistently. This ambiguity of reporting on the use of force by police is exemplified in the case of Jozef Chovanec.

### The case of Jozef Chovanec

On 19 August 2020, camera images appear showing a wounded detainee in a cell at Charleroi airport being overpowered by several police officers and dying. The man was the Slovakian Jozef Chovanec. He was arrested at Charleroi airport in 2018 for 'not behaving well'. The camera footage shows the man banging his head against the wall of his cell in the airport until he starts bleeding. The policemen who enter the cell handcuff the man and place him on his stomach, after which several policemen lie down on him. On the footage it is also noticeable that one of the policemen is dancing while another one is making the 'Hitler salute'. After sixteen minutes, medical personnel enter the cell. They try to resuscitate Chovanec in vain. At the time of writing, the judicial process is still ongoing which means that it is still unclear if the actions of the police officers led to the death of Jozef Chovanec<sup>47</sup>.

The images led to a parliamentary hearing on 1 September 2020. Both the minister of the interior in 2018 Jan Jambon, the head of the integrated police of 2018 Catherine De Bolle and the current head of integrated police Marc De Mesmaeker (who in 2018 was still working as a liaison between the federal police and the Jambon cabinet), stated that there is a difference between the images that appeared and the report that was drawn up at the time. The intervention on the tarmac and the arrest are described in detail, even with the damage suffered by the officers. What happened in the cell is all described only very briefly<sup>48</sup>.

<sup>38</sup> Committee P, *Judicial decisions concerning members of the police: 2015, 2016 and 2017 and Police brutality: 2013 to 2017, 2019*, <https://comitep.be/document/cahiers/Cahier%2033%20-%20%20Rechterlijke%20beslissingen.pdf> (accessed 8 August 2020).

<sup>39</sup> The Belgian Constitution, art. 32, [https://www.dekamer.be/kvvcr/pdf\\_sections/publications/constitution/GrondwetUK.pdf](https://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/GrondwetUK.pdf), (accessed 5 December 2020).

<sup>40</sup> D. Voorhoof, 'Openness of public administration in Belgium: a loose bag', *Samenleving en politiek*, vol. 17, no. 3, 2010, pp.56-61.

<sup>41</sup> Committee P, *Use of force and violence in response to large-scale events and police operations*, <https://comitep.be/document/onderzoeksrapporten/2009%20gebruik%20van%20dwang%20en%20geweld%20nl.pdf>, (accessed 9 August 2020). Committee P, *Annual report 2010*, p.72, <https://comitep.be/document/jaarverslagen/2010NL.pdf>, (accessed 9 August 2020).

<sup>42</sup> If multiple civilians are involved, police officers only need to add the number of civilians involved next to the description of the main civilian involved.

<sup>43</sup> Vico Cockx, Personal Communication, (28 September 2020): 'TER INFO: Er bestaat een gestandaardiseerd document (zie bijlage) dat sinds kort in de geautomatiseerde politieapplicaties (nu al in ISLP, Lokale Politie en sommige Federale Politie – kortelings ook in FEEDIS, andere Federale Politie) geïntegreerd is. Het zal bij opstellen van een proces-verbaal met bepaalde classificatie automatisch worden ingevuld maar ook onafhankelijk als "meldingsdocument" kunnen worden ingevuld.'

<sup>44</sup> Vico Cockx, Personal Communication, (28 September 2020): 'Sinds 2016 was er een gestandaardiseerd word-formulier dat door de dienst welzijn (CGWB) binnen de GPI werd verspreid (zie bijlage).

<sup>45</sup> Willy Bruggeman, Personal Communication, (6 April 2020): 'De praktijken in de politiezones zijn heel verschillend. Er zijn natuurlijk de klassieke vormen, maar sommige elementen binnen dit formulier zijn vrijblijvend. Door deze verschillen kunnen we spreken van eerder subjectieve gegevens.'

<sup>46</sup> Ronny De Cuyper, Personal Communication, (9 July 2020): 'We hebben geen monitoringsysteem dat als zodanig wordt gebruikt voor geweld door de politie. Alleen geweld tegen de politie, maar ook dan doen onze mensen niet altijd aangifte. Dit gebeurt alleen in geval van professionele onbekwaamheid. Dat neemt niet weg dat geweld niet wordt opgevolgd door de politie. Elke dag hebben we een debriefing van de afgelopen 24 uur en een briefing van de komende 24 uur. Als er excessief geweld is gebruikt, kunnen we daar direct op reageren.'

<sup>47</sup> S. Peek, 'België geschokt over video gearresteerde Slowaak' ['Belgium shocked about video of arrested Slovakian citizen'], *NRC* (accessed 19 August 2020). E. Bergmans, 'Man sterft na politieoptreden in cel in Charleroi: "Mijn echtgenoot stierf zoals George Floyd"' ['Husband dies after police intervention in cell in Charleroi: "My husband died like George Floyd"'], *De Standaard* (accessed on 19 August 2020).

<sup>48</sup> *Het Laatste Nieuws*, *KJK LIVE*: CD&V scherp voor Jambon en De Bolle: "Alle alarmbellen hadden moeten afgaan", [Watch LIVE: 'CD&V sharp for Jambon and De Bolle: "All the alarm bells should have gone off"'], (accessed 1 September 2020).

## Belgium

### Data Analysis and Lessons Learnt

Three organisations in Belgium have each produced an analysis of the use of force by police. These analyses are solely based on the topic of the use of force in general. There is no research on lethal force within the Belgian context.

In 2019, Committee P published a report on the use of force (which includes non-lethal force) by police in which they qualitatively analysed a selection of dossiers involving both local and federal police. The cases were selected from the database of Committee P in the period of 2001 to 2016. Committee P selected 21 dossiers on the use of force, but without considering whether any of these dossiers have led to a prosecution, resulted in a court ruling if there was a prosecution, or led to a decision by a supervision agency if there was no prosecution. As such, their analysis is purely based on complaints. The 21 selected dossiers come from 14 different police zones and one from the federal police. Of these 21 dossiers, 5 are chief inspectors and the others are inspectors. All of them are men. These members of staff occupy front-line positions such as intervention and anti-crime brigades. All these staff members are in direct contact with the population. The police forces involved were informed of the investigation by letter in August 2017. From September 2017, Committee P contacted these services to gain access to the necessary and available material, in particular the personal files, the disciplinary files and the files concerning accidents at work.

175 incidents on the use of force were recorded for these 21 individuals. As mentioned earlier, not all incidents have led to a prosecution or have been held by a court to involve an offence. When analysing the individual

dossiers, Committee P found out that some led to a prosecution and others did not. The amount or reasoning of prosecutions was not specified. Yet, it is important to note that when a prosecutorial file is opened, the final judicial decision can be made several years after the events involved. The judicial decisions are often shelved for various reasons. For three members of staff, however, the court's decision was followed by disciplinary measures. Committee P describes three lessons learned. First, Committee P recommended that greater importance should be given to continuous professional performance appraisal, in order to break away from the short-term perspective of occasional appraisals and make it easier to address and adjust impulsive and aggressive attitudes and behaviour that become apparent over time. Second, on the question of evaluation and discipline, the local police zones were called on to conclude agreements among themselves in order to appoint preparatory investigators or experts in disciplinary matters. Third, Committee P called for the establishment of a system to centralize data about specialist training in order to facilitate monitoring of training needs, especially with regard to violence reduction<sup>49</sup>. Yet, despite these three recommendations from Committee P, there is no clear indication of how the Belgian federal or local police have incorporated these lessons learned in their respective organisations.

The other two organisations that have produced analyses of police uses of force are *Centre Permanent pour la Citoyenneté & Participation*<sup>50</sup> (CPCP, Permanent Centre for Citizenship and Participation), which is a semi-governmental organisation (partially funded by the Walloon regional government), and Police Watch, which is a public research centre. *Centre Permanent pour la Citoyenneté & Participation* produced a qualitative document analysis based on reports from Committee P and the League of Human Rights, which is a movement that monitors respect for human rights in

Belgium. Human rights are fundamental rights that every human being has, simply because he or she is human, and the League encourages governments and municipalities to increase their respect for those rights. It does so in many ways: through pressure in the media, lobbying and strategic legal actions<sup>51</sup>. *Centre Permanent pour la Citoyenneté & Participation* emphasized the lack of clear statistics on the use of force by police and problems concerning the monitoring bodies, which are neither independent nor impartial:

Statistics on the use of force by the police are rather sketchy, incomplete and difficult to obtain. One of the prerogatives of Committee P is to issue an annual report on this subject, but not all complaints are recorded in it. Indeed, in these reports, only complaints received directly by Committee P are included. Complaints received by the GIS or ISS are therefore not included (...) In addition the current control bodies seem to lack independence from the police<sup>52</sup>.

Police Watch is a public research centre established by the League of Human Rights. Through their website, civilians can report if they have been a victim of force used by the police or a witness to a use of (lethal) force by police. Based on these claims, Police Watch has published a report on the use of force by police. Their results have not been very different compared to the report of Committee P as elaborated above. Also, within their lessons learned they state that the existence of police abuse should be recognized and monitored in order to produce official figures<sup>53</sup>.

In conclusion it should be noted that neither Committee P, CPCP nor Police Watch have conducted research on lethal force, but only on uses of force by police in general.

### Investigations by Official Agencies

As mentioned at the start of this country report, lethal force in general is controlled by three control bodies in Belgium. The Internal Supervision Service carries out audits on its own initiative and acts proactively in this way. For every complaint that the service receives, it systematically produces a file. An investigation which determines whether a certain act is legal follows<sup>54</sup>. The General Inspection Service investigates complaints and reports regarding the behaviour of a police officer and the functioning of a police service<sup>55</sup>. Committee P carries out both surveillance investigations and complaint investigations<sup>56</sup>. Committee P and the General Inspection Service have overlapping powers with regard to dealing with complaints about the police and carrying out investigations into police operations. Supervision on the operations (including investigations) of local police and federal police is carried out in parallel.

In contrast to the Internal Supervision Service, Committee P and the General Inspection Service are independent agencies due to their position in the framework of the Belgian police. That is because they are placed outside the police institutional hierarchy<sup>57</sup>. Yet, in terms of the composition of the personnel of Committee P and the General Inspection Service, concerns can be raised about their degree of independence in practice. Even though their websites state that they are independent agencies, the personnel of the General Inspection Service consist of seconded police officers and members of the administrative and logistics framework of the federal police or a local police force<sup>58</sup>. This staffing arrangement is also similar in Committee P, some of whose investigative staff are police

<sup>49</sup> Committee P, *Judicial decisions concerning members of the police: 2015, 2016 and 2017 and Police brutality: 2013 to 2017, 2019*, <https://comitep.be/document/cahiers/Cahier%2033%20-%20Rechterlijke%20beslissingen.pdf> (accessed 8 August 2020).

<sup>50</sup> The Permanent Centre for Citizenship and Participation (CPCP) is a non-profit association recognised since 2010 by the Wallonia-Brussels Federation as a permanent educational institution. The CPCP's mission is to accompany and consolidate the processes that favour the emergence or reinforcement of an effective, informed, structured, innovative, critical and resilient citizenship.

<sup>51</sup> Ligue des droits humains, *La LDH*, <https://www.liguedh.be/la-ldh/qui-sommes-nous>, (accessed 25 August 2020).

<sup>52</sup> Centre Permanent pour la Citoyenneté et la Participation (2020). *Belgium, a bad student in terms of police violence?*, <http://www.cpcp.be/wp-content/uploads/2020/04/violences-policiers.pdf>, (accessed 8 August 2020).

<sup>53</sup> Police Watch, *Police: abuse and confinement*, <http://www.liguedh.be/wp-content/uploads/2020/06/Rapport-Police-Watch-LDH-2020.pdf>, (accessed 10 August 2020).

<sup>54</sup> Local Police, 11 January 2005. Internal supervision. Permanent note, p.1.

<sup>55</sup> General Inspection Act, 2007.

<sup>56</sup> G. Vande Walle, P. Ponsaers, E. De Pauw (2009). *Zakboekje Politiefunctie [Police Function Pocketbook]*, Mechelen, Kluwer, 2009. Administrative circular POL 56 of 20 December 1996 concerning the supervision of the use of force by police officers.

<sup>57</sup> A. Verhage, *Supervision and Control of the Police*, Antwerpen, Maklu, 2012, p.134.

<sup>58</sup> General Inspection Act, 2007. General Inspection Service, activities report 2018, 2019, <https://www.politie.be/aigpol/aigpol/sites/aigpol/files/attachments/AIG-Evaluatieverslag%202018-Toepassing%20van%20de%20MFO2.pdf>, (accessed 10 August 2020).

officers on secondment from their services<sup>59</sup>. It is legitimate to question the impartiality of these investigative services, given that some members will, after their service in the supervisory bodies, return to work in a police department.

In addition, investigation reports into deaths are only available through judicial authorities. They are not made public and they mostly describe legal and disciplinary proceedings. This type of information has a qualitative nature, resulting in a lack of statistics on the amount of prosecutions and convictions<sup>60</sup>. Only Committee P has analysed prosecutions for uses of force by the police. Within their report they have stated that from 2009-2017 there were a total of 236 prosecutions, of which 'merely' 30 prosecutions against 41 members of the police led to a conviction. Also, within this timeframe, none of the prosecutions led to imprisonment of a police officer, which would be the appropriate sentence for the 'murder' of a civilian<sup>61</sup>.

## Non-official Sources and Analysis

It is certainly not inconceivable that the discharge of firearms without consequences or other uses of force will not be reported to the Internal Supervision Service, the General Inspection Service or Committee P. However, instances resulting in deaths will certainly not be hidden in Belgium; such cases have always been reported in the media in the past<sup>62</sup>. The website <https://academic.gopress.be> contains detailed information about media reporting on lethal force resulting in death (2010-2020). Through a systematic review of newspaper articles, we have found 19 articles on lethal force<sup>63</sup>.

In addition, Amnesty International collects information, interviews victims, attends court hearings, meets government representatives and compiles all this data into robust investigation reports on the use of force by police. However, their research on lethal force has only been conducted in relation to deaths in custody.

<sup>59</sup> Supervision of Police and Intelligence Services Act, 18 July 1991. Committee P, *Our Organisation*, <https://comitep.be/organisatie.html>, (accessed 4 August 2020).

<sup>60</sup> Public Access to Government Act, 11 April 1994.

<sup>61</sup> Committee P, *Judicial decisions concerning members of the police: 2015, 2016 and 2017 and Police brutality: 2013 to 2017, 2019*, <https://comitep.be/document/cahiers/Cahier%2033%20-%20%20Rechterlijke%20beslissingen.pdf>, (accessed 8 August 2020).

<sup>62</sup> Marc Duplessis (OCAD). 'Police and Weapons,' interviewed by Jannes Van de Ponsele, Ghent University, 22 November 2018. Willy Bruggeman, Personal Communication, (6 April 2020).

<sup>63</sup> Own source. Words used in search: politiegeweld + dood; politie + schiet; politie.



## Belgium

### Recommendations

There is a need for both an institutional adjustment and a procedural adjustment of data collection, data analysis and reporting of data.

- 1) Regarding the institutional adjustment, we refer to the need for a better division of roles and tasks between the Internal Supervision Services, Committee P and the General Inspection Service.** These inspection bodies were set up to inform respectively the head of the local government, the federal Parliament and the Ministry of Interior about developments in the relevant police forces. It is a challenge for Belgium to reduce this ambiguity given the embedding of each of these services in the administrative apparatus. The presence of three different monitoring bodies contributes to a fragmentation of data collection because their supervision on the operations (including investigations) of local police and federal police is carried out in parallel. In addition, control of the use of force by the police often remains in the hands of seconded ex-police personnel. This generates questions in terms of neutrality as they eventually return to operational police work. **Consequently, we recommend that:**
- Serious consideration be given to the question whether the installation of a single monitoring body could contribute to a better follow-up of lethal force. When both the legislative powers and the executive powers have the same data at their disposal, transparency and accountability of state actors could increase.

**2) Regarding the procedural adjustment of lethal force monitoring, several elements can be distinguished from each other in the current arrangements. In this context, we recommend that:**

- The internal exchange of information of those instances involved in the follow-up of lethal force should be more streamlined. A better exchange of information can be achieved through a clear role assignment (as elaborated above) and diminishing the administrative burden. When a situation of lethal force arises, the individual officer is obliged to produce two different reports. In the first report (brief report), the officer should present a description of the circumstances and submit it as soon as possible to the Directorate of Administrative Police Operations for operational purposes. The second report (extensive report) also contains a description of the circumstances complemented by additional data for the purposes of supervision, management and production of qualitative and quantitative analyses. This report must be submitted to the three control bodies (ISS, GIS and Committee P), the Directorate of the Service for Prevention and Protection at Work, the Training Directorate and the 'Use of Force & Sports' department of the national police academy.
- Consideration be given to the implications of leaving the reporting of force used by police personnel in the field to be dependent on the initiative of the individual police officer and their supervisor. Although there is a legal reporting obligation for any form of violence used by police personnel, whether the use of force is reported to the above-mentioned authorities depends on the content of the report. This vulnerability will remain, even after the introduction of the standard form in 2020 which will be generated based on any official report that contains reference to the use of force by the police.
- Consideration be given to the introduction of a single use of force database. The lack of a 'database on the use of force by police personnel' fed by all the authorities mentioned above remains a shortcoming that has consequences for the transparency and reliability of monitoring the use of force by the police in Belgium.



# England & Wales

## Data Collection and Publication by Official Agencies

Based on March 2018 – March 2019 reporting period:

	England & Wales
<b>1. Are the number of deaths following any police use of force (be it firearms, 'less lethal' weapons or other force):</b>	
Collected?	G
Publicly available?	G
Is this a legal requirement?	N
Can such information be requested from the authorities via FOI laws?	G
<b>2. If published, to what extent is the number of deaths readily identifiable from official statistics? What work needs to be done to pull these out?</b>	P
<b>3. Are the deceased identified by name?</b>	P
<b>4. Is demographic and other information for the deceased (including ethnic background, age and gender):</b>	
Collected?	G
Publicly available?	G
Is this a legal requirement?	N
Can such information be requested from the authorities via FOI laws?	G
<b>5. Is demographic and other information for LEOs:</b>	
Collected?	G
Publicly available?	N
Is this a legal requirement?	N
Can such information be requested from the authorities via FOI laws?	G
<b>6. Is information on the circumstances:</b>	
Collected?	G
Publicly available?	G
Is this a legal requirement?	N
Can such information be requested from the authorities via FOI laws?	G
<b>7. Is information about the type(s) of force used:</b>	
Collected?	G
Publicly available?	G
Is this a legal requirement?	N
Can such information be requested from the authorities via FOI laws?	G

### Key

<b>G</b>	<b>P</b>	<b>L</b>	<b>N</b>	<b>U</b>	
Good, Robust	Partial, Medium	Limited, Poor	None	Unknown	Not relevant

	England & Wales
<b>Data Quality of Official Sources</b>	
8. How reliable are the sources used to produce official statistics about deaths?	P
9. Internal quality assurance / verification conducted	G
10. Methodology for data collection publicly specified	G
11. How reliable are the overall figures produced?	P
<b>Data Analysis and Lessons Learnt</b>	
12. State / police agencies analyse data to generate evidence-based recommendations / lessons learnt, in order to prevent future deaths	P
13. Evidence that state / police agencies act on the results of their analysis, including applying lessons learnt	L
14. External bodies are able to reuse data for their own analyses	P
15. External, non-governmental agencies collect, and are able to publish, their own statistics on deaths following police use of force	G
<b>Investigations by Official Agencies</b>	
16. Is there a legal requirement for deaths to be independently investigated?	G
17. Is there an authority, separate from the one involved in the incident, which conducts investigations into deaths? If so, which organisation(s) conduct these investigations?	★
18. How independent are the investigations conducted by the organisation(s) named above? Please consider the extent to which they are independent and separate in terms of a) legal structure, b) hierarchy, c) investigative activity and personnel, d) operational ability (or 'self-reliance') e) oversight and control	P
19. Involvement of close relatives in the investigations	P
20. Investigation reports into deaths are:	
Publicly available?	P
Do they give reasons for the conclusions they have reached?	P
Is this a legal requirement?	N
Can such information be requested from the authorities via FOI laws?	G
21. Information available on legal proceedings against agents / officials pursuant to deaths	L
22. Information available on legal proceedings against state agencies pursuant to deaths	L
23. Information available on disciplinary proceedings against agents / officials pursuant to deaths	P
24. Number of prosecutions against agents / officials involved in the last ten years?	N
25. Number of convictions against agents / officials involved in the last ten years?	N
26. Number of prosecutions against agencies involved in the last ten years?	L
27. Number of convictions against agencies involved in the last ten years?	L
28. How readily available is information about prosecutions and convictions?	L

★ The IOPC (previously the IPCC) and the Coroner

## England & Wales

The police in England and Wales are comprised of 43 territorial services, each with a specific geographical remit, and some specialist non-territorial forces (for instance, the British Transport Police, Ministry of Defence Police and the Civil Nuclear Constabulary). The territorial services are sometimes referred to as Home Office forces, due to the nature of their funding arrangements. Each police force is a distinct entity, with Chief Constables described as having operational independence over matters relating to their service.

A number of other agencies are also involved in policing in England and Wales. These include the College of Policing, which describes itself as the professional body for the police in England and Wales, the National Police Chiefs Council (NPCC), which co-ordinates national police responses and approaches across the different police forces, and the Home Office, the government department responsible for interior affairs, which describes itself as supporting visible, responsible and accountable policing<sup>64</sup>. Oversight mechanisms include elected Police and Crime Commissioners (PCCs)<sup>65</sup>, Her Majesty's Inspectorate of the Constabulary and Fire and Rescue Service (HMICFRS)<sup>66</sup>, and the Independent Office for Police Conduct (IOPC), which was launched following reform of the Independent Police Complaints Commission (IPCC) in 2018.

Reporting on deaths and police use of force is organised by financial year and this case study covers the period April 2018 – March 2019. For this reporting period, the 43 territorial forces employed just over 123,000 police officers<sup>67</sup>. The focus here is on the collection, recording and publication of data and official statistics on deaths following use of force, but there are a number of other ways individual deaths are considered, including via inquests (legal inquiries into suspicious deaths) and IOPC investigations.

### Data Collection and Publication by Official Agencies

Although it is not a legal requirement for them to do so, two official agencies publish aggregate statistics on police use of force in England and Wales, the IOPC and the Home Office.

#### IOPC data collection and publication

The IOPC collects data on deaths directly from the police, who are required by law to refer certain matters to them, including cases where 'someone had direct or indirect contact with the police when, or shortly before, they... died. However, forces only need to refer cases where the contact may have caused or contributed to the death or injury'<sup>68</sup>. An annual publication is then produced using this data and IOPC internal data sources<sup>69</sup>.

Titled *Deaths During or Following Police Contact*, this IOPC publication classifies deaths into 5 categories: road traffic fatalities, fatal shootings, deaths in or following police custody, apparent suicides following police custody and other deaths following police contact that were subject to an independent investigation. Deaths following police use of force could fall under multiple headings. As a result, identifying and extracting from the publication those cases in which force is used requires close analysis of its various sections.

Bearing in mind these caveats, during the 2018 – 2019 reporting period it appears that at least 17 deaths followed police use of force (3 fatal shootings, 6 in or following police custody and 8 in the 'other' category). However, these figures should be treated with caution and we return to broader issues around data quality in the next section of the report.

*Deaths During or Following Police Contact* presents information on deaths in an anonymised, narrative format. However, the amount of information given varies according to how the death has been classified. This means that, while it may be provided to the IOPC, demographic information on the people who died, the officers involved, the circumstances of the incident and the types of force used are not consistently available for all deaths detailed in the report. In addition to the narrative information detailed in the report, demographic information such as age, gender and ethnicity are reported for each type of death in tables listed in an Appendix to the report. As deaths are categorised into the five sections listed above, it is not possible to identify from the tables those deaths which occurred after force was used.

#### Home Office data collection and publication

Since 2017, police officers, staff and volunteers, such as members of the Special Constabulary, have been required to fill out a standardised form whenever they use any form of force<sup>70</sup>. Under these new reporting requirements, a form<sup>71</sup> is to be completed when an officer uses force on any one person. If the same officer uses force on multiple people, they have to fill out a separate use of force form for each person. If multiple officers use force on the same person, each officer has to fill out a form documenting their own use of force.

The form includes information about the person on whom force is used (including officer perceived gender, ethnicity and age) as well as demographic information about the officer who used force, the circumstances and the type of force used. The form also asks, 'what subsequently happened to the subject', with an option to record that they died. However, there is some ambiguity around whether fatalities should be recorded in all cases<sup>72</sup> or only in cases where there is a suspected causal link between police contact and/or police use of force and the death in question<sup>73</sup>. The Home Office publishes a subset of these anonymised statistics, including fatalities, on an annual basis<sup>74</sup>. Police forces are also expected to publish quarterly data on their websites<sup>75</sup>, although this does not always happen in practice.

The Home Office statistics for the year in question indicate that 'there were 4 reports of the death of a subject'<sup>76</sup>. However, multiple records may have been submitted for the same fatality which makes it difficult to readily identify the overall number of deaths. This figure is also markedly different from the IOPC figures for the same year.

<sup>64</sup> College of Policing, *About us*, <https://www.college.police.uk/About/Pages/default.aspx> and Home Office (undated) *About Us*, <https://www.gov.uk/government/organisations/home-office/about>, (both accessed 18 August 2020).

<sup>65</sup> With the exception of the Metropolitan Police and Greater Manchester Police (because London and Manchester have directly elected Mayors), each territorial police service has a directly elected Police and Crime Commissioner, with a remit to hold the police force, and chief constable, to account and deliver an effective and efficient police service in their area.

<sup>66</sup> HMICFRS have a remit to independently assess and report on the efficiency and effectiveness of police forces in England and Wales.

<sup>67</sup> Numbers taken from Home Office, *Police Workforce, England and Wales, 31 March 2019*, 2nd edn, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/831726/police-workforce-mar19-hosb1119.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831726/police-workforce-mar19-hosb1119.pdf), (accessed 18 August 2020).

<sup>68</sup> IOPC, *What We Investigate and Next Steps*, <https://www.policeconduct.gov.uk/investigations/what-we-investigate-and-next-steps>, (accessed 18 August 2020).

<sup>69</sup> IOPC, *Deaths During or Following Police Contact: Statistics for England and Wales 2018/19, 2019*, [https://www.policeconduct.gov.uk/sites/default/files/Documents/statistics/deaths\\_during\\_following\\_police\\_contact\\_201819.pdf](https://www.policeconduct.gov.uk/sites/default/files/Documents/statistics/deaths_during_following_police_contact_201819.pdf), (accessed 18 August 2020). In addition, the IOPC notes that 'we publish full investigation reports for the most serious and high-profile incidents. Reports will sometimes be redacted to remove sensitive or private information...We remove news releases and investigation reports from our website six months after completing an investigation', IOPC (undated) *Our Investigations*, <https://policeconduct.gov.uk/investigations/our-investigations>, (accessed 18 August 2020).

<sup>70</sup> One of the authors of this report was involved in the design and implementation of this new form.

<sup>71</sup> The form is available online at <https://www.npcc.police.uk/Publication/SDAR/Use%20of%20Force%20Monitoring%20master%20V4Mar18.pdf>, (accessed 29 October 2020).

<sup>72</sup> National Police Chiefs Council, *Use of Force Monitoring Form: Guidance* (2017), p.8, <https://www.npcc.police.uk/documents/Guidance%20on%20Use%20of%20Force%20master%20V2Jan17.pdf>, (accessed 18 August 2020).

<sup>73</sup> National Police Chiefs Council, *Use of Force Monitoring Form: Guidance* (2018), pp. 8-9, <https://www.npcc.police.uk/documents/Operations/Guidance%20on%20Use%20of%20Force%20Data%20V4Mar18.pdf>, (accessed 18 August 2020).

<sup>74</sup> Home Office, *Police Use of Force Statistics, England and Wales April 2018 to March 2019*, p.22, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/853204/police-use-of-force-apr2018-mar2019-hosb3319.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/853204/police-use-of-force-apr2018-mar2019-hosb3319.pdf), (accessed 18 August 2020).

<sup>75</sup> National Police Chiefs Council, 'Police are charged with maintaining order and keeping people safe. In fulfilling those duties, they will sometimes need to use force on behalf of the state to protect the public and themselves from harm', 2017, <https://www.npcc.police.uk/ThePoliceChiefsBlog/Publishinguseofforcedataisagreatstepforwardforp.aspx>, (accessed 18 August 2020).

<sup>76</sup> *Ibid.*, p.22.

## England & Wales

### Data Quality

#### IOPC data quality

The IOPC's methodology, reporting practices, definitions and limitations are set out in a detailed guidance document which accompanies the publication<sup>77</sup> and the IOPC engage in internal quality assurance and verification measures. According to the guidance document, these include checking that all deaths reported are captured and that there is no duplication; classifying deaths into the categories detailed above using various sources; and validating details with the IOPC investigator and police forces. The figures produced are designated as national statistics and comply with the requirements set out by the Office for National Statistics.

In addition to the issues detailed in the previous section, there are some data quality issues pertaining to those deaths categorised as 'other'. This category encompasses deaths following contact with the police that did not involve arrest or detention under the Mental Health Act 1983<sup>78</sup>. This could include, for example, deaths where the police 'help medical staff to restrain individuals who are not under arrest'<sup>79</sup>.

Such deaths are only included in the annual publication if they are subject to an independent investigation. As the IOPC note, the criteria for deciding whether an independent investigation should be conducted 'may vary over time... (and the) increase in our capacity to carry out independent investigations... has had a direct impact on the number of deaths reported on in this category. Therefore, trend analysis of deaths recorded in this category would not be meaningful'<sup>80</sup>. As such it is possible, in theory, that some cases involving the use of force in circumstances where the person is not arrested or taken into detention under the Mental Health Act may not be included in the report. However, the IOPC contended to us that, in

practice, if police use of force may have been relevant to a death, it is highly likely that they would independently investigate<sup>81</sup>.

#### Home Office statistics

The Home Office's methodology, reporting practices, definitions and limitations are set out in a detailed guidance document, or user guide. As noted in the previous section, the data comes from the police and quality assurance takes place between the Home Office and individual police services, with statisticians implementing a range of quality assurance checks. This includes querying missing or incomplete data and ensuring the data provided is as complete as possible<sup>82</sup>.

As detailed above, there are concerns that the Home Office statistics may over-report the number of deaths following police use of force. The Home Office user guide also documents a number of concerns about under-reporting and other inaccuracies. First, they note that the statistics are experimental and do not represent all use of force in the police agencies covered by the release. Secondly, the report only covers the 43 territorial forces in England and Wales and does not include other, specialist forces. Third, officers are encouraged to submit a use of force report as soon as possible after the incident. Therefore, any subject fatalities which occur after the incident may not be recorded. Fourth, it is possible that a form may not be completed in incidents where someone has died. The Home Office notes that 'although all police forces do keep records of all fatalities, a fatality caused by an officer's use of force may not have been recorded specifically on the police forces' use of force recording system'. Further, 'where a fatality occurred and a use of force report was submitted, the officer involved may not have completed the report themselves... As such, these incidents often had little other information, as these reports were likely submitted by a third-party who was not

present at the incident and could not provide more than the key information'<sup>83</sup>.

Relatedly, the Home Office also notes that 'the data on injuries and fatalities is not reported consistently. For example, officers may report 'no injury' sustained due to their use of force, but then also include details of a 'minor' injury. This could be because officers recorded injuries... when these did not occur as a result of the use of force incident. The same may be true for the reporting of hospitalisations and fatalities'<sup>84</sup>.

### Data Analysis and Lessons Learnt

#### Generating analysis and recommendations

Some analysis of the data gathered does take place, for example in the Home Office and IOPC reports detailed above. There is evidence that some analysis also takes place at the local, force level. HMICFRS reports indicate that at least 30 services had made some changes to policies and practices following the introduction of the use of force reporting system<sup>85</sup>.

The Home Office notes that its figures do not represent the number of deaths caused following use of force. As such it is difficult to conduct evidence-based analysis, or to make recommendations to prevent future deaths, based on this data. Similarly, the analysis and changes to policies and practices that HMICFRS documented in individual forces, as detailed above, tended to focus on the use of force more broadly, and not on cases where a fatality occurred. The National Police Chiefs' Council engaged one of the authors of this report (AD) alongside other colleagues from the University of Exeter and College of Policing to conduct

additional analysis of the new use of force data collected under the scheme<sup>86</sup>. However, this project did not look at factors associated with deaths following police use of force due to the small number of deaths in the time period in question and the quality of this data.

The IOPC publication provides analysis including tables detailing the ethnicity, age and gender of those who died across each of the categories. Additional information about the number of the deceased who were identified as having mental health concerns, or were known to have a link to drug and/or alcohol use was provided for deaths during or following police custody, suicides and other deaths. The report contains no recommendations for preventing future deaths although the IOPC note that, as it is intended as a purely statistical report, it is not the appropriate mechanism to do so.

Instead, the IOPC note that recommendations can be found in a variety of other places, including in other publications, *Learning the Lessons*, bulletins and in investigation summaries<sup>87</sup>, and note that they publish formal recommendations issued under paragraph 28A of the Police Reform Act 2002<sup>88</sup>. Details of IOPC investigations and recommendations can also be found on the IOPC website<sup>89</sup>. While these investigations can be searched by a number of variables, including the police force or agency involved and the topic (with 'death and serious injury' and 'use of force and armed policing' listed as categories), these filters cannot be applied simultaneously. As the website also includes details of investigations that did not result in recommendations, it can also be difficult to find those cases that did result in recommendations for change. As a result, recommendations that have been made following a death pursuant to a use of force are not always immediately apparent.

<sup>77</sup> IOPC, *Deaths During or Following Police Contact Annual Report: Guidance*, 2018, [https://www.policeconduct.gov.uk/sites/default/files/Documents/statistics/Guidance\\_IOPC\\_Annual\\_Death\\_Report.pdf](https://www.policeconduct.gov.uk/sites/default/files/Documents/statistics/Guidance_IOPC_Annual_Death_Report.pdf), (accessed 18 August 2020).

<sup>78</sup> IOPC, *Deaths During or Following Police Contact: Statistics for England and Wales 2018/19*, 2019, p.2, [https://www.policeconduct.gov.uk/sites/default/files/Documents/statistics/deaths\\_during\\_following\\_police\\_contact\\_201819.pdf](https://www.policeconduct.gov.uk/sites/default/files/Documents/statistics/deaths_during_following_police_contact_201819.pdf), (accessed 18 August 2020).

<sup>79</sup> IOPC, *Deaths During or Following Police Contact: Statistics for England and Wales 2018/19*, 2019, p.2, [https://www.policeconduct.gov.uk/sites/default/files/Documents/statistics/deaths\\_during\\_following\\_police\\_contact\\_201819.pdf](https://www.policeconduct.gov.uk/sites/default/files/Documents/statistics/deaths_during_following_police_contact_201819.pdf), (accessed 18 August 2020).

<sup>80</sup> IOPC, *Deaths During or Following Police Contact*, 2019, p.6.

<sup>81</sup> IOPC communication with author, (9 October 2020).

<sup>82</sup> Home Office, *User Guide to 'Police Use of Force Statistics, England and Wales'*, 2019, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/853006/user-guide-police-use-of-force.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/853006/user-guide-police-use-of-force.pdf), (accessed 18 August 2020).

<sup>83</sup> Ibid, p.10.

<sup>84</sup> Home Office, *Police use of force statistics*, 2019, p.21.

<sup>85</sup> Figures calculated from HMICFRS PEEL Legitimacy Reports for individual police forces in 2017, <https://www.justiceinspectors.gov.uk/hmicfrs/publications/peel-police-legitimacy-2017>, (accessed 18 August 2020).

<sup>86</sup> Published as P. Quinton et al., *Police Use of Force: Tactics, Assaults and Safety*, College of Policing, 2020, <https://paas-s3-broker-prod-lon-6453d964-1d1a-432a-9260-5e0ba7d2fc51.s3.eu-west-2.amazonaws.com/s3fs-public/2020-09/200818-use-of-force-final-report-1.0.pdf>, (accessed 20 September 2020).

<sup>87</sup> For example, IOPC, *Learning and Recommendations*, undated, <https://www.policeconduct.gov.uk/research-and-learning/learning-and-recommendations>, (accessed 18 August 2020).

<sup>88</sup> IOPC communication with author, (9 October 2020).

<sup>89</sup> Details of individual investigations can be found at *Investigation Summaries and Learning Recommendations*, <https://www.policeconduct.gov.uk/investigations/investigation-summaries-and-learning-recommendations> and *Our Investigations*, <https://www.policeconduct.gov.uk/investigations/our-investigations>, (both accessed 29 October 2020).

## England & Wales



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### Learning lessons and implementing regulations

A Ministerial Council on Deaths in Custody was established in 2008<sup>90</sup>. It is advised by the Independent Advisory Panel on Deaths in Custody and has a remit to 'bring about a continuing and sustained reduction in the number and rate of deaths in all forms of state custody in England and Wales'<sup>91</sup>. This is an ongoing challenge. In 2015 the then Home Secretary, the Rt. Hon Theresa May MP, announced an independent review of deaths and serious incidents in police custody (the Report of the Independent Review of Deaths and Serious Incidents in Police Custody, also referred to as the Report of the Angiolini Review). The

establishment of a Ministerial Council and the creation of an independent review are important steps towards ensuring that lessons are learnt and the risk of future deaths are minimised.

However, it is also notable that the Angiolini Report, published in 2017, found that there was a 'failure to learn lessons and to properly consider and implement recommendations and advice from... interested organisations and from previous reports and studies'<sup>92</sup>. Since the Angiolini Report was published, there are further indications that this remains an area of concern as indicated in the case of Marc Cole, detailed below.

<sup>90</sup> The Ministerial Council on Deaths in Custody replaced the Ministerial Roundtable on Suicide and the Forum for Preventing Deaths in Custody. For further detail on the historical context of the Ministerial Council, see the Ministry of Justice, *Tailored Review of the Independent Advisory Panel on Deaths in Custody*, 2017, p.5, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/777178/tailored-review-of-the-independent-advisory-panel-on-deaths-in-custody.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777178/tailored-review-of-the-independent-advisory-panel-on-deaths-in-custody.pdf), (accessed 18 August 2020).

<sup>91</sup> Ministry of Justice, *Tailored Review of the Independent Advisory Panel on Deaths in Custody*, 2017, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/777178/tailored-review-of-the-independent-advisory-panel-on-deaths-in-custody.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777178/tailored-review-of-the-independent-advisory-panel-on-deaths-in-custody.pdf), (accessed 18 August 2020).

<sup>92</sup> E. Angiolini, *Report of the Independent Review of Deaths and Serious Incidents in Police Custody*, 2017, p.13, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/655401/Report\\_of\\_Angiolini\\_Review\\_ISBN\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655401/Report_of_Angiolini_Review_ISBN_Accessible.pdf), (accessed 18 August 2020).

### Learning the Lessons? The Case of Marc Cole

The Coroners and Justice Act 2009 requires coroners to make reports to a person or organisation where they believe that action should be taken to prevent future deaths (these are known as Reports to Prevent Future Deaths, or Regulation 28 reports). In most cases these reports, and responses to them, will be made publicly available, and the Office of the Chief Coroner is working to upload reports issued since 2013 on their website<sup>93</sup>. At the time of writing, the most recent report pertaining to police use of force concerned the death of Marc Cole.

The jury found that the cause of death was 'excessive cocaine taken resulting in paranoid and erratic behaviour with the use of the Taser having more than a trivial impact on Mr Cole's cardiac arrest'. The Coroner's Regulation 28 report recommended a 'wholesale review of the effects of multiple Taser activations and the effects of sustained activations...so that fuller and more comprehensive advice, guidance and training can be given to...officers'<sup>94</sup>.

In their response to the Regulation 28 report, the College of Policing indicated that they 'keep Taser training under regular review and we will carefully examine the findings of Mr Cole's inquest to ensure learning continues to be reflected'<sup>95</sup>. However they also indicated their view that the 'current College guidance and learning material address the risks associated with the number and duration of Taser

activations'<sup>96</sup>. They expressed concern that they had not 'been called to give evidence at the Coroners court' and suggested that 'there were gaps in the information available to the inquest in respect of... the advice the College gives on multiple activations, medical implications and first aid'<sup>97</sup>. The Home Office response indicated that they had 'carefully reviewed the processes and safeguards in place for the police use of Taser... (and are) satisfied that they are adequate and help ensure that any use of force by the police is proportionate, necessary and as safe as possible'<sup>98</sup>.

These responses explicitly state that the system is 'adequate' and already 'address(es) the risks' identified by the Coroner. As such, they do not specify particular changes that will be made following the Coroner's recommendation.

Following these responses, family members of Marc Cole have been quoted as saying that 'we are so angry that the Home Office and police are not taking my brother's horrifying death seriously... I was absolutely galled when I was told that the Government and the police are refusing to change the Taser training'<sup>99</sup>. The Chief Executive of the College of Policing, Mike Cunningham has been quoted as saying that 'we will ensure that our immediate and future work is informed by the events that culminated in Mr Cole's tragic death'<sup>100</sup>.

<sup>93</sup> Office of the Chief Coroner, *Reports to Prevent Future Deaths*, 2020, <https://www.judiciary.uk/related-offices-and-bodies/office-chief-coroner/https://www.judiciary.uk/subject-community-health-care-and-emergency-services-related-deaths>, (accessed 25 August 2020).

<sup>94</sup> Cornwall and Isles of Scilly Coroner, *Regulation 28: Report to Prevent Future Deaths*, 2020, <https://www.judiciary.uk/wp-content/uploads/2020/04/Marc-Cole-2020-0087-Redacted.pdf>, (accessed 18 August 2020).

<sup>95</sup> The College of Policing also note, more broadly, that there is an organisational learning structure embedded within armed policing and that revisions are regularly made to the authorised professional practice (i.e. national guidance) and training curriculum as a consequence of learning and recommendations. College of Policing communication with author, (16 October 2020).

<sup>96</sup> Ibid.

<sup>97</sup> College of Policing, *Marc Cole: Response from the College of Policing Redacted*, 2020, <https://www.judiciary.uk/publications/marc-cole>, (accessed 18 August 2020).

<sup>98</sup> Home Office, *Marc Cole: Response from the Home Office*, 2020, <https://www.judiciary.uk/publications/marc-cole>, (accessed 18 August 2020).

<sup>99</sup> E. Ferguson, 'Family of Falmouth's Marc Cole React to Taser Report Findings', *The Falmouth Packet*, 9 June 2020, <https://www.falmouthpacket.co.uk/news/18504045.family-falmouths-marc-cole-react-taser-report-findings>, (accessed 26 October 2020).

<sup>100</sup> L. Dearden, 'Police Taser Deaths will Rise in UK Unless Action is Taken Coroner Warns', *The Independent*, 21 April 2020, <https://www.independent.co.uk/news/uk/home-news/police-taser-deaths-uk-marc-cole-cornwall-coroner-a9477026.html>, (accessed 26 October 2020).

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In 2018 the government assessed its own progress against the Angiolini Report. It found that 'we have made good progress although there remains more to do'<sup>101</sup>. In 2020, Dame Angiolini was quoted expressing her concern 'that many very significant recommendations (from the Review) have not been progressed'<sup>102</sup>.

### Investigations by Official Agencies

#### Investigations

The IOPC is responsible for conducting external investigations into deaths following police use of force. Its website<sup>103</sup> states that 'we are independent of the police, government and interest groups. We investigate the most serious and sensitive incidents and allegations involving the police in England and Wales'<sup>104</sup>.

In terms of *legal structure and hierarchy*, the IOPC has a Board which provides 'advice and challenge to the Director General and, with him, sets the strategy for the organisation'<sup>105</sup> and the Director General is a Crown appointment<sup>106</sup>. In terms of *investigative activity, personnel and operational ability*, the IOPC notes that 'neither our Director General, Director for Wales or any of the

Regional Directors have worked for the police in any capacity'<sup>107</sup>. As at 31 March 2020, the IOPC employed 1,032 staff. 23% of staff overall came from a police background (officer and civilian) and 28% of staff in Operations came from a police background<sup>108</sup>.

A Home Affairs Select Committee enquiry into the IPCC, the IOPC's predecessor, found the organisation was 'woefully under-equipped and hamstrung in achieving its original objectives. It has neither the powers nor the resources that it needs to get to the truth... It is not yet capable of delivering powerful, objective scrutiny'<sup>109</sup>. The IOPC was launched following reform of the Independent Police Complaints Commission (IPCC) in 2018 and has doubled in size, taking on six times as many investigations compared to 2013<sup>110</sup>. The IOPC Director General has noted that the organisation continues to 'work through many legacy issues, including improving timeliness of investigations'<sup>111</sup>. The IOPC noted that improvements are being made in this area, with around 80% of independent investigations completed within 12 months and proposals submitted to the Ministerial Board on Deaths in Custody to improve timeliness across the end-to-end processes when someone dies during or following police contact<sup>112</sup>.

In terms of *oversight and control* of investigations, the IOPC notes that 'police forces deal with the majority of complaints against police officers and police staff'<sup>113</sup>. When the IOPC conducts its own investigations, it determines whether there are questions of (gross) misconduct and / or criminal conduct to answer but does not determine or control the answer to these questions. The IOPC can pass a case to the Crown Prosecution Service and, thanks to new powers<sup>114</sup>, it can direct that forces must hold a misconduct hearing and can present a case at these hearings – but the outcome of such processes is independent of the IOPC. In cases where performance issues fall below the threshold for misconduct, the IOPC can recommend action. More broadly, it can also make organisational learning recommendations and produce recommendations both for individual forces and nationally.

A Listening Day held by INQUEST<sup>115</sup> involved nine families, represented by 18 attendees, who were invited to discuss their experiences of the death of a relative following contact with the police. INQUEST found that 'few in the room... had positive accounts of investigations', with families raising concerns including evidence gathering, inconsistent approaches to interviewing officers, delays and a failure to involve families during the investigation<sup>116</sup>. The IOPC state that, since this Listening Day, they have made various improvements, including holding their own listening days with bereaved families, appointing Family Liaison Officers and expanding and strengthening the Stakeholder Engagement Team<sup>117</sup>.

#### Legal proceedings, prosecutions and convictions

From 2017, the 43 Home Office services must provide the College of Policing with details of officers, staff and others who have been dismissed, including following gross misconduct hearings. The College of Policing publishes overall figures, and a publicly searchable database, based on these reports. This reveals that, in March 2018 – 2019, 11 officers were dismissed due to 'excess force'<sup>118</sup>.

It is more difficult to find comprehensive information about legal proceedings, prosecutions and convictions. While members of the public can attend police disciplinary hearings<sup>119</sup>, court cases and inquests, details of these proceedings are often not freely or publicly available to those who were unable to attend on the day<sup>120</sup>. It can be difficult to find a comprehensive list of outcomes (prosecutions, disciplinary hearings, inquest conclusions) for all cases following police use of force, in particular if one does not know the name of the individuals involved. However, the 2017 Angiolini Report notes that:

Of eight prosecutions of police officers in connection with a death in custody in the last 15 years all have ended with acquittals...there has never been a successful prosecution for manslaughter in such cases, despite unlawful killing verdicts in Coroner's Inquests<sup>121</sup>.

At the time of writing, the Crown Prosecution Service has charged an officer with murder following the use of force in the death of Dalian Atkinson, with a second officer being charged with assault causing actual bodily harm. This is as a result of an IOPC investigation. The case is yet to come to court at the time of writing.

<sup>101</sup> HM Government, *Deaths in Police Custody: Progress Update*, 2018, p.2, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/763654/181211\\_DiC\\_progress\\_update\\_HMG\\_template.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/763654/181211_DiC_progress_update_HMG_template.pdf), (accessed 26 October 2020).

<sup>102</sup> M. Townsend, 'Report into deaths in custody in England and Wales "kicked into long grass"', *The Observer*, 1 November 2020, <https://www.theguardian.com/uk-news/2020/nov/01/report-into-deaths-in-custody-in-england-and-wales-kicked-into-long-grass>, (accessed 2 November 2020).

<sup>103</sup> <https://www.policeconduct.gov.uk/investigations/what-we-investigate-and-next-steps>, (accessed 27 October 2020).

<sup>104</sup> As noted in the introduction, while this case study focuses predominantly on the IOPC due to their role collating and publishing statistics about deaths during or following police contact, Coroners can also conduct investigations to establish who has died, and how, when, and where they died. This investigation may include an inquest and, if the death happened in prison, in police custody or another type of state detention and was not from natural causes, the inquest must be heard with a jury. Ministry of Justice, *A Guide to Coroner Services for Bereaved People*, 2020, p.27, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/859076/guide-to-coroner-services-bereaved-people-jan-2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/859076/guide-to-coroner-services-bereaved-people-jan-2020.pdf), (accessed 27 October 2020).

<sup>105</sup> IOPC, *Becoming the IOPC*, undated, <https://policeconduct.gov.uk/becoming-iopc>, (accessed 18 August 2020).

<sup>106</sup> Policing and Crime Act 2017, Chapter 5, Section 33.

<sup>107</sup> IOPC, *Becoming the IOPC*, undated, <https://policeconduct.gov.uk/becoming-iopc>, (accessed 18 August 2020).

<sup>108</sup> IOPC communication with author; (9 October 2020).

<sup>109</sup> Home Affairs Select Committee, *House of Commons Home Affairs Committee Independent Police Complaints Commission Eleventh Report of Session 2012–13*, London, 2013.

<sup>110</sup> IOPC *Who We Are*, <https://www.policeconduct.gov.uk/who-we-are>, (accessed 18 August 2020).

<sup>111</sup> M.Lockwood, 'Operation Midland Made Mistakes, but the Presumption of Innocence Must Prevail', *The Guardian*, 8 October 2019, <https://www.theguardian.com/commentisfree/2019/oct/08/mistakes-operation-midland-iopc-investigation-carl-beech>, (accessed 18 August 2020).

<sup>112</sup> IOPC, *Response to the Home Secretary on the Efficiency, Effectiveness and Profile of the IOPC*, 2020, pp.2-3, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/867998/Response\\_to\\_the\\_Home\\_Secretary\\_on\\_the\\_efficiency\\_\\_effectiveness\\_and\\_profile\\_of\\_the\\_IOPC.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/867998/Response_to_the_Home_Secretary_on_the_efficiency__effectiveness_and_profile_of_the_IOPC.pdf) and IOPC, *Annual Report and Statement of Accounts*, 2019, p.12, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/820239/IOPC-Annual-Report-2018-19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/820239/IOPC-Annual-Report-2018-19.pdf), (accessed 18 August 2020).

<sup>113</sup> IOPC, *Who We Are*, <https://www.policeconduct.gov.uk/who-we-are>, (accessed 18 August 2020).

<sup>114</sup> IOPC, *Becoming the IOPC*, undated, <https://policeconduct.gov.uk/becoming-iopc>, (accessed 29 October 2020).

<sup>115</sup> INQUEST are the only charity in England and Wales providing expertise on state related deaths and their investigation, [www.inquest.org.uk](http://www.inquest.org.uk), (accessed 29 October 2020).

<sup>116</sup> INQUEST, *INQUEST report of the Family Listening Day for the Independent Police Complaints Commission*, 2018, p.14, <https://www.inquest.org.uk/Handlers/Download.ashx?IDMF=6df8ac79-3c8a-4fc9-8761-289d1d652558>, (accessed 18 August 2020).

<sup>117</sup> IOPC communication with author, dated 09/10/2020.

<sup>118</sup> College of Policing, *Police Dismissals (Home Office Forces)*, 2019, [https://www.college.police.uk/News/College-news/Documents/Barred\\_List\\_2019.pdf](https://www.college.police.uk/News/College-news/Documents/Barred_List_2019.pdf), (accessed 18 August 2020).

<sup>119</sup> In practice, this may depend on space and capacity limitations.

<sup>120</sup> See also D. Baker, 'Researching Deaths after Police Contact: Challenges and Solutions', *Journal of Criminological Research, Policy and Practice*, vol. 2, no. 1, 2016, pp.15-27.

<sup>121</sup> E. Angiolini, *Report of the Independent Review of Deaths and Serious Incidents in Police Custody*, 2017, pp.24-25, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/655401/Report\\_of\\_Angiolini\\_Review\\_ISBN\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655401/Report_of_Angiolini_Review_ISBN_Accessible.pdf), (accessed 18 August 2020).

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There have been two cases where police forces (Devon and Cornwall Police and the Metropolitan Police Service) were found, or pleaded, guilty under the Health and Safety Act, following the deaths of Thomas Orchard and Jean Charles De Menezes, respectively<sup>122</sup>.

### Non-official Sources and Analysis

A number of non-official sources provide statistics on deaths following police contact, or in police custody. These may include deaths following police use of force, though such deaths are not always readily identifiable. Sources include, but are not limited to, the following:

- The NGO INQUEST, which provides figures that cover deaths that happen 'while the individual is in contact with police... or that happen shortly after'. Their figures are from 'our monitoring and casework and are independent' of the Home Office and IOPC<sup>123</sup>.
- The Institute of Race Relations (IRR) 'publish a list of BAME, refugee and migrant deaths in custody from 2014 – 2020 that took place in prison, in immigration detention or involving police'. They state that the 'list has been compiled by IRR, using *IRR News* coverage and media releases by the organisation Inquest'<sup>124</sup>.
- The Independent Advisory Panel (IAP) on deaths in custody has conducted analysis of recorded deaths in state custody between 2000 – 2013<sup>125</sup> and state that a report for 2016 – 2019 is due for publication later this year.

- A BBC analysis of deaths in or following police custody as reported by the IOPC over the last 10 years found that 164 people had died, of whom '141 were white; 13 were black; 10 were from other minority ethnic groups'. They compared these figures to the 2011 census and found that 'black people are more than twice as likely to die in police custody'<sup>126</sup>. However, the BBC analysis also indicated that 79% of those arrested, and 85% of those who died in custody, were white. 9% of people arrested and 8% of those who died in custody were black. They calculated that, 'over the last 10 years, a white individual who has been arrested was about 25% more likely to die in custody than a black individual who had been arrested'.
- A study by Action on Armed Violence found that 'a quarter of people shot by armed police forces in England, Wales and Northern Ireland in the last five years were black... Out of 31 incidents since 2015 – excluding live terrorist events – eight of those shot by officers were black, including three killed and five wounded. This constitutes 26% of the total shootings'<sup>127</sup>.

<sup>122</sup> INQUEST, 'Hearing for Health and Safety prosecution of Devon and Cornwall Police to determine whether breaches caused Thomas Orchard's death', 2019, <https://www.inquest.org.uk/thomas-orchard-newton-hearing>, (accessed 29 October 2020).

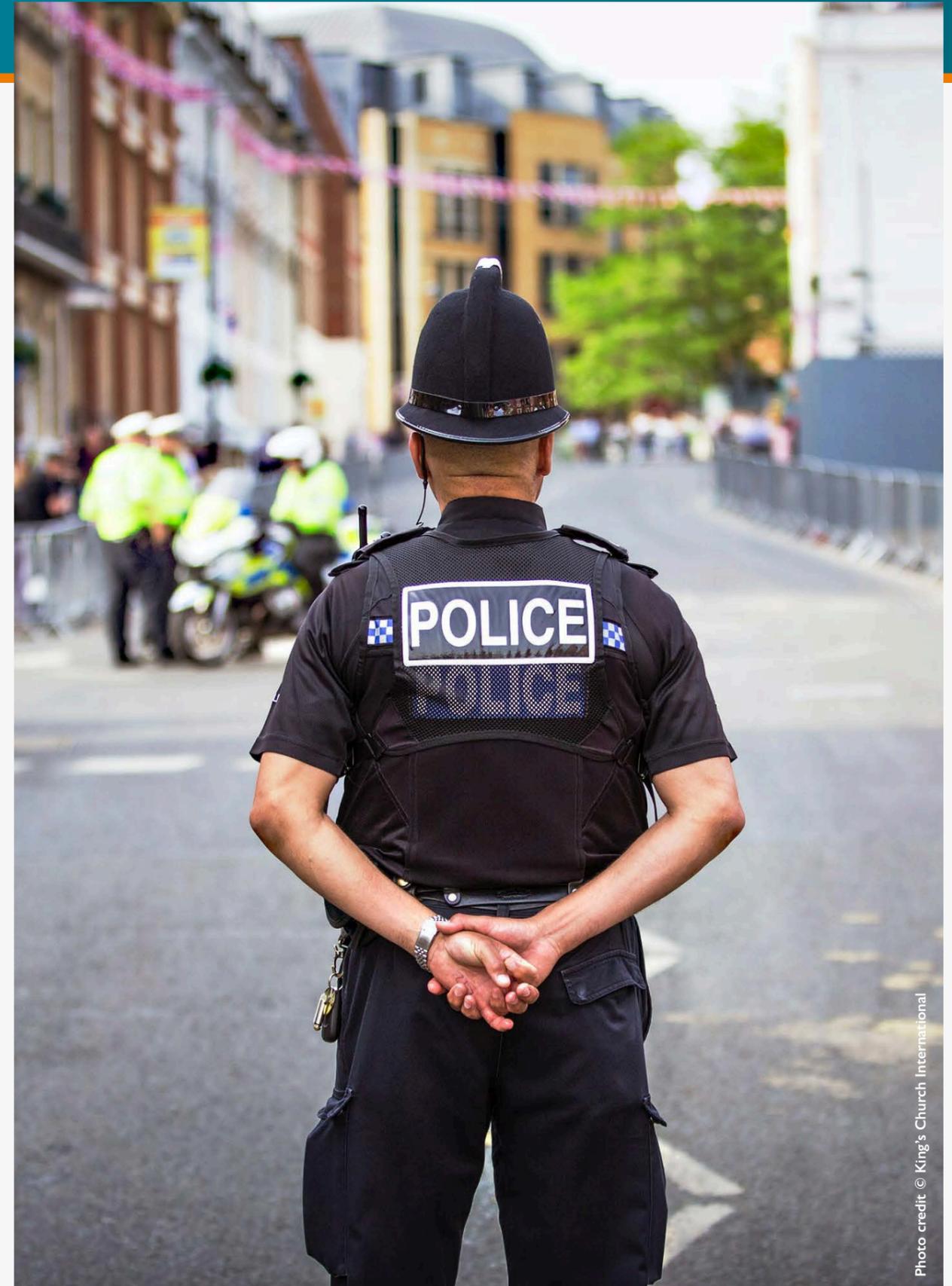
<sup>123</sup> INQUEST, *Deaths in Police Custody*, 2020, <https://www.inquest.org.uk/deaths-in-police-custody>, (accessed 18 August 2020).

<sup>124</sup> Institute of Race Relations, *BAME, Refugee and Migrant Deaths in Custody (2014 – 2020)*, 2020, <https://irr.org.uk/research/deaths/bame-refugee-and-migrant-deaths-in-custody-2014-2020>, (accessed 20 September 2020).

<sup>125</sup> Independent Advisory Panel of Deaths in Custody, *Statistics*, undated, <http://iapdeathsincustody.independent.gov.uk/work-of-the-iap/statistics>, (accessed 18 August 2020).

<sup>126</sup> BBC News, 'George Floyd death: How many black people die in police custody in England and Wales?', 3 June 2020 edition, <https://www.bbc.co.uk/news/52890363>, (accessed 20 September 2020).

<sup>127</sup> Action on Armed Violence, 'One in Four Shot by UK Police are Black, yet Tiny Fraction of Armed Officers are Black', 2020, <https://aoav.org.uk/2020/one-in-four-shot-by-uk-police-are-black-yet-tiny-fraction-of-armed-officers-are-black-study-finds>, (accessed 26 October 2020).



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### Recommendations

Certain features of the English and Welsh system constitute relatively good practice when looked at internationally. However, in an area as important as deaths following police use of force, there is no room for complacency and as the government has recognised, 'there remains more to do'<sup>128</sup>. Consequently, our recommendations include the following.

**1) While much information is published, there is a need to enhance data collection and publication, particularly as sources of information and recommendations pertaining to this crucial area can be disparate, difficult to find and difficult to collate. We recommend that:**

- Police forces publish use of force data quarterly, including but not limited to fatalities.
- The Crown Prosecution Service track and publish statistics on the outcomes of cases relating to police use of force (particularly, but not limited to, cases where death has occurred) to allow for the tracking of prosecutions, convictions, appeals and sentences in such cases.
- The IOPC more clearly disaggregate deaths following police use of force in its *Deaths During or Following Police Contact* report. While we appreciate that the report has to appeal to a range of audiences and contain information about a wide range of deaths, not only those where force is used, and there is a balance to be struck between detail and readability, additional information would be useful and could perhaps be included in the appendix.
- The IOPC signpost and cross-reference to relevant publications and investigation summaries, recommendations and responses to recommendations in *Deaths During or Following Police Contact*. There are many investigation summaries that may contain recommendations where deaths have followed police use of force and a way of readily identifying these would be advantageous.

- Where possible, the IOPC publish details of all recommendations made following investigations into deaths subsequent to police use of force and responses to them, irrespective of which section of the Police Reform Act they were issued under.
- Transparency around Inquests is enhanced in cases where force has been used, with Regulation 28 reports classified according to whether police use of force was involved, and transcripts of proceedings and jury verdicts made available. While Jury verdicts can be requested from the Coroner's court, this necessitates knowing where and when the inquest was heard and the name of the deceased. Similarly, it is currently difficult for those who are unable to attend Inquest hearings on the day in question to receive a record of proceedings.
- Alternatively, given the multiple recommendations for multiple organisations listed above, the government should consider creating one central hub to capture such details, trace deaths pursuant to police use of force and collate relevant documentation, outcomes and implementation measures in one place (see also previous recommendation for a database to capture inputs from the coronial system and the IPCC<sup>129</sup>). The Angiolini Report's proposal for an Office for Article 2 compliance could have a useful role to play in compiling such data, amongst other functions, but in the meantime, we suggest that the measures detailed above would be useful steps. Please refer to recommendation 3 for further detail about the Office for Article 2 compliance.



Photo credit © Richard Masquellier

**2) We recommend that data quality is enhanced by:**

- Improving clarity around when fatalities should be recorded on the NPCC and Home Office use of force form and minimising discrepancies between IOPC and Home Office figures.
- Clearly identifying in IOPC and Home Office publications cases where deaths have followed police use of force, as detailed in recommendation 1.

**3) We recommend that data analysis, investigations and lessons learned are enhanced by:**

- The IOPC undertaking to independently investigate all deaths where use of force may have caused or contributed to the fatality and to clarify this on their website.
- Relevant agencies working together to implement the recommendations of the Independent Advisory Panel on Deaths in Custody in September 2020, including that 'cross-cutting, collaborative work must be carried forward to ensure learning from deaths, and specifically coroners' prevention of future deaths reports, are appropriately disseminated and embedded into policy and practice'<sup>130</sup>.

- Relevant agencies working together to implement the recommendations of the Report of the Independent Review of Deaths and Serious Incidents in Police Custody (also known as the Angiolini Report), where these remain outstanding. With over 100 recommendations, there is not space to outline all of them here, but they include recommendations on the use of force and restraint (recommendations 1 – 7), recommendations to introduce non-means tested legal advice, assistance and representation for bereaved families (recommendation 33) and greater involvement, engagement and communication with families both around the investigations and subsequent hearings (see, for example, recommendations 40, 47, 81) and around the training delivered by the police, the IOPC and other bodies (recommendations 88 and 94 - 5). The recommendation to create an Office for Article 2 compliance (recommendation 100) also advises that it 'be accountable to Parliament, and tasked with the collation and dissemination of learning, the implementation and monitoring of that learning, and monitoring the consistency of its application at a national level. It should report publicly on the accumulated learning, and compliance arising from Inquest outcomes and recommendations. It should provide a route for bereaved families and community groups to voice their concerns and help provide a mandate for its work'.

<sup>128</sup> HM Government, *Deaths in Police Custody: Progress Update*, 2018, p.2, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/763654/181211\\_DiC\\_progress\\_update\\_HMG\\_template.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/763654/181211_DiC_progress_update_HMG_template.pdf), (accessed 26 October 2020).

<sup>129</sup> D. Baker, *Deaths After Police Contact Constructing Accountability in the 21st Century*, London, Palgrave Macmillan, 2017, p.207.

<sup>130</sup> Independent Advisory Panel on Deaths in Custody submission to the Justice Select Committee inquiry on the Coroner Service, September, 2020, p.1, <https://static1.squarespace.com/static/5c5ae65ed86cc93b6c1e19a3/t/5f6b37f6e0bdb2c75d764e6/1600862203091/200902+IAP+JSC+coroners+service+evidence+-+September+2020+-+final+to+submit.pdf>, (accessed 26 October 2020).

# France

## Data Collection and Publication by Official Agencies

Based on the 2018 reporting period (calendar year)

	Police	Gendarmerie
<b>1. Are the number of deaths following any police use of force (be it firearms, 'less lethal' weapons or other force):</b>		
Collected?	G	U
Publicly available?	G	N
Is this a legal requirement?	N	N
Can such information be requested from the authorities via FOI laws?	N	N
<b>2. If published, to what extent is the number of deaths readily identifiable from official statistics? What work needs to be done to pull these out?</b>		
	G	N
<b>3. Are the deceased identified by name?</b>		
	N	N
<b>4. Is demographic and other information for the deceased (including ethnic background, age and gender):</b>		
Collected?	U	U
Publicly available?	N	N
Is this a legal requirement?	N	N
Can such information be requested from the authorities via FOI laws?	N	N
<b>5. Is demographic and other information for LEOs:</b>		
Collected?	U	U
Publicly available?	N	N
Is this a legal requirement?	N	N
Can such information be requested from the authorities via FOI laws?	N	N
<b>6. Is information on the circumstances:</b>		
Collected?	U	U
Publicly available?	N	N
Is this a legal requirement?	N	N
Can such information be requested from the authorities via FOI laws?	N	N
<b>7. Is information about the type(s) of force used:</b>		
Collected? <sup>131</sup>	U	U
Publicly available?	N	N
Is this a legal requirement?	N	N
Can such information be requested from the authorities via FOI laws?	N	N
<b>Data Quality of Official Sources</b>		
8. How reliable are the sources used to produce official statistics about deaths?	L	N
9. Internal quality assurance / verification conducted	U	N
10. Methodology for data collection publicly specified	P	N
11. How reliable are the overall figures produced?	P	N

### Key

<b>G</b>	<b>P</b>	<b>L</b>	<b>N</b>	<b>U</b>	
Good, Robust	Partial, Medium	Limited, Poor	None	Unknown	Not relevant

<sup>131</sup> The reference year used for this table is 2018. However, it should be noted that this information has changed slightly in 2019: the IGPN's annual report for 2019 includes information relating to the "cause of death" (i.e. the type of force used).

	Police	Gendarmerie
<b>Data Analysis and Lessons Learnt</b>		
12. State / police agencies analyse data to generate evidence-based recommendations / lessons learnt, in order to prevent future deaths	U	U
13. Evidence that state / police agencies act on the results of their analysis, including applying lessons learnt	N	N
14. External bodies are able to reuse data for their own analyses	N	
15. External, non-governmental agencies collect, and are able to publish, their own statistics on deaths following police use of force	G	G
<b>Investigations by Official Agencies</b>		
16. Is there a legal requirement for deaths to be independently investigated?	N	N
17. Is there an authority, separate from the one involved in the incident, which conducts investigations into deaths? If so, which organisation(s) conduct these investigations? <sup>132</sup>	▲	★
18. How independent are the investigations conducted by the organisation(s) named above? Please consider the extent to which they are independent and separate in terms of a) legal structure, b) hierarchy, c) investigative activity and personnel, d) operational ability (or 'self-reliance') e) oversight and control	N	N
19. Involvement of close relatives in the investigations	L	L
<b>20. Investigation reports into deaths are:</b>		
Publicly available?	N	N
Do they give reasons for the conclusions they have reached?	N	N
Is this a legal requirement?	N	N
Can such information be requested from the authorities via FOI laws?	N	N
21. Information available on legal proceedings against agents / officials pursuant to deaths	N	N
22. Information available on legal proceedings against state agencies pursuant to deaths	N	N
23. Information available on disciplinary proceedings against agents / officials pursuant to deaths	L	N
24. Number of prosecutions against agents / officials involved in the last ten years?	N	N
25. Number of convictions against agents / officials involved in the last ten years?	N	N
26. Number of prosecutions against agencies involved in the last ten years?	N	N
27. Number of convictions against agencies involved in the last ten years?	N	N
28. How readily available is information about prosecutions and convictions?	N	N

<sup>132</sup> The table mentions here only the Official Agencies competent to conduct judicial and disciplinary investigations. It does not include the Defender of Rights, an independent authority, which may also carry out investigations but is not competent to conduct judicial or disciplinary inquiries.

▲ IGPN or police services

★ IGGN or gendarmerie services

## France

French law enforcement agencies are divided into two main bodies: the national police (“Police”) and the national gendarmerie (“Gendarmerie”). The gendarmerie is an army corps, and the gendarmes are therefore military personnel. There are currently approximately 150,000 police officers and 100,000 gendarmes. Police officers are traditionally assigned to urban areas (cities with more than 20,000 inhabitants), while gendarmes operate in rural areas. In total, the national gendarmerie covers 95 per cent of the territory and 50 per cent of the population. Both have been under the authority of the Ministry of the Interior since 2009. In addition to these two main bodies, there is also the municipal police in France (approximately 23,000 officers<sup>133</sup>), whose establishment and management is the responsibility of the mayor of each municipality. Municipal police officers are territorial civil servants of communes and intercommunal bodies.

This report only deals in-depth with the actions of the national security forces (national police and gendarmerie), which are the two main law enforcement agencies in the country, and are moreover the security forces that most often use force. The reporting period used in this report is based on a calendar year. It assesses the information available pertaining to 2018 and 2019.

It should be noted with regard to municipal police officers that, while they are rarely involved in cases involving the use of force, they nevertheless have the possibility of being armed and of using force in certain circumstances<sup>134</sup>. The French government publishes precise data on the number of municipal police officers and the number and type of weapons they carry<sup>135</sup>. However, to date, there is no public information on cases of possible use of physical force or weapons by these officers, nor is there any information on disciplinary and/or judicial investigations in such cases.

## Data Collection and Publication by Official Agencies

The French authorities have only very recently begun officially counting the number of people “injured or killed” during police interventions. However, the information published is incomplete and the census is also partial since it concerns only the National Police. The National Gendarmerie does not yet carry out any official data collection.

### National Police

For the National Police, the official census is carried out by the Inspection générale de la Police nationale (IGPN – General Inspectorate of the National Police). Composed exclusively of police officers, the IGPN is an active service of the General Directorate of the National Police, under whose direction it is placed. The IGPN has a double role, covering both general auditing of police services and the control of police personnel<sup>136</sup>. In the latter role, it ensures that police officers comply with national laws and regulations and the police code of ethics and is, for this reason, commonly referred to as the “police of police”. It investigates disciplinary and criminal cases concerning police officers, in particular in the context of investigations entrusted to it by the administrative and judicial authorities. However, it has no direct power of sanction: the decision to impose a disciplinary sanction rests with the hierarchical authorities of the Ministry of the Interior.

The recording of cases of persons who have died during a police intervention is not a legal obligation in France. Since 2017, the IGPN has recorded cases of injuries and deaths

occurring during police operations. Inaugurated through an experimental phase starting in July 2017, the census tool (known as the “census of injured or dead individuals<sup>137</sup>) was subsequently extended to all police services from January 2018. The data are presented in the annual Inspectorate’s report, which is accessible on the Internet<sup>138</sup>. On the basis of this tool, the IGPN reports 15 deaths (and 106 injuries) in 2018, then 19 deaths (and 117 injuries) in 2019.

However, the published data is highly limited in scope. In 2018, only the total number of recorded injuries and fatalities was made public, excluding any factual or analytical information about the recorded fatalities (name, location, ethnicity, age, sex, circumstances of death, type of force used). There is a slight change in the activity report for 2019, which provides additional information on “causes of death”. Thus, we learn there that the majority of deaths were caused by the use of a weapon. Apart from this new information, the IGPN does not publish any information on the circumstances of the death or injury, or on the place (city, region) where it occurred. Deceased persons are not identified by name and no other biographical data (age, gender, etc.) is provided. It is therefore impossible to know which cases are or are not recorded and to cross-check with public sources of information.

In addition to this, the possibilities for citizens to request information on the use of police force are very limited. In the absence of a freedom of information act, the only possibility for a citizen to access unpublished administrative documents is to refer the matter to the Commission for Access to Administrative Documents (CADA). However, seized by a journalist, the CADA considered that the IGPN is not obliged to make public a study it carried out in 2017 on the use of weapons in the police<sup>139</sup>.

### National Gendarmerie

Even though this corps covers half of the population and includes 100,000 agents, the National Gendarmerie does not provide any information about its use of force. It does not publish an annual report or provide any information on cases of injuries and deaths during its operations. To the best of our current knowledge, there is no internal tool for identifying individuals injured or killed. Only a few scattered figures, communicated sporadically, provide rare indications. For example, the IGGN agreed to provide the researcher Sebastian Roché, upon his request, with the number of individuals killed during gendarmerie operations in 2018. Roché reported that the Gendarmerie recorded five deaths “by use of a weapon” in 2018, with no further information being provided on the circumstances, dates and location of death, the identity of the deceased or the methodology used to account for these cases<sup>140</sup>.

## Data Quality

In the absence of data compiled and published by the National Gendarmerie, in this section we only deal with information relating to deaths occurring during National Police operations. The reports of the IGPN provide little information on the methodology used and the practical details of this census. The database is fed by “statements from the IGPN delegations and from all police services”<sup>141</sup>. It is therefore based on the police services themselves, on a declarative basis, without any further details. These reports do not make it possible to know in practice who is responsible for filling out the database (for instance, field agents, IGPN inspectors, etc.), nor what training and methodological framework has been provided to the individuals concerned, nor what controls are carried out to monitor the database’s input. We do not have any information on any internal checks that may have been carried out.

<sup>133</sup> The French government lists 22,780 agents in 2018: Ministry of Interior, *Police municipale : Effectifs par commune*, 2018, <https://www.data.gouv.fr/fr/datasets/police-municipale-effectifs-par-commune>, (accessed 4 August 2020).

<sup>134</sup> Each mayor who wishes to do so may decide to arm his municipal police (with tear gas grenades, rubber bullet launchers (LBD or ‘flashball’), Tasers and/or firearms), by requesting authorisation from the Préfet.

<sup>135</sup> The Government publishes a table listing all the municipalities that have established a municipal police force, the number of officers assigned to each municipality and the number and type of weapons equipping each of these municipal police forces. As of 1 January 2019, 53% (12,143) of municipal police officers were equipped with a firearm, 16.5% were equipped with a flashball (3,775) and 14% had a Taser (3,167): A. Léchenet and H. Jouanneau, ‘Police municipale: l’armement en cartes et en chiffres’, *La Gazette des communes*, 10 February 2020, <https://www.lagazettedescommunes.com/661973/police-municipale-larmement-en-cartes-et-en-chiffres>, (accessed 4 August 2020).

<sup>136</sup> The role and missions of the IGPN are presented in detail in the annual report of the Inspectorate; for example, see the IGPN’s report for 2019.

<sup>137</sup> “Recensement des particuliers blessés ou décédés” (RBD) in French.

<sup>138</sup> IGPN, *IGPN Annual Report for 2018*, 17 June 2019 and *IGPN Annual Report for 2019*, 8 June 2020.

<sup>139</sup> C. Polloni, ‘La Cada dit qu’elle ne voit pas le rapport (de l’IGPN)’, *Médiapart*, 24 February 2020, <https://blogs.mediapart.fr/camille-polloni/blog/240220/la-cada-dit-qu-elle-ne-voit-pas-le-rapport-de-l-igpn>, (accessed 27 October 2020).

<sup>140</sup> S. Roché, ‘Les violences policières en France’, *Revue Esprit*, January 2020.

<sup>141</sup> Translated from French. “Depuis le 1er janvier 2018, une application est alimentée par les déclarations provenant des délégations de l’IGPN et de l’ensemble des services de police.” *IGPN Annual Report for 2018*, p.30.

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The IGPN's reports for 2018 and 2019 only provide details on the types of deaths included in this census. It includes<sup>142</sup>:

- Events (injuries or deaths) that occurred “during a police mission”;
- Events that have “led to the opening of a judicial inquiry (following a complaint by the person concerned, a death investigation, an arrest...)”;
- In the case of injury(ies), facts for which the temporary interruption of work is “at least equal to or greater than 9 days and established by a medical certificate drawn up by a forensic doctor”.

Furthermore, we have no precise information on the scope of the missions concerned, as the term “during a police mission” is imprecise. The information made public does not, for example, make it possible to know whether deaths occurring during car chases are recorded in this database, nor do we know whether deaths occurring after an arrest (but potentially related to the arrest) are recorded in this database (e.g. people who died in hospital when no longer in police custody).

## Data Analysis and Lessons Learnt

The French police do not publish any detailed analysis of the data collected on the number of deaths. It does not make any public recommendations based on its census and does not draw – at least publicly – any lessons from the data that would be aimed at preventing future deaths. Moreover, the data that could support this purpose do not appear to be collected.

The National Police census tool was created in a very specific context. The lack of transparency of the French police is regularly the subject of strong criticism, both from civil society and from segments of the population. It is in this context of tension that the IGPN announced, in 2016, that it intended to set up a system to record the number of people injured or killed during police interventions<sup>143</sup>, a decision that it justified by the need to combat the dissemination of information “that lacked rigour and objectivity”<sup>144</sup>. At no time was the justification put forward for the creation of this database stated to be the prevention of future deaths.

On the contrary, several elements of the IGPN's report for 2019 question the real willingness of the institution to change its practices and learn from the deaths that have occurred. Thus, concerning the aforementioned 19 deaths listed for 2019, the report hastens to assert – without specifying the data on which this assertion is based – that “in more than a third of cases, the death results from the direct behaviour of the individual or from his physical condition (health problem, negative reaction to alcohol or drugs)”, thus seeming to seek to exclude the responsibility of law enforcement agencies for part of the deaths listed<sup>145</sup>.

Moreover, this statement is followed by another, specifying that death is not necessarily related to the use of force but may result from an “exogenous” cause: “It is important to specify that the use of arrest and restraint techniques or of electrical discharge weapons does not necessarily imply a direct link between these uses and death, which may be caused by an exogenous cause”<sup>146</sup>. In the preceding pages, the IGPN also calls for the development of the use of electrical discharge weapons (Taser) to “neutralize an individual in a state of high agitation without using restraint techniques requiring the physical intervention of the law enforcement agencies”<sup>147</sup>, even though the use of this type of weapon in these precise circumstances is considered dangerous and potentially lethal by many authorities (for instance, European Committee for the Prevention of Torture<sup>148</sup>, Defender of Rights<sup>149</sup>) or NGOs<sup>150</sup>, and even though the Inspectorate recorded at least one death in 2019 in France after this weapon was used.

Since no biographical data or data on the circumstances of the deaths recorded are published, external bodies are not in a position to re-use these official data for their own analysis, with the sole exception of the number of deaths recorded. The weakness of the published information does not allow an external counter-analysis. Unofficial sources carry out their own counting by investigating from information provided in the media. Some activist groups, families of victims, journalists and NGOs publish reports or analysis on certain cases of death. A more accurate and complete account is carried out by the independent newspaper *Bastamag*, which, on the basis of a thorough investigation, publishes and updates its own statistics (see below under non-official sources).

## Investigations by Official Agencies

### Information on investigations

International law obliges States to conduct an effective investigation as soon as there are reasonable grounds to believe that ill-treatment or torture has been committed, or as soon as the use of force has resulted in the death of a person. However, this obligation is not codified in French law. There is no provision in the code of ethics of the police and gendarmerie nor in the decree relating to the missions and organization of the IGPN that obliges the State to investigate cases of deaths occurring during interventions by the security forces. The IGPN report states only that “the use of a lethal weapon (...) usually leads to a criminal investigation”<sup>151</sup>.

In practice, judicial investigations into allegations of unlawful use of force (injury and death) are conducted either by conventional police or gendarmerie services, or by the IGPN (in the case of the police) or the IGGN (gendarmerie). When a case is referred to the IGPN or IGGN, the investigation is carried out either by the services of a regional office or by the central office located in Paris. However, no text or information makes it possible to know precisely how investigations are divided between the police services and the IGPN (or IGGN). Similarly, when investigations are entrusted to the Inspectorates (IGPN or IGGN), there is no information on which cases fall under the jurisdiction of the regional offices and which fall under the jurisdiction of the central office.

In all cases, the independence of these bodies is disputed: both Inspectorates are composed exclusively of police officers (IGPN) or gendarmes (IGGN), and come under the

<sup>142</sup> Translated from French. “Le traitement retient trois conditions cumulatives: Les faits (blessures ou décès) se sont produits à l'occasion d'une mission de police ; Les faits ont donné lieu à l'ouverture d'une enquête judiciaire (à la suite d'une plainte de l'intéressé, d'une enquête décès, d'une interpellation...); Dans le cas de blessure(s), l'ITT est au moins égale ou supérieure à 9 jours et constatée par un certificat médical rédigé par un médecin médico-judiciaire.” *IGPN Annual Report for 2018*, p.30.

<sup>143</sup> J. Pascual, ‘La police va enfin recenser les cas de violences policières’, *Le Monde*, 6 April 2016, [https://www.lemonde.fr/police-justice/article/2016/04/07/la-police-va-enfin-recenser-les-cas-de-violences-policieres\\_4897384\\_1653578.html](https://www.lemonde.fr/police-justice/article/2016/04/07/la-police-va-enfin-recenser-les-cas-de-violences-policieres_4897384_1653578.html), (accessed 14 April 2020).

<sup>144</sup> Translated from French. “Jusqu'en 2017, faute d'un outil institutionnel de recensement, il n'était pas possible de fournir des données fiables sur les personnes blessées ou décédées à l'occasion des missions de police (...). Cet état de fait favorisait la diffusion d'informations souffrant d'un manque de rigueur et d'objectivité et conduisait certains commentateurs à assimiler l'usage de la force physique ou armée à des violences policières, voire à des bavures”. *IGPN Annual Report for 2018*, p.30.

<sup>145</sup> Translated from French. “Dans plus d'un tiers des cas, le décès résulte du comportement direct du particulier ou de son état physique (problème de santé, malaise généré par l'alcool ou les stupéfiants...)”. *IGPN Annual Report for 2019*, p.22.

<sup>146</sup> Translated from French. “Il est important de préciser que l'utilisation de techniques de sécurité en intervention ou du pistolet à impulsion électrique n'emporte pas pour autant un lien direct entre ces usages et le décès, lequel peut être provoqué par une cause exogène”. *IGPN Report for 2019*, p.22.

<sup>147</sup> Translated from French. “[Le] développement [du pistolet à impulsion électrique] pourrait constituer une alternative pertinente pour neutraliser un individu en état de forte agitation sans faire usage de techniques de sécurité en intervention justifiant l'intervention physique des forces de l'ordre”. *IGPN Annual Report for 2019*, p.21.

<sup>148</sup> Council of Europe, *20th General Report on the CPT's Activities (2009-2010)*, § 79.

<sup>149</sup> Défenseur des droits, *Rapport sur trois moyens de force intermédiaire*, May 2013, p.18.

<sup>150</sup> Amnesty International, *USA, Life, liberty and the pursuit of human rights. A submission to the UN Human Rights committee*, September 2013, p.23 ; ACAT, *L'ordre et la force. Enquête sur l'usage de la force par les représentants de la loi en France*, 2016, pp.43-46.

<sup>151</sup> Translated from French. “Le recours à l'arme létale, qu'il s'avère in fine légitime ou non, entraîne généralement l'ouverture d'une enquête judiciaire souvent confiée à l'IGPN”. *IGPN Annual Report for 2019*, p.9.

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authority of the National Police Directorate (or the National Gendarmerie), on which they are hierarchically dependent. Political scientist Sebastian Roché sums it up as follows:

The IGPN is by law a department of the Ministry, organically attached to the Ministry, whose officers are exclusively agents of the Ministry, which pays them, gives them bonuses and their future assignment. The orders to audit come from the Minister. Orders to investigate administratively also. Moreover, they share a professional police identity, which introduces bias into the judgments. The IGPN is therefore dependent on the police hierarchy and culture<sup>152</sup>.

As a result of this institutional dependence, these bodies are suspected of bias.

Added to this, relatives of the deceased are not “involved” in the investigations. They are only heard as complainants or witnesses. The complainants (civil parties) can ask the judge to carry out certain acts of investigation (hearing witnesses, reconstitution, viewing of videos), but several civil society surveys report that it is very difficult for families to obtain these acts of investigation<sup>153</sup>.

These suspicions of bias are not dispelled by the lack of transparency of the two Inspectorates as to the results of their investigations: the IGPN and IGGN investigation reports are not made public. In the case of disciplinary investigation reports, the institution considers that the investigation, which is exclusively internal, does not have to be communicated to the public or to the families of the victims. Reports of judicial inquiries are placed in the judicial file but are not made public.

Only the investigations of certain journalists provide access to information from these reports. In the first work of its

kind, in June 2020, journalist David Dufresne published the results of a six-month investigation during which he examined and analysed in detail 65 IGPN files and compared successive annual inspection reports. The results showed that a significant proportion of the cases followed up were closed and David Dufresne observes in these investigations several repetitive elements that contribute to what he calls the “factory of impunity” (investigations not carried out in depth, failure to identify the police officers involved, video or radio recordings not seized, failure to carry out ballistic examination of weapons, disappearance of evidence, failure to interview police officers, software listing police computer reports truncated, etc.)<sup>154</sup>.

In addition to the “official” investigations of the IGPN and IGGN, there are also investigations carried out by the Defender of Rights. This independent human rights institution (Ombudsman) can be called upon to investigate matters relating to the ethics of the security forces and the use of police force and has broad investigative powers (interview witnesses, police officers, victims; view video footage; request the communication of any document, etc.). At the end of the investigation, he issues an opinion which is transmitted to the Ministry of the Interior, in which he provides his view on the possible responsibility of the officers involved and can, if necessary, recommend disciplinary sanctions. Unlike the investigation reports of the IGPN and the IGGN, his decisions are made public and accessible on the institution’s website. However, these opinions are advisory and do not bind the Minister of the Interior, who remains the sole decision-maker on the sanction. The opinions of the Defender of Rights are rarely followed by the competent authorities. In his own activity report for 2019, the Defender of Rights states that “since the beginning of his mandate, (he) has requested disciplinary proceedings in 36 cases. However, none of his

requests, although rare and detailed in relation to the number of cases handled over the same period (3987 complaints, or 1%), have been acted upon”<sup>155</sup>.

### Information available on legal or disciplinary proceedings and number of prosecutions and convictions

In its annual activity report, the IGPN reports on the number of judicial and disciplinary investigations initiated against police officers. In 2019, it received 1,460 judicial investigations (including 868 for intentional violence) and 224 administrative investigations. All categories combined, the IGPN proposed 276 disciplinary sanctions, including 117 Disciplinary Boards. Sanctions are then decided by the General Police Directorate. The IGPN’s annual report informs the public that in 2019, the police institution issued 1678 sanctions against officers, including a large majority of warnings (900) and reprimands (595). However, the information published does not allow us to know which field of police ethics these sanctions concern. In view of the information provided, it is therefore not possible to know what sanctions may have been issued in cases leading to deaths.

As regards the National Gendarmerie, we have no public information on the investigative activities of the Inspectorate or on the disciplinary activity of the institution.

No official information is published on court cases involving officers from either the Police or the Gendarmerie. It is currently impossible to know the number of prosecutions of officers for acts of violence over the last ten years. Lastly, no official statistics are available on the outcome of these prosecutions or on any convictions (number and quantum of sentences). The rare information on judicial decisions about cases involving police officers for the use of force is published by activist groups, families of victims, NGOs and journalists. In June 2020, the newspaper *Bastamag* published the results of an investigation into judicial decisions about cases involving police officers implicated in deaths. The survey showed that

between January 1977 and June 2020, out of 213 cases involving death for which the outcome of judicial decisions is publicly known (usually in the media), two thirds of them never resulted in a trial, the majority of cases being dismissed. Only 33% (one-third) of the cases went to trial (10% resulted in an acquittal, 18% in a suspended prison sentence, 5% in a prison sentence)<sup>156</sup>.

### Further Information about Non-Official Sources

In addition to the data published by the IGPN, several groups of victims, NGOs, academic researchers and journalists have initiated a census based in particular on information communicated in the media. A notable example is the work of the *Bastamag* newspaper, which created in 2014 a database of cases of “deaths by the police”. Its results are presented on the newspaper’s website in the form of short analytical texts and numerous visual infographics<sup>157</sup>.

*Bastamag* records 676 deaths between January 1977 and December 2019. For each of these cases, the journalists processed and analysed several variables relating in particular to the dates and places of death, the biographical data of the deceased (age, sex) or the causes and circumstances of death (deaths by firearms, road accidents, “malaise or asphyxiation”, falls and drowning or by so-called “non-lethal” weapons). This database also provides information on the context in which the death occurred (death while fleeing from law enforcement agencies, following an arrest, in a police station or during a transfer), as well as on the police missions and units concerned (anti-terrorist operations, identity checks, response to a police call, response to a (suspected) crime in progress).

*Bastamag*’s methodology is presented in detail. The journalists explain that they have included “all” cases of deaths involving police officers or gendarmes, including deaths involving

<sup>152</sup> Translated from French: “L’IGPN est par la loi un service du ministère, rattaché organiquement au ministère, dont les agents sont exclusivement des agents du ministère, qui les paie, leur donne des primes et leur futur affectation. Les ordres d’auditer viennent du ministre. Les ordres d’enquêter administrativement aussi. Par ailleurs, ils partagent une identité professionnelle policière, ce qui introduit des biais dans les jugements. L’IGPN est donc dépendante à la hiérarchie et à la culture policière.” D. Dufresne, ‘Sept ans de rapports IGPN analysés: Une absence de sincérité dans la recherche de la transparence’, *Médiapart*, 12 June 2020, <https://www.mediapart.fr/journal/france/120620/sept-ans-de-rapports-igpn-analyses-une-absence-de-sincerite-dans-la-recherche-de-la-transparence>, (accessed 2 August 2020).

<sup>153</sup> ACAT, *L’ordre et la force. Enquête sur l’usage de la force par les représentants de la loi en France*, 2016, pp.75-82.

<sup>154</sup> For detailed survey results see D. Dufresne, ‘Allô IGPN? Que fait (vraiment) la police des polices?’, 13 June 2020, <http://www.davduf.net/allo-igpn-que-fait-vraiment-la-police-des-polices/>, (accessed 2 August 2020). See also D. Dufresne and P. Pasceriello, ‘IGPN: plongée dans la fabrique de l’impunité’, *Médiapart*, 13 June 2020, <https://www.mediapart.fr/journal/france/120620/igpn-plongee-dans-la-fabrique-de-l-impunite>, (accessed 2 August 2020).

<sup>155</sup> Translated from French. “Depuis le début de son mandat, le Défenseur des droits a demandé l’engagement de poursuites disciplinaires dans 36 dossiers. Or, aucune de ses demandes, pourtant rares et circonstanciées au regard du nombre de dossiers traités sur la même période (3987 réclamations, soit 1%), n’a été suivie d’effet.” Defender of Rights, *Annual Report for 2019*, 8 June 2020, p.60.

<sup>156</sup> I. Du Roy and L. Simbille, ‘Décès suite à une intervention policière: les deux-tiers des affaires ne débouchent sur aucun procès’, *Bastamag*, 16 July 2020, <https://www.bastamag.net/Violences-policieres-sui-vi-judiciaire-non-lieu-sans-suite-prison-impunite-IGPN>, (accessed 2 August 2020).

<sup>157</sup> I. Du Roy and L. Simbille, ‘En quarante-trois ans, 676 morts à la suite d’interventions policières ou du fait d’un agent des forces de l’ordre’, *Bastamag*, <https://bastamag.net/webdocs/police>, (accessed 12 July 2020).

## France

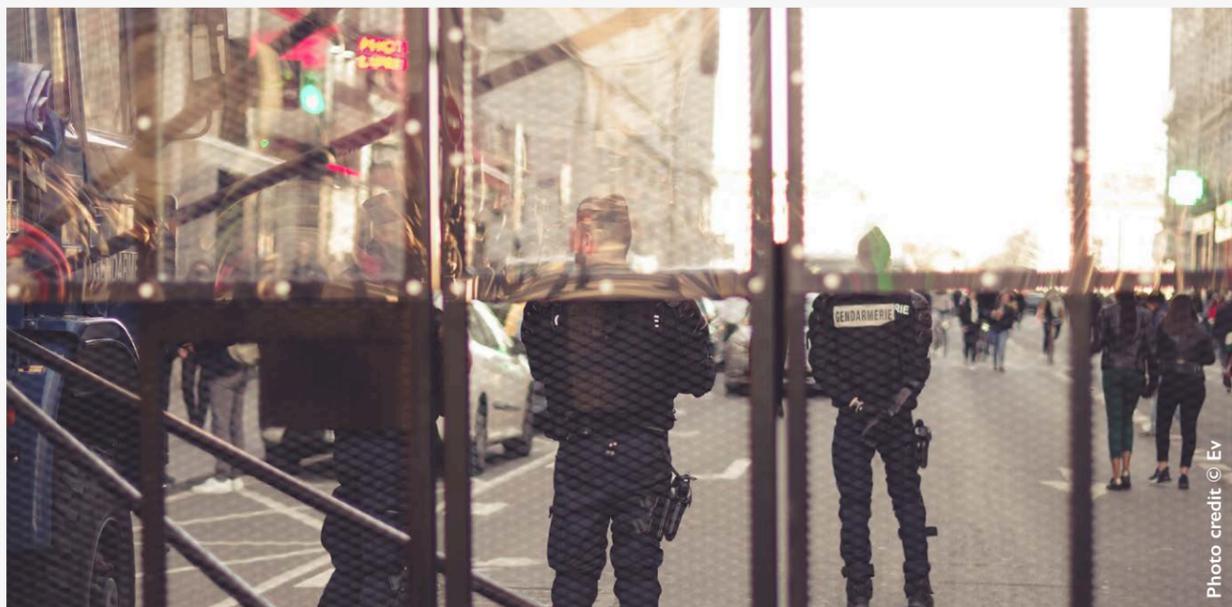


Photo credit © Ev

off-duty police officers. They mention their sources of information, which are diverse (press articles, archives, researchers, NGOs, families of deceased, lawyers etc.). The newspaper also provides transparency about the cases it reports. For each death recorded, the date, place, name and age of the person are mentioned (except when unknown), information that makes it possible to verify and cross-check the information if necessary. Based on this data, *Bastamag* recorded, from 2009 to 2019, between 10 and 36 deaths each year. It recorded 28 deaths for the year 2018 and 26 for 2019.

In addition, because of the legislation, no information on the ethnicity or migratory origin of the victims is recorded by the French authorities. However, the work of researchers provide some objective data. Based on a census of “fatal police interventions” that he carried out (using data from *Bastamag* in particular), Paul Le Derff carried out an analysis of the migratory origin of the victims, which is an innovation on this subject. His work shows “a very clear over-representation of foreign victims, immigrants or victims of immigrant origin,” with victims of North African nationality or origin being the most numerous among the victims of fatal police interventions<sup>158</sup>.

<sup>158</sup> Paul Le Derff is a researcher, a doctoral student in political science. Working with genealogical tools, he has tried to objectify the migratory origins of the victims based on their surnames. He concludes from his research that “while nearly one-third (30%) of victims are anonymous or have only a first name, there is a clear over-representation of foreign victims, immigrants or victims of immigrant origin (47.6%) compared to victims with no immigration connection or from overseas (22.4%). Victims of North African nationality or origin are the most numerous among victims of fatal police interventions (N=103, i.e. 27.8% of all victims and 39.8% of all victims whose origins are known)”. Translated from French: “S’il reste près d’un tiers (30%) de victimes anonymes ou dont on a seulement le prénom, une très nette surreprésentation de victimes étrangères, immigrées ou d’origine immigrée (47.6%) se dégage par rapport aux victimes sans lien avec l’immigration ou venant d’outre-mer (22.4%). Les victimes de nationalité ou d’origine maghrébine sont les plus nombreuses parmi les victimes d’interventions policières mortelles (N=103, soit 27.8% de l’ensemble des victimes et 39.8% de l’ensemble des victimes dont les origines sont connues)”. P. Le Derff, ‘Questionner l’origine migratoire des victimes d’interventions policières mortelles’, *Médiapart*, 19 February 2020, <https://blogs.mediapart.fr/paul-le-derff/blog/190220/questionner-l-origine-migratoire-des-victimes-d-interventions-policieres-mortelles>, (accessed 2 September 2020).

## Recommendations

The two French national forces (Police and Gendarmerie) are characterised by a profound lack of transparency. Very little information is provided to the public, either on cases of injuries and deaths, or on the disciplinary and judicial investigations and reviews following deaths. The institutions responsible for investigating cases involving the Police or Gendarmerie are also marked by a lack of hierarchical and institutional independence. We therefore make the following set of recommendations:

### 1) Although progress has been made by the National Police, which now publishes the number of “injuries and deaths” it registers each year, there is a need to improve the collection and publication of data. We recommend that:

- The national Police publish qualitative data on recorded cases of death (age, sex, place, date and circumstances of death; type of force used), in order to enable the use and analysis of this data (including by external bodies).
- The national Gendarmerie develop a tool for registering injured and deceased persons and annually publish the data resulting from this census in a detailed manner (e.g. circumstances of death or injury, place where it occurred, demographic information such as age and sex of the deceased or injured, etc.).

### 2) We also recommend that the data quality be improved through these measures:

- The national Police should publish precise data on the methodology used for their “census of injured or dead individuals” and publicly specify, for example, the process according to which the database is populated, and the independent verifications conducted to monitor that process.
- The national Gendarmerie should publicly specify what methodology will be used for the data collection to be put in place, as set out above (recommendation 1). The Gendarmerie should also detail what procedures will be used and what internal checks and controls will be carried out on data collection.

### 3) We recommend that steps be taken regarding data analysis and lessons learned:

- The Police and Gendarmerie should use and analyse data on the use of force, including but not limited to, data on deaths and injuries, in order to generate evidence-based recommendations and to prevent future deaths.

### 4) Finally, it is necessary to guarantee the independence and transparency of investigations conducted by official agencies:

- Investigations involving police officers or gendarmes, particularly in cases of death, must be conducted by a body with hierarchical, institutional, operational and legal independence;
- The Ministry of the Interior must publish statistics on disciplinary proceedings against officers in cases relating to the use of force by the police and gendarmerie (including, but not limited to, cases in which a death has occurred).
- The Ministry of Justice must monitor and publish statistics on cases relating to the use of force by the police and gendarmerie (including, but not limited to, cases in which a death has occurred) in order to enable the monitoring of prosecutions, convictions, appeals and sentences in these cases.

# The Netherlands

## Data Collection and Publication by Official Agencies

Based on 2018 reporting period:

	The Netherlands
<b>1. Are the number of deaths following any police use of force (be it firearms, 'less lethal' weapons or other force):</b>	
Collected?	P
Publicly available?	P
Is this a legal requirement?	N
Can such information be requested from the authorities via FOI laws?	G
<b>2. If published, to what extent is the number of deaths readily identifiable from official statistics? What work needs to be done to pull these out?</b>	P
<b>3. Are the deceased identified by name?</b>	N
<b>4. Is demographic and other information for the deceased (including ethnic background, age and gender):</b>	
Collected?	N
Publicly available?	N
Is this a legal requirement?	N
Can such information be requested from the authorities via FOI laws?	N
<b>5. Is demographic and other information for LEOs:</b>	
Collected?	N
Publicly available?	N
Is this a legal requirement?	N
Can such information be requested from the authorities via FOI laws?	N
<b>6. Is information on the circumstances:</b>	
Collected?	G
Publicly available?	P
Is this a legal requirement?	P
Can such information be requested from the authorities via FOI laws?	P
<b>7. Is information about the type(s) of force used:</b>	
Collected?	G
Publicly available?	G
Is this a legal requirement?	N
Can such information be requested from the authorities via FOI laws?	G

### Key

<b>G</b>	<b>P</b>	<b>L</b>	<b>N</b>	<b>U</b>	
Good, Robust	Partial, Medium	Limited, Poor	None	Unknown	Not relevant

	The Netherlands
<b>Data Quality of Official Sources</b>	
8. How reliable are the sources used to produce official statistics about deaths?	P
9. Internal quality assurance / verification conducted	G
10. Methodology for data collection publicly specified	G
11. How reliable are the overall figures produced?	P
<b>Data Analysis and Lessons Learnt</b>	
12. State / police agencies analyse data to generate evidence-based recommendations / lessons learnt, in order to prevent future deaths	P
13. Evidence that state / police agencies act on the results of their analysis, including applying lessons learnt	P
14. External bodies are able to reuse data for their own analyses	P
15. External, non-governmental agencies collect, and are able to publish, their own statistics on deaths following police use of force	G
<b>Investigations by Official Agencies</b>	
16. Is there a legal requirement for deaths to be independently investigated?	G
17. Is there an authority, separate from the one involved in the incident, which conducts investigations into deaths? If so, which organisation(s) conduct these investigations?	Rijksrecherche
18. How independent are the investigations conducted by the organisation(s) named above? Please consider the extent to which they are independent and separate in terms of a) legal structure, b) hierarchy, c) investigative activity and personnel, d) operational ability (or 'self-reliance') e) oversight and control	G
19. Involvement of close relatives in the investigations	L
20. Investigation reports into deaths are:	
Publicly available?	L
Do they give reasons for the conclusions they have reached?	G
Is this a legal requirement?	N
Can such information be requested from the authorities via FOI laws?	G
21. Information available on legal proceedings against agents / officials pursuant to deaths	P
22. Information available on legal proceedings against state agencies pursuant to deaths	P
23. Information available on disciplinary proceedings against agents / officials pursuant to deaths	N
24. Number of prosecutions against agents / officials involved in the last ten years?	N
25. Number of convictions against agents / officials involved in the last ten years?	N
26. Number of prosecutions against agencies involved in the last ten years?	L
27. Number of convictions against agencies involved in the last ten years?	L
28. How readily available is information about prosecutions and convictions?	G

## The Netherlands

The Netherlands is a geographically small coastal state with a high population density (over 17 million people live in area of 41,543 km<sup>2</sup> for a density of 411.3 people/km<sup>2</sup>). Due to its colonial past and labour migration it has become an increasingly multicultural society. This has tested the country's long established reputation as the epitome of a liberal political and cultural tradition, especially since the murder of the right-wing populist politician, Pim Fortuyn, by an environmental and animal rights activist in 2002 as well as the murder of the film maker Theo van Gogh by an Islamist militant in 2004<sup>159</sup>. Policing in the Netherlands was traditionally based on municipalities, but was reformed in the 1990s into 25 regional forces, with an additional national force providing services to regional forces and performing such tasks as diplomatic protection. Since 2013, a national police force has been formed. Throughout, a basic dual accountability has been in place: on the one hand, the police are responsible to the mayor of the municipalities in which they operate for public order and providing general assistance, but criminal investigation is the province of the public prosecutor.

Dutch police officers are routinely armed, each with a sidearm (in addition to a short baton and pepper spray). The police are not the only organisation fulfilling policing functions that carry firearms<sup>160</sup>. As no members of any of these organisations have been involved in any deaths in the last twenty years, they will not be dealt with in the rest of this report.

### Police and firearms in the Netherlands: rules and regulations

Dutch police officers (numbering 51,442 in 2015) routinely carry a Walther P99 firearm<sup>161</sup>. More important than the firearm is the type of ammunition used, as this determines the seriousness of any injuries caused by projectile impact. Since 2011, the Dutch police use Action NP ammunition (the NP stands for Netherlands Police), representing the choice made with regard to the balance between stopping power considered necessary and the prevention of wounding considered excessive<sup>162</sup>.

The use of the firearm is regulated (as are all police uses of force) by Article 11 of the Constitution (*Grondwet*), which mentions the inviolable rights of physical integrity of the body, and Article 7.1 of the Police Law 2012 (*Politiewet* 2012). In addition to these laws, there is a national official instruction on the use of force (*Ambtsinstructie* 1994<sup>163</sup>), as stipulated in Article 9 of the Police Law. Article 7.1 of the Police Law 2012 stipulates that police officers are authorized to use force<sup>164</sup>, when the intended goal justifies this (paying attention to the dangers inherent in the use of force) and the goal cannot be achieved by other means. If possible, a warning should be given before any use of force. The exercise of authority to use force has to be reasonable and measured in relation to the intended goal (principles of subsidiarity and proportionality).

Articles 8 & 9 provide specific regulations for the use of automatic or sharpshooter rifles by special units. In 1989, one death occurred as a result of the use of such a weapon, but no other instances have occurred since then<sup>165</sup>. In a specific regulation (RTGP), training requirements for all police officers are set out. The National Regulation on Police Weapons and Equipment (*Bewapenings – en uitrustingsregeling* 2012)<sup>166</sup> stipulates what weapons and equipment may be carried by specific types of officers.

### Data Collection and Publication by Official Agencies

The number of deaths following police use of force is not recorded. The public prosecutor's office publishes a yearly list of incidents involving the use of a firearm that have been investigated by the *Rijksrecherche*<sup>167</sup> and how many deaths have resulted following police use of a firearm (in 2018, 27 shooting incidents were investigated that resulted in 3 deaths, which equals the average number of people dying each year as a result of police use of firearms<sup>168</sup>). There is no publication of the number of deaths following other types of police use of force (or deaths in police custody). As far as is known, these data are not collected<sup>169</sup>. There is no legal requirement to collect or publish these data. The information could in principle be requested from authorities via FOI laws, but it is not the case that for each and every case any single authority would be in possession of all relevant data. In individual cases the public prosecutor's office publishes a press release after an investigation has been concluded and a decision with regard to prosecution of the officer has been taken.

No extra work is required to establish the number of deaths following use of a firearm. Establishing deaths following other use of force / in custody deaths requires extensive work

encompassing going through press releases or court records. On no occasion are the deceased identified by name by the authorities.

Demographic and other information on deceased individuals is not collected or published by the authorities. Due to privacy considerations, it is unlikely that information requests via FOI laws would yield this type of information.

Demographics and other information on police officers is not collected or made available. As their privacy is protected, details about them are not provided in press releases or judicial proceedings. When they testify their anonymity is ensured. On some occasions, officers have at some point (after all legal proceedings had ended) spoken out publicly and talked about the huge impact the incident had had upon themselves, both in their personal lives and career wise.

Information on the circumstances in which a death occurs are certainly part of the investigation conducted by the *Rijksrecherche*. The summary published after the investigation has been concluded contains information about the circumstances, but the amount of detail differs considerably from case to case. There is no legal requirement to publish this information. Only if a case is brought before a judge (a rare occurrence) would more details become publicly available.

Information about the type of force used in general is collected and registered by the police, which is a legal requirement<sup>170</sup>. In principle, the consequences for the citizen are also registered, but this is not always known at the time the registration is made. On a yearly basis, the police publish an overview of the number of incidents police used force and of the types of force being used. This is not a legal requirement and in the past this information was regularly requested by the media using FOI laws.

<sup>159</sup> P.A.J. Waddington et al., 'Singing the same tune? International continuities and discontinuities in how police talk about using force', *Crime, Law and Social Change*, vol. 52, no. 2, 2009, pp.111-138.

<sup>160</sup> The relevant organisations are: Royal Marechaussee KMAR (some 5700 officers), a police organisation responsible for police functions with regard to the military that according to the Police Law also fulfils a police function by providing security for airports, royal palaces, the Dutch national bank and important persons (as well as Dutch embassies in risk areas abroad). The KMAR can also provide support to the Dutch police and serves as a strategic reserve for it. Around 3,000 customs officers, some 400 forest and game wardens and officers in the state criminal investigations department also carry firearms.

<sup>161</sup> Since 2014, before which date they carried a Walther P5.

<sup>162</sup> <http://politieparcours.eu/home/page%204%20politiemunitie.html>, <http://www.thefirearmblog.com/blog/2009/10/07/the-9x19mm-np-netherlands-police> and [https://www.ruag.com/sites/default/files/media\\_document/2017-01/9x19\\_Deformation\\_Ammunition\\_en\\_low.pdf](https://www.ruag.com/sites/default/files/media_document/2017-01/9x19_Deformation_Ammunition_en_low.pdf), (accessed 27 October 2020).

<sup>163</sup> <http://wetten.overheid.nl/BWBR0006589/2017-01-01>

<sup>164</sup> It should be borne in mind that the Dutch word for 'force' in the use of force is 'violence' (geweld).

<sup>165</sup> After the 2001 September 11 attacks in the US, one of the police unions called for an extension of the circumstances in which force could be used to fight terrorism, but this was felt to be unnecessary, as existing regulations were considered to be flexible enough to deal with this. What did occur was a reorganisation of SWAT-teams to be better prepared to deal with terrorism-related incidents. Since 2006 a Special Interventions Unit exists to deal with terrorist incidents.

<sup>166</sup> This combined and replaced two previously existing regulations: the *Bewapeningsregeling* 1994 and the *Uitrustingsregeling* 2012.

<sup>167</sup> The *Rijksrecherche* falls under the jurisdiction of the public prosecutor's office and is not part of the police.

<sup>168</sup> <https://www.om.nl/actueel/nieuws/2020/05/11/rijksrecherche-onderzocht-16-schietincidenten-in-2019>, (accessed 27 October 2020).

<sup>169</sup> Following publications by NGO ControleAltDelete (see below), the police recently announced that they will in future publish these data.

<sup>170</sup> The officer reports the use of force to a supervising officer, who makes up a written report.

## The Netherlands

### Data Quality

Data on the number of deaths as a result of police use of a firearm is 100% reliable. As all deaths as a result of police use of force are investigated by the same institution (*Rijksrecherche*) and as the number of deaths (including deaths as a result of other uses of force and deaths in custody) rarely if ever rises above 10 per year<sup>171</sup>, there are no methodological issues (other than the lack of data on deaths not caused by use of a firearm). The issues instead pertain to the lack of information available.

### Data Analysis and Lessons Learnt

Over the past decades the Dutch police has commissioned a large number of independent studies into police use of force, including police use of firearms. These studies have been used explicitly to change the *Ambtsinstructie*, to adjust training in the use of force and to make decisions about (the need to) acquire new weapons. This does not imply that recommendations from these studies are always acted upon. For these studies, police data and *Rijksrecherche* data have been made available to researchers<sup>172</sup>. In recent years, after the formation of a national police force, police also carry out their own (limited) analyses of use of force data<sup>173</sup>. Since 2019, a conscious attempt is being made to decouple accountability procedures from learning processes.

<sup>171</sup> Adang (in preparation).

<sup>172</sup> E.g. O. Adang and J. Timmer, *Beheersing van gevaar. Praktijkboek voor de opleiding van vuurwapendragenden en de toetsing van geweldstoepassing. Derde, herziene druk*, The Hague, Elsevier Overheid, 2005; O. Adang, B. Mali and J. Timmer, 'Politiegeweld in zicht: zijn nieuwe geweldsmiddelen nodig?' *Tijdschrift voor de Politie*, vol. 219, no. 1, 2019, pp.22-26; J. Naeyé, *Niet zonder slag of stoot. De geweldsbevoegdheid en doorzettingkracht van de Nederlandse politie*, Kerckebosch, Zeist, 2005; J. Timmer, J. Naeyé and M. van der Steeg, *Onder schot: Vuurwapengebruik van de politie in Nederland (1978-1995)*, Deventer, Gouda Quint, 1996; J. Timmer, *Politiegeweld: Geweldgebruik van en tegen de politie in Nederland*, Alphen aan den Rijn, Kluwer, 2005; J.S. Timmer and R.S.M. Visser (eds.), *Gepast geweld. Geweld van en tegen de politie in 2010*, Amsterdam, Centrum voor Politiewetenschappen Vrije Universiteit Amsterdam, 2015.

<sup>173</sup> For figures on police use of force in 2018 see <https://www.politie.nl/nieuws/2019/maart/28/00-lichte-daling-in-cijfers-politiegeweld.html>, (accessed 27 October 2020).

<sup>174</sup> *Public prosecution service at a glance*, 2011, p.26. The procedure was adopted following a verdict from the ECtHR that the procedure followed before was in some respects insufficiently independent and effective and a violation of Article 2 ECHR: *Ramsahai v The Netherlands*, 15 May 2007 (Application no. 52391/99), § 321, <https://zembbla.bnnvara.nl/data/files/1918355397.pdf>, (accessed 27 October 2020).

<sup>175</sup> Although the term "*Rijksrecherche*" is translated in this brochure as the Police Internal Investigations Department, as mentioned earlier, it falls in fact under the jurisdiction of the public prosecutor's office and is not part of the police. A better translation would be State Criminal Investigations Department. The ECHR has determined that it is sufficiently independent of the police.

### Investigations by Official Agencies

Article 17 of the *Ambtsinstructie 1994* stipulates that the commanding officer has to be notified of any use of force immediately. The commanding officer is the one who then prepares the use-of-force report. In specific cases (such as when shots have been fired or someone has died) the chief of police is required to inform the public prosecutor of the use of force. The binding "*Procedure after serious incidents involving police use of force*" will be followed<sup>174</sup>. The public prosecutor's office describes the procedure as follows in a 2011 brochure (published in English):

If civilians are seriously injured or die after a police use of force, the National Police Internal Investigations Department<sup>175</sup> (*Rijksrecherche*) will investigate under the supervision of a public prosecutor. To this purpose, the department has a quick response team to start an investigation whenever such an incident occurs. According to the serious incidents procedure, the police are required to report the incident to the public prosecutor, who will contact the internal investigations department. A coordinator from the internal investigations department will be appointed who will contact the police force involved and explain the internal investigation procedure to the officer involved. In principle, the officer involved should be interviewed within 24 hours. The investigation will be supervised by

a public prosecutor, who, for reasons of objectivity, may not be the prosecutor responsible for the area where the incident took place. Members of support services taking part in the investigation (e.g., forensic detectives) may not be connected to those involved in the incident.

All those involved will be interviewed by the internal investigations department. In a meeting with forensic experts and the public prosecutor, a decision is made about which forensic data will and will not be investigated. In case of death, an autopsy is performed on the body of the deceased. In complex cases a video reconstruction is made in the presence of the examining magistrate and lawyers involved.

Investigations by the internal investigations department should be concluded within six weeks but sometimes take longer. The department sends its report to the chief public prosecutor who will decide whether or not the use of force was lawful. The chief public prosecutor will usually ask for and receive non-binding advice from the Advisory Committee on Police Use of Firearms (composed of some chief prosecutors, an officer specialised in investigations, the coordinating officer from the internal investigations department and a chief advocate general). According to a binding protocol, police officers will be interviewed in the first instance as witnesses, and not as suspects.

As a result of the investigation, the chief public prosecutor decides whether or not to prosecute the police officer(s) who used the force that caused the death. When the relatives of the deceased (as directly interested parties) do not agree with this decision, they can petition the Court of Appeals (*Gerechtshof*) to order the public prosecutor to prosecute the officer(s) involved (Article 12 procedure<sup>176</sup>). If the court rules favourably on their complaint, a trial will follow. If the court agrees with the prosecutor that a prosecution is not called for, family members may petition the ECtHR to take up their case.

As far as transparency is concerned, in most cases, the public prosecutor brings out a press release following his decision whether or not to prosecute the officers involved.

The press release usually contains a (very brief) summary of the findings of the internal investigations department. This means that in cases where there is no prosecution (i.e. in almost all cases) there is very little public information about what happened. Relatives may receive (through their lawyers) more extensive results of the investigation, but these are not made public (unless the lawyer decides to go public with part of the findings). If the relatives decide to file a complaint with the Court of Appeals, most of the motivated decisions are published online at [rechtspraak.nl](https://rechtspraak.nl). In general, only a selection of court cases is published in this way. In special cases, an independent public investigation (separate from the criminal investigation performed by the internal investigations department) is carried out.

Glismeijer studied the Article 12 complaints procedure with the Court of Appeals, based on 6 complaints filed between 2012 and 2015 with regard to use of the firearm by a police officer (two with a deadly result) and concluded that it is not always clear from the court's decision (disposition) whether or not the investigation was carried out in an independent, impartial and effective way. This is important because the Article 12 procedure is intended to bolster the confidence of civilians in the judicial process and to prevent arbitrariness in the prosecution policy of the public prosecutor<sup>177</sup>.

Van der Steeg, a lawyer for police officers, studied 23 cases in which police officers who had fired shots (three of which resulted in death) were prosecuted between 2000-2015. The 23 officers acted in 21 incidents, nine of them were convicted (mostly for manslaughter<sup>178</sup>). She notes that in most cases where police officers used their firearm, they are not prosecuted. It is clear according to Van der Steeg that judges and prosecutors take the special position of police officers into account with regard to their duty to act in specific situations (*Garantenstellung*) or the proportionality of their actions in a self-defence situation. She notes nevertheless that the number of prosecutions and convictions increased considerably over the last three years of her study (2013-2015)<sup>179</sup>.

<sup>176</sup> Contained in the Code of Criminal Procedure.

<sup>177</sup> M. Glismeijer, *De beklagprocedure van artikel 12 Sv bij het niet vervolgen van politiegeweld door het Openbaar Ministerie*, Masterscriptie Strafrecht, Universiteit van Utrecht, 2015.

<sup>178</sup> In Dutch: 'doodslag'.

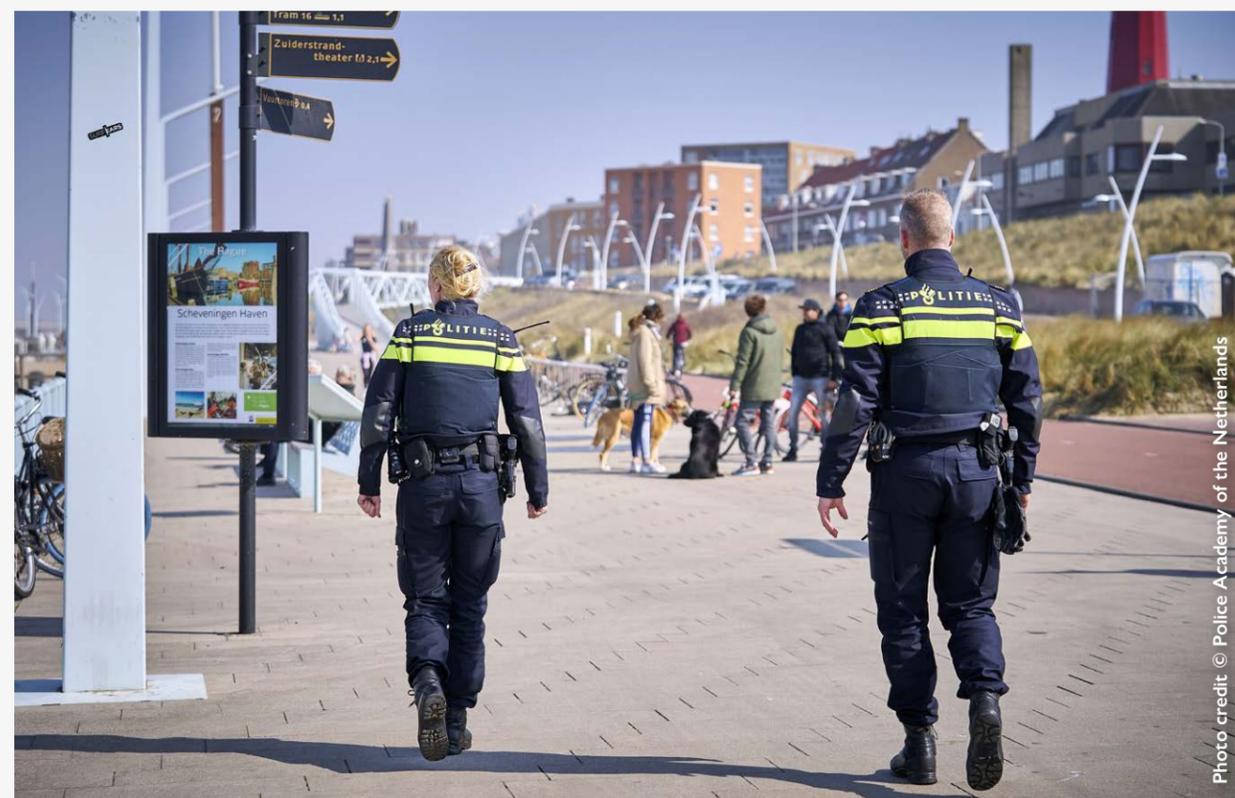
<sup>179</sup> M. van der Steeg, 'Politieschutter voor de rechter', *Tijdschrift Praktijkwijzer Strafrecht*, vol.43, 2016, pp.1-17.

## The Netherlands

### Non-official Sources and Analysis

There is one NGO, ControleAltDelete, that consistently draws attention to police use of force and ethnic profiling by police. For 2016 and 2017 they compiled a list of individuals that died as a result of police use of force or in police custody (7 in 2016, 9 in 2017; 6 of the total of 16 as a result of police use of a firearm)<sup>180</sup>. The Dutch section of Amnesty International on occasion draws attention to issues with police use of force and ethnic profiling by police in the Netherlands, but they do not compile lists on deaths as a result of police use of force.

Newspapers occasionally pay attention to the topic after (a controversy around) a death occurred and then sometimes include a list (e.g. examples of alleged “suicide by cop”), but no systematic analysis has been produced.



<sup>180</sup> <https://controlealtdelete.nl/blog/bijna-3-keer-meer-politiedoden-dan-bekend>, (accessed 27 October 2020).

### Recommendations

As of July 2020, the way in which officers in the Netherlands need to report on the use of force and the way use of force is judged have changed considerably, a conscious attempt to decouple accountability procedures from learning processes. These changes aim to increase the learning potential of the police organisation, to clarify the position of officers that used force, to treat them in principle as professionals (meaning that only in exceptional cases resulting in death or serious injury will the full spectrum of judicial review take place), to support officers and to be more transparent to the public. Given that these reporting changes have only come in recently, it remains to be seen how well these aims will be achieved. The changes do not affect the independent way in which incidents that result in death are investigated and dealt with (as described above).

Information about the type of force used by police in the Netherlands is collected and registered by the police. This is a legal requirement. On a yearly basis, the police publish an overview of the number of incidents police used force and of the types of force being used. Publishing this overview, however, is *not* a legal requirement.

The Netherlands has a clear procedure for the independent investigation of deaths of individuals who were subjected to use of force by police or who died while under control of the police. However, there is limited public information available about these investigations. The public prosecutor's office publishes a yearly list of incidents involving the use of a firearm that have been investigated and how many deaths have resulted following police use of a firearm. There is no publication of the number of deaths following other types of police use of force (or of deaths in police custody). In individual cases (especially high profile cases that received a lot of media attention) the public prosecutor's office publishes a press release after an investigation has been concluded and a decision with regard to prosecution of the officer has been taken, summarising the findings of the investigation and the reasons for the prosecutorial decision. The amount of detail provided on the circumstances in which a death occurs differs considerably from case to case. There is no legal requirement

to publish this information. This means that in cases where there is no prosecution (in other words, in almost all cases) there is very little public information about what happened. Relatives of the deceased may receive (through their lawyers) more extensive results of the investigation, but these are not made public (unless the lawyer decides to go public with part of the findings). If the relatives decide to file a complaint with the Court of Appeals, its (reasoned) decisions will most likely be published online.

**In light of the points above, transparency associated with the use of force in the Netherlands should be increased. In particular, we recommend that:**

#### 1) To enhance data collection and publication

- It should be standard practice to make publicly available information on each death that resulted after police use of force (any type of force, not just use of a firearm) and after each death in custody. This information should include details about the circumstances in which the death occurred (while respecting privacy of both the deceased and the police officers involved), the review process that has taken place and any measures that have been taken or lessons that have been drawn.

#### 2) To enhance data quality

- The type of data that needs to be collected systematically and maintained on any death resulting after police use of force or after an in-custody death needs to be clarified and coordinated between institutions involved (police, *Rijkrecherche*, public prosecutor, court decisions).

#### 3) To enhance data analysis, investigations and lessons learned

- Instead of on an ad hoc basis as is the case now, accumulated data on deaths that resulted after police use of force or after in-custody deaths should be analysed by independent researchers on a regular basis.

## Contributors

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**Aline Daillère** is an independent researcher. A lawyer by training, specialised in the field of human rights, she previously worked for French NGOs (La Cimade, ACAT). She is now preparing a PhD in political science on police fining practices at the University of Versailles-Saint-Quentin (France). Her research interests are the use of force by the police, policing of assemblies and the judicial and disciplinary control of police activities. She is the author of *L'ordre et la force. Enquête sur l'usage de la force par les représentants de la loi en France*<sup>181</sup> and of the report *Affaire Ali Ziri, autopsie d'une enquête judiciaire*<sup>182</sup>, published by ACAT in 2016 and 2017.

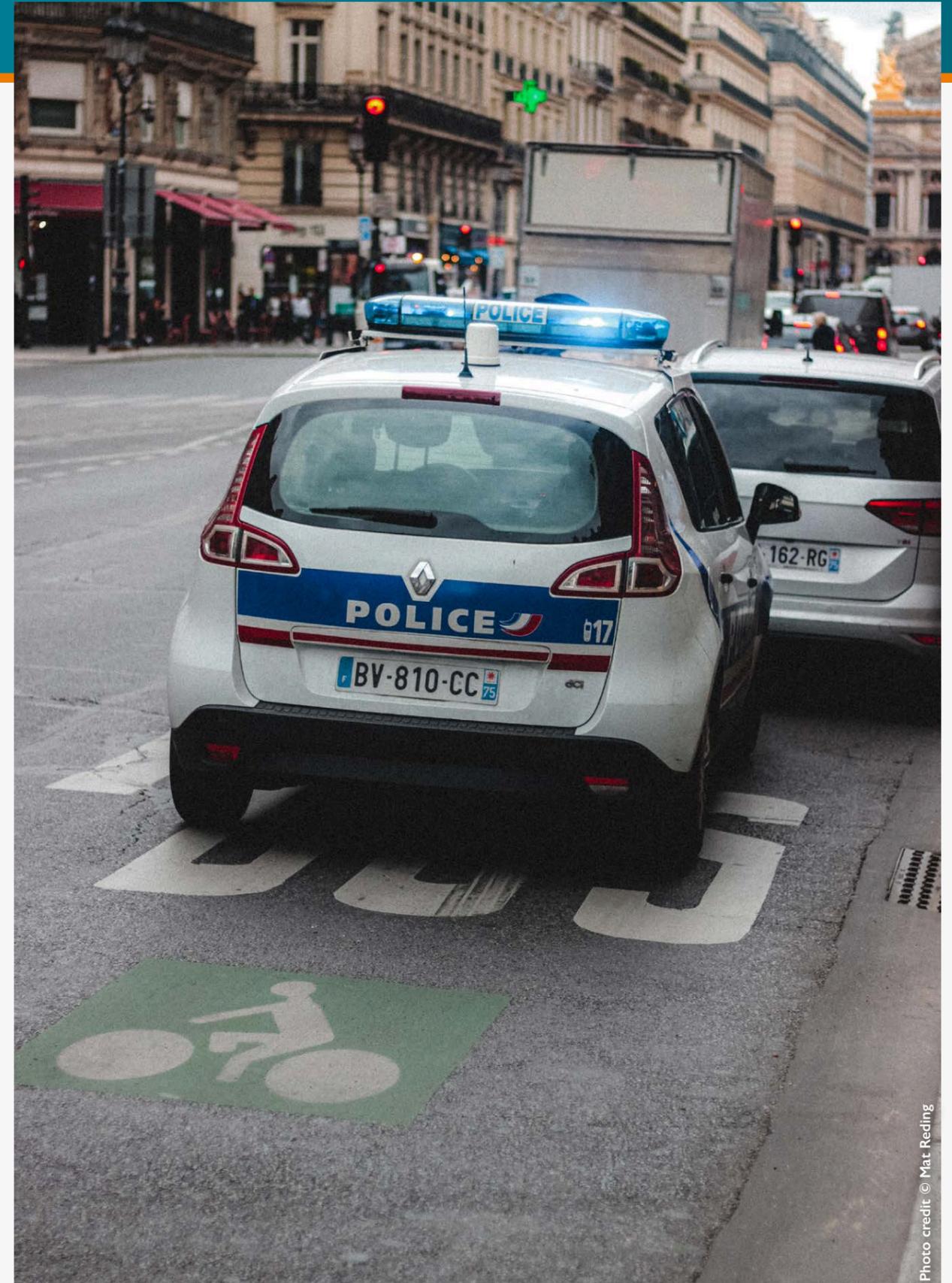
**Jasper De Paepe** is a PhD fellow and researcher in the research group 'Governing & Policing Security' (GaPS) in the Department of Public Governance & Management at Ghent University. His main research interest is in the management of police innovation and change.

**Abi Dymond** is a Senior Lecturer in Criminology at the University of Exeter and previously worked for a range of UK NGOs, including the Omega Research Foundation where she focused on police use of force and human rights. Her current research interests and impact work focus on the use of less lethal weapons by the police and in places of detention. She received the ESRC Impact Prize in 2018 for her work on the new police use of force reporting requirement in England and Wales that is discussed throughout the report.

**Marleen Easton** is Professor and chair of the research group 'Governing & Policing Security' in the Department of Public Governance & Management at Ghent University. She has twenty years of experience conducting qualitative, empirical research on policing and security related topics. Since 2014 she is president of the Belgian Innovation Centre for Security (IUNGOS). Since 2017 she is adjunct professor at the Griffith Criminology Institute participating in the Evolving Security Initiative by running its Ghent hub (ESI@GNE).

**Brian Rappert** is a Professor of Science, Technology and Public Affairs at the University of Exeter. His long-term interest has been the examination of the disclosure and concealment of information in situations characterised by uncertainty and disagreement. His books include *Controlling the Weapons of War; Biotechnology, Security and the Search for Limits; How to Look Good in a War* and *The Dis-eases of Secrecy*.

**Stephen Skinner** is a Professor of Comparative Legal History and Legal Theory at the University of Exeter and Director of Exeter Law School's Human Rights and Democracy Forum. His research is mainly focused on questions of state power and criminal law in democratic and non-democratic systems; and the application of the Right to Life under Article 2 of the European Convention on Human Rights to police uses of lethal and life-threatening force. His publications include a recent monograph entitled *Lethal Force, the Right to Life and the ECHR: Narratives of Death and Democracy* (Hart, 2019).



<sup>181</sup> 'Order and force. Survey on the use of force by law enforcement officials in France'.

<sup>182</sup> 'Ali Ziri case, autopsy of a judicial enquiry'.



