

“Take back

Repression and
criminalization of protest around the world

the streets”



"Take back the streets"

Repression and criminalization of protest around the world
October 2013

This document has been produced by a group of ten of domestic human rights organizations which cooperate as the International Network of Civil Liberties Organizations (INCLO). Each organization is multi-issue, multiconstituency, domestic in focus, and independent of government. We advocate on behalf of all persons in our respective countries through a mix of litigation, legislative campaigning, public education and grass-roots advocacy. The organizations that participated in the elaboration of this report are the American Civil Liberties Union, the Association for Civil Rights in Israel, the Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales (Argentina), the Egyptian Initiative for Personal Rights, the Hungarian Civil Liberties Union, the Kenyan Human Rights Commission, the Legal Resources Centre (South Africa), and Liberty (United Kingdom). The tenth member of INCLO, the Irish Council for Civil Liberties, contributed editorially to the report.

Cover photo source: Telam

This report was supported in part by grants from the Open Society Foundations and the Ford Foundation.



Table of Contents

Acknowledgments

Introduction 1

CASE STUDIES

UNITED STATES: Billy Clubs versus Speech – Excessive Force against Protesters to Suppress Speech and Expression in Puerto Rico 4

ISRAEL: The Case of Bassem Tamimi 10

CANADA: Le Printemps Érable and the Silencing of Students 16

ARGENTINA: Repression and Police Violence at Indoamericano Park 22

EGYPT: The Mohammed Mahmoud Protests, 18-24 November 2011 26

HUNGARY: Unlawful Ban of the Pride March 32

KENYA: Police Excesses in Kisumu, Kenya, as Citizens Protest the Supreme Court Ruling on the March 2013 General Elections 39

SOUTH AFRICA: Civil Society Committee for COP17 v. EtheKwini Municipality 44

UNITED KINGDOM: Anti-Terrorism Powers used against Protesters 50

Promotion and Protection of Human Rights in the Context of Social Protests: Main International Standards Regulating the Use of Force by the Police 56

Conclusion 61

Acknowledgments

This report has been a collaborative effort on the part of ten domestic civil liberties and human rights organizations: the American Civil Liberties Union, the Association for Civil Rights in Israel, the Canadian Civil Liberties Association, Centro de Estudios Legales y Sociales, the Egyptian Initiative for Personal Rights, the Hungarian Civil Liberties Union, the Kenyan Human Rights Commission, the Legal Resources Centre, Liberty, and the Irish Council for Civil Liberties.

The primary report editors were Abby Deshman (Program Director, CCLA), Karim Ennarah (Researcher, policing and criminal justice, EIPR), Luciana Pol (Researcher, institutional violence and security policies, CELS), and James Welch (Legal Director, Liberty).

The primary chapter authors were:

Case Study 1: Jennifer Turner, Human Rights Researcher, ACLU

Case Study 2: Raghad Jaraisy, Attorney, ACRI

Case Study 3: Cara Zwibel, Fundamental Freedoms Program Director, CCLA

Case Study 4: Luciana Pol, Researcher (institutional violence and security policies), CELS

Case Study 5: Karim Medhat Ennarah, Researcher (policing and criminal justice), EIPR, and Magda Boutrous, Director of Criminal Justice Reform, EIPR

Case Study 6: Lillian Kantai, Program Officer Security Sector Reforms, KHRC, and Marie Grace Utetiwabo, Program Associate Security Sector Reforms and Legal Aid, KHRC

Case Study 7: Szabolcs Hegyi, Head of Political Freedoms Program, HCLU and Attila Mráz, Associate, Political Freedoms Program, HCLU

Case Study 8: Sheldon Magardie, Director, Cape Town Regional Office, LRC

Case Study 9: James Welch, Legal Director, Liberty

Part III, International Standards: Petalla Timo, International Team, CELS

This publication would not have been possible without the assistance of many others. Thanks to Samuel Heppell (CCLA legal intern) for the research, writing and editing assistance. Thanks also to CELS employees Gabriela Kletzel, Camila Maia, Alejandro San Cristobal, Florencia Reggiardo and Federico Efron, as well as Davis Malombe (Deputy Executive Director, KHRC), George Morara (Senior Programs Officer Civil and Political Rights, KHRC), all of whom provided research and editing assistance. ACRI would like to thank the contributions from Karen Kaufman, Madeline Sanderford and Ryan Shandler. Louise Melling (ACLU), Jennifer Turner (ACLU) and Laura Berger (CCLA) provided helpful editing suggestions to the final text. The team at the Independent Medico-Legal Unit was instrumental in sharing their work documenting information in Kenya, and Éva Simon and Tamás Szigeti (former Head and Associate of Political Freedoms Program, HCLU) prepared the 2011 submissions to the Hungarian Court on behalf of the Hungarian Pride March. Thanks also to Emma Broster from the Durban office of the LRC for background research on the COP17 case.

Many thanks to the ACLU for assistance with the report editing, design, formatting and printing.

This report was supported in part by grants from the Open Society Foundations and the Ford Foundation.

This publication attempts to address some of the gaps in public debate about the state's responsibility toward the protection of the right to protest and assembly. We relate nine case studies from the nine countries about how governments have responded to diverse kinds of protest and public assembly.

The cases, originating from Argentina, Canada, Egypt, Israel and the Occupied Territories, Kenya, Hungary, South Africa, the United Kingdom and the United States, each present a unique state reaction in a unique domestic context. They relate instances of excessive use of force resulting in injury and death, discriminatory treatment, criminalization of social leaders, and suppression of democratic rights through law, regulation and bureaucratic processes. And despite the fact that all the cases come from different countries, with different substantive debates and different social contexts, a number of common threads are identifiable.

A number of case studies document disproportionate and illegal use of force by police, resulting in hundreds of wounded and dead. The American Civil Liberties Union details the case of police brutality against protesters in Puerto Rico, recounting violent beatings and low-flying helicopters spraying toxic chemicals over hundreds of peaceful demonstrators. The Egyptian Initiative for Personal Rights details six days in November 2011, when the police shot thousands of tear gas canisters directly into the crowds, resulting in numerous deaths due to asphyxiation, in addition to deaths caused by live fire and shotgun pellets. In one case, the police shot tear gas into a building and then sealed all the doors, suffocating the people inside. In Kenya, police beatings and shootings around the 2013 election left several dead and dozens more injured. And in Argentina, the Centro de Estudios Legales y Sociales tells of police indiscriminately firing live ammunition to disperse some of the poorest families from Buenos Aires, who had descended from the overcrowded outskirts of the city to peacefully occupy an open piece of land.

These cases collectively illustrate the use of lethal and deadly force in response to largely peaceful gatherings seeking to express social and political viewpoints. The deaths and injuries are caused both by the use of firearms with live ammunition, and also through the use of so-called "nonlethal" weapons – a term that we intentionally reject. The numbers of dead and injured due to the inhalation of tear gas and other less-lethal weapons clearly demonstrates the urgent need to clarify and expand the norms that regulate the use of these law enforcement tools. It is also striking that these documented acts of violence and repression are frequently compounded by a lack of accountability. Justice systems in multiple countries appear unwilling or unable to undertake the serious investigations necessary to hold powerful state actors accountable for their actions.

Several other chapters document the persecution or criminalization of those social leaders and community members that organize demonstrations. The Association for Civil Rights in Israel, for example, relates the struggles of community activist and West Bank resident Bassem Tamimi, who has spent over 13 months in jail for peaceful, expressive activities.

Introduction

In June 2010, hundreds of thousands of Canadians took to the streets of Toronto to peacefully protest the G20 Summit, which was taking place behind a fortified fence that walled off much of the city's downtown core. On the Saturday evening during the Summit weekend, a senior Toronto Police Commander sent out an order – “take back the streets.” Within a span of 36 hours, over 1000 people – peaceful protesters, journalists, human rights monitors and downtown residents – were arrested and placed in detention.

The title of this publication is taken from that initial police order. It is emblematic of a very concerning pattern of government conduct: the tendency to transform individuals exercising a fundamental democratic right – the right to protest – into a perceived threat that requires a forceful government response. The case studies detailed in this report, each written by a different domestic civil liberties and human rights organization, provide contemporary examples of different governments' reactions to peaceful protests. They document instances of unnecessary legal restrictions, discriminatory responses, criminalization of leaders, and unjustifiable – at times deadly – force.

The nine organizations that have contributed to this publication work to defend basic democratic rights and freedoms in nine countries spread over four continents. Across the regions where our organizations operate, States are engaged in concerted efforts to roll back advances in the protection and promotion of human rights – and often, regressive measures impacting the right to protest follows in lockstep. And across the globe, social movements are pushing for change and resisting the advancement of authoritarian policies; dozens, hundreds, thousands or hundreds of thousands of individuals are marching in the roads and occupying the public space. In rural areas across the global south, there are a variety of demands, calling for access to land or resisting the exploitation of natural resources that threaten indigenous peoples' or peasants' territories. In urban settings, housing shortages or lack of basic services spark social protests and upheavals. Even in developed economies, there are disturbing tensions provoked by the contraction of the economy, globalization policies and the social and political exclusion of migrants. Students' movements all over the globe are demanding the right to education.

History tells us that many of the fundamental rights we enjoy today were obtained after generations before us engaged in sustained protests in the streets: the prohibition against child labor, steps toward racial equality, women's suffrage – to name just a few – were each accomplished with the help of public expression of these demands. If freedom of expression is the grievance system of democracies, the right to protest and peaceful assembly is democracy's megaphone. It is the tool of the poor and the marginalized – those who do not have ready access to the levers of power and influence, those who need to take to the streets to make their voices heard.

Unfortunately, these are also rights that are frequently violated. Our organizations have witnessed numerous instances of direct state repression during protests: mass arrests, unlawful detentions, illegal use of force and the deployment of toxic chemicals against protesters and bystanders alike. At other times the state action is less visible: the increased criminalization of protest movements, the denial of march permits, imposition of administrative hurdles and the persecution and prosecution of social leaders and protesters.

This publication attempts to address some of the gaps in public debate about the state responsibility toward the protection of the right to protest and assembly. We relate nine case studies from the nine countries about how governments have responded to diverse kinds of protest and public assembly.

The cases, originating from Argentina, Canada, Egypt, Israel and the Occupied Territories, Kenya, Hungary, South Africa, the United Kingdom and the United States, each present a unique state reaction in a unique domestic context. They relate instances of excessive use of force resulting in injury and death, discriminatory treatment, criminalization of social leaders, and suppression of democratic rights through law, regulation and bureaucratic processes. And despite the fact that all the cases come from different countries, with different substantive debates and different social contexts, a number of common threads are identifiable.

A number of case studies document disproportionate and illegal use of force by police, resulting in hundreds of wounded and dead. The American Civil Liberties Union details the case of police brutality against protesters in Puerto Rico, recounting violent beatings and low-flying helicopters spraying toxic chemicals over hundreds of peaceful demonstrators. The Egyptian Initiative for Personal Rights details six days in November 2011, when the police shot thousands of tear gas canisters directly into the crowds, resulting in numerous deaths due to asphyxiation, in addition to deaths caused by live fire and shotgun pellets. In one case, the police shot tear gas into a building and then sealed all the doors, suffocating the people inside. In Kenya, police beatings and shootings around the 2013 election left several dead and dozens more injured. And in Argentina, the Centro de Estudios Legales y Sociales tells of police indiscriminately firing live ammunition to disperse some of the poorest families from Buenos Aires, who had descended from the overcrowded outskirts of the city to peacefully occupy an open piece of land.

These cases collectively illustrate the use of lethal and deadly force in response to largely peaceful gatherings seeking to express social and political viewpoints. The deaths and injuries are caused both by the use of firearms with live ammunition, and also through the use of so-called “nonlethal” weapons – a term that we intentionally reject. The numbers of dead and injured due to the inhalation of tear gas and other less-lethal weapons clearly demonstrates the urgent need to clarify and expand the norms that regulate the use of these law enforcement tools. It is also striking that these documented acts of violence and repression are frequently compounded by a lack of accountability. Justice systems in multiple countries appear unwilling or unable to undertake the serious investigations necessary to hold powerful state actors accountable for their actions.

Several other chapters document the persecution or criminalization of those social leaders and community members that organize demonstrations. The Association for Civil Rights in Israel, for example, relates the struggles of community activist and West Bank resident Bassem Tamimi, who has spent over 13 months in jail for peaceful, expressive activities.

In Canada, the Canadian Civil Liberties Association sets out how a student leader was put on trial for contempt of court – and found guilty – after telling the media he thought it was legitimate for students to picket universities. And in Argentina, the social leaders who were essential to establishing dialogue with authorities during a critical point of social crisis were afterwards prosecuted. Their participation in official negotiations was used as evidence that they were capable of controlling others involved in the event, and that they had instigated others to commit crimes.

These cases demonstrate how the justice system not only frequently fails to provide accountability for the illegal acts committed by law enforcement, but can also at times act as a repressive force toward demonstrators and social organizations. Too often, those individuals who are courageous enough to lead peaceful opposition or voice dissent must also be brave enough to face subsequent prosecution and detention from government authorities. It is difficult to calculate the chilling impact such prosecutions have on current and future leaders of social movements.

The post-9/11 context has also made a mark on governments' reactions to societal dissent. Many countries have introduced broad anti-terrorist laws, and as time passes there is an increasing risk that these tools of interrogation, arrest, search and detention will be redirected toward peaceful political activity and domestic dissent. The case study from Liberty provides one example of how the United Kingdom's counterterrorism laws were applied to peaceful anti-arms protesters. It was only during Liberty's case challenging the abuse of these search powers that the UK public discovered that the whole of Greater London had been subject to a multiyear, high-level terrorism designation giving police officers significantly enhanced powers of search and detention. The fact that this discretionary power was disproportionately and arbitrarily used against black and Asian people and individuals from other visible minority communities should not come as a surprise.

Finally, the case studies from the Hungarian Civil Liberties Union and South Africa's Legal Resources Centre demonstrate how the very existence of laws regulating the exercise of the right to protest can facilitate the denial of rights and discrimination. In both countries, community groups had to go to the courts to force the government to facilitate their basic democratic rights. Laws that give authorities a measure of discretion can be applied or interpreted in a manner that restricts or limits the impact of the expression or actions of social groups – and in particular those groups that are vulnerable or likely to be subjected to discrimination. It is clear that, when faced with the potential disruption or inconvenience that is inevitably caused by protest, governments too often react by seeking to ban the demonstration, rather than accommodate it.

All the cases presented show the integral role played by civil society organizations in protecting these fundamental democratic rights. Each organization that has contributed to this publication recognizes that a democratic society must not only tolerate, but actively facilitate, social participation and protest. And each organization actively operates on the premise that, no matter the underlying cause or issue, individuals' and groups' right to protest must be protected. Dissenting voices must be heard. And they must be given the space – both legal and physical – to do so.

Billy Clubs versus Speech – Excessive Force against Protesters to Suppress Speech and Expression in Puerto Rico

Introduction

Police crackdowns on the Occupy movement have brought national attention to the problem of police abuse against protesters in the United States. Until recently, however, relatively little of this attention was directed toward Puerto Rico. The Puerto Rico Police Department (PRPD), charged with policing the Commonwealth of Puerto Rico, is one of the largest police departments in the United States, second only to the New York City Police Department. Since 2009, the PRPD has regularly used excessive force against nonviolent protesters, routinely suppressing constitutionally protected speech and expression by indiscriminately deploying pepper spray, tear gas, batons, rubber bullets and stinger rounds, sting ball grenades, beanbag bullets, and conducted-energy

UNITED STATES



weapons. They also regularly subject protesters to carotid holds and pressure-point techniques. This case documents one particularly brutal instance of police violence in June 2010, and the American Civil Liberties Union's (ACLU's) advocacy efforts in response.

Suppression of Protest at the Capitol Building

In 2010 the Puerto Rico government proposed legislation that would reduce annual public expenditure by more than two billion dollars. In response, various concerned citizens and groups, including University of Puerto Rico students and labor union leaders and members, planned protests at the Capitol Building in San Juan on 30 June. Protesters gathered outside the building to demonstrate against the legislation under debate, the public's and press's expulsion from the legislative session in previous days, the mass lay-offs of 30,000 public workers under a recently passed austerity law, and new policies that would limit the ability of many students to afford to attend the public university.

A group of students who planned to deliver a proclamation to the legislature also tried to peacefully enter the Capitol Building, and Riot Squad officers hit these students with batons on their faces, heads, arms, and backs, forcing the students to tumble down the marble stairs.

Riot squad and other tactical PRPD officers had gathered inside the Capitol Building prior to any attempt at citizen protest. Later that morning, student and alternative media journalists arrived to observe and report on the final day of the controversial legislative session. As the journalists and a legal observer attempted to enter the Capitol Building, Riot Squad officers pepper-sprayed them at close range, and kicked, pushed, and beat them with batons before throwing them out onto the exterior stairs. Riot Squad officers also struck an opposition party legislator who attempted to intervene, tearing a ligament in her arm. A group of students who planned to deliver a proclamation to the legislature also tried to peacefully enter the Capitol Building, and Riot Squad officers hit these students with batons on their faces, heads, arms, and backs, forcing the students to tumble down the marble stairs.

The media began to broadcast images of police beatings and footage of bloodied protesters being assisted by paramedics, and as news spread about the protest, the size of the crowd outside the Capitol Building swelled to thousands.

The Riot Squad then created a perimeter around the public plaza leading to the building. Without ordering the crowd to disperse, Riot Squad, mounted police, and other PRPD officers charged, indiscriminately striking, pushing, pepper-spraying and jabbing students, union members, demonstrating citizens, legal observers, and journalists. Officers fired tear gas canisters from riot guns, in some cases aiming the aluminum projectiles directly at protesters. A low-flying police helicopter sprayed tear gas from above, blanketing the crowd in chemicals.

Betty Peña Peña and her 17-year-old daughter Eliza Ramos Peña were attacked by Riot Squad officers while they peacefully protested outside the Capitol Building. Police beat the mother and daughter with batons and pepper-sprayed them. Source: Ricardo Arduengo / AP (2010)



Source: Andre Kang / Primera Hora (2010)

Among those attacked by police were Betty Peña Peña, a ninth-grade schoolteacher and community activist, and her 17-year-old daughter Eliza Ramos Peña, a high school student.

Betty and Eliza were doused with tear gas from a helicopter. Betty, who has a respiratory condition, could not breathe and looked for a place not choked with tear gas, but was blocked by the line of Riot Squad officers. A wall of Riot Squad officers then attacked Betty and Eliza with batons and pepper spray. Officers knocked the teenager to the ground with their batons, trampling and dragging her. Betty threw herself on top of Eliza in an attempt to protect her from the officers' blows, but police continued to strike the mother and daughter with batons. Betty lost consciousness from being pepper-sprayed in her eyes and mouth, and both mother and daughter suffered hematomas.

Police officers split the crowd into three groups and helicopters continued shooting tear gas at the fleeing protesters. The terrified citizens, many of whom were blinded by pepper spray and tear gas, were forced into oncoming traffic in the attempt to escape police violence. Dozens were injured, and many required treatment at local hospitals.

In the aftermath, then-Superintendent Figueroa Sancha, who had been present at the Capitol Building during the incident, publicly defended the officers' use of force. He "assumed full responsibility" for the use of chemical agents against protesters, confirming that he "gave all of the instructions personally" and warning citizens that, if faced with similar protests, his response would be the same, "today, tomorrow...and next month."¹

Documenting the Puerto Rico Police Department's Use of Force against Protesters

The events at the Capitol Building and other similar reports of police brutality prompted the ACLU to engage in an intensive fact-finding mission.

The terrified citizens, many of whom were blinded by pepper spray and tear gas, were forced into oncoming traffic in the attempt to escape police violence. Dozens were injured, and many required treatment at local hospitals.

In June 2012, the ACLU released a 180-page human rights report, documenting the PRPD's violent suppression of peaceful protests, and other abuses. The report found that the PRPD has regularly responded to peaceful protests by deploying scores of officers in full riot gear.² In the context of peaceful political demonstrations, PRPD officers routinely fired aluminum tear gas canisters at protesters from riot guns or "less-lethal launchers" – firearms resembling rifle grenade launchers. Video footage and photographs reviewed during the investigation also showed thick clouds of tear gas, deployed from police helicopters, engulfing protesters. Protesters were doused with pepper spray at point-blank range, directly into eyes, noses, and mouths. Individuals reported that they were sprayed so heavily that they were covered in the orange liquid, which poured down their faces and bodies, temporarily blinding them and causing excruciating pain that in some cases lasted for days.



Police have also routinely struck, jabbed, and beat protesters with 36-inch straight-stick batons used as blunt impact weapons specifically for riot control.

Source: Andre Kang / Primera Hora (2010)

Police have also routinely struck, jabbed, and beat protesters with 36-inch straight-stick batons used as blunt impact weapons specifically for riot control. Riot squad officers used two-handed jabs and single-handed strikes, raising batons over their heads to hit protesters with maximum impact. In numerous cases riot squad officers pursued fleeing protesters and struck them in the head, back, and shoulders from behind. Officers also used painful carotid holds and pressure-point techniques intended to cause passively resisting protesters pain by targeting pressure points under jaws, near the neck, or directly on eyes and eye sockets. Pressure-point tactics not only cause excruciating pain, but they also block normal blood flow to the brain and can be potentially fatal if misapplied. In some cases these tactics have caused student protesters to lose consciousness. As a result of the PRPD's excessive use of force, numerous protesters required medical treatment for blunt and penetrating trauma, contusions, head injuries, torn ligaments and sprains, respiratory distress, and second-degree burns from chemical agents.

In most of these incidents, few protesters were arrested. However, during student strikes from April to June 2010 and December 2010 to February 2011, baseless mass arrests of students at the University of Puerto Rico (UPR) were used to suppress political speech and expression. A very small fraction of student arrests were supported by probable cause. Of an estimated 200 UPR student protesters who have been arrested, some multiple times, prosecutors have pursued charges against approximately 17. In case after case, arrested student protesters were held for hours in police cells, only to have a court find there was no probable cause to support the arrest.

The ACLU also found that the PRPD had no general protocol on the amount of force that officers are authorized to use, and that the department lacked other standard specialized use-of-force protocols, including guidance on the use of chemical agents, impact weapons, and "less-lethal" ammunition such as rubber bullets or sting ball grenades. The PRPD enacted such policies shortly after the publication of the ACLU's report.

The American Civil Liberties Union's Advocacy

Following the release of the report, the ACLU filed suit seeking to bring the island's police force into compliance with constitutional standards. Representing police targets – the student council at the UPR and a local union – the ACLU contended that the superintendent encouraged a pattern of violence against demonstrators and it sought a court order requiring the creation, implementation, and enforcement of constitutionally compliant policies concerning the policing of protest.



Source: Cubadebate (2010)

Two months later, the lawsuit was amended to block Puerto Rico's new penal code, which could send protesters to prison for three years if they, within view of lawmakers, "reduce the respect due to their authority." In April 2013, the Governor of Puerto Rico signed a law repealing the penal code provision. The ACLU's lawsuit was widely discussed in the legislature during the debate on the bill, and the ACLU is quoted in the bill's statement of purpose.

In addition, the ACLU pressured the United States Department of Justice (DOJ), which has statutory authority to investigate and sue local police departments found in systematic violation of constitutional or statutory law, to take action against the PRPD. The DOJ conducted an investigation into the PRPD and released a scathing report, concluding

that the PRPD has a pattern and practice of police misconduct that deprives people of rights protected by the United States Constitution.

In late December 2012, the DOJ sued the Commonwealth of Puerto Rico. The DOJ's lawsuit sought injunctive relief to end police misconduct and require changes in the agency's policies and procedures that resulted in the misconduct. The ACLU filed two amicus briefs in the lawsuit to recommend reforms and provide guidance on reform implementation, arguing that the only way to achieve lasting reform of the PRPD is by entering a court-enforceable and court-supervised consent decree containing a detailed timeline for reforms.

In late December 2012, the DOJ sued the Commonwealth of Puerto Rico. The DOJ's lawsuit sought injunctive relief to end police misconduct and require changes in the agency's policies and procedures that resulted in the misconduct.

In July 2013, the Commonwealth of Puerto Rico agreed to settle the lawsuit through a court-enforceable consent decree. It calls for a court-appointed independent monitor to enforce detailed reforms to police department organizational structures, operational policy and oversight mechanisms, training protocols, and accountability systems. The decree also includes a provision that creates a formal mechanism for the ACLU's clients and other civil society groups to comment on proposed protest policies, and to report issues to the independent police monitor as they arise.



Police departments around the country use tactics designed to establish preemptive control over protests, thereby minimizing their impact and suppressing protesters' free speech rights.

Source: Andre Kang / Primera Hora (2010)

Conclusion

While the PRPD represents an extreme case, problematic police response to peaceful protest is common throughout the United States. Police departments around the country use tactics designed to establish preemptive control over protests, thereby minimizing their impact and suppressing protesters' free speech rights. Police set strict guidelines for protests; regulate permits in a manner designed to redirect, dissuade, or prohibit protests; deploy large numbers of officers at scheduled protest locations; surround protesters; use barricades to block or divert protester access to an area; create no-protest zones; arrest protesters for minor legal violations that are typically not enforced; and use force, including "less-lethal" weapons, to establish control. In combination with local government ordinances, state and local police response to mass demonstrations during the Democratic and Republican National Conventions, G20, and G8 summits have curtailed protesters' ability to meaningfully demonstrate. Since September 2011, police departments have used excessive force and selective or baseless arrests to stifle Occupy movement protesters in cities from New York to Oakland. In response, the ACLU continues its advocacy, seeking to ensure that protesters can exercise their constitutional rights throughout the country.

-
- ¹ Sara Justicia and Nydia Bauzá, *Macanazos y gases lacrimógenos a los estudiantes en el Capitolio*, PRIMERA HORA, 30 June 2010; *Figueroa Sancha defiende Violencia Policiaca y Advierte que lo hara de Nuevo*, UNIVISIÓN, <http://www.youtube.com/watch?v=67LyuNF7NCc> (video); *Reacciona el superintendente*, WAPA.TV, 30 June 2010, http://www.wapa.tv/noticias/locales/reacciona-el-superintendente_20100630191454.html.
 - ² Officers deployed to public protests include officers assigned to Tactical Operations Units (*Unidad de Operaciones Tácticas*, or UOT), colloquially known as the *Fuerza de Choque* (literally translated as Strike Force) or Riot Squad. The Riot Squad frequently works closely with the Specialized Tactical Unit (*Unidad de Tácticas Especializadas*, or UTE), commonly known as the Group of 100 (*Grupo de Cien*), an elite unit of officers grouped into multidisciplinary teams drawn from several different police units including drug, traffic, stolen vehicles, and the UOT. Officers assigned to the Criminal Investigation Corps (*Cuerpo de Investigaciones Criminales*, or CIC) also were frequently deployed to protests.

The Case of Bassem Tamimi

Introduction

The Palestinian village of Nabi Saleh, like many other villages in the West Bank, has been organizing peaceful demonstrations against the occupation for years. Despite the principle of nonviolence underlying these protests, these demonstrations are illegal under Israeli military law.

Bassem Tamimi, an organizer and demonstrator, was arrested in March 2011 on five separate charges arising from his participation in the demonstrations. He was convicted of two of the charges. After 13 months in jail, he was released on probation with the condition that he cease demonstrating. In October 2012, he was again arrested for participating in a demonstration. He is just one example of the extreme and continued repression of freedom of expression in the Occupied Territories. Tamimi has become a symbol for the lost voice of the Palestinian people and their right to protest against the occupation.

The complete suppression of the rights of protesters and human rights defenders in the West Bank has failed to stem dissent; instead it has led to increased violence, higher rates of incarceration and the further militarization of the Israeli presence in the area.

ISRAEL



Proceedings against Bassem Tamimi

Nabi Saleh is a Palestinian village of around 500 residents in the Ramallah Governorate of the West Bank, just north of Jerusalem. A large portion of the village land is agricultural, sustained by a nearby natural spring named Ein al-Qaws. In 2009, this spring was taken over by the illegal Israeli settlement of Halamish. In response, the villagers began protesting against the occupation and continued illegal land acquisitions resulting from a policy of settlement expansion. Since 2009, hundreds of people have been arrested in these demonstrations – including members of the local popular committees, villagers, minors, Israelis and international activists. Many individuals have been arrested more than once.

Bassem Tamimi, an organizer and demonstrator, was arrested in March 2011 on five separate charges arising from his participation in the demonstrations. He was convicted of two of the charges.

Bassem Tamimi, a schoolteacher in Nabi Saleh and a father of four, has taken the lead in organizing the weekly demonstrations against the Halamish settlement. On 24 March 2011, Tamimi was detained following one of these recurring demonstrations. The arrest took place minutes after Tamimi entered his house for a meeting with a French diplomat. The soldiers tried to prevent Tamimi's wife, Nariman Tamimi, from filming the arrest, hitting her and attempting to grab the camera from her. When she passed the camera to their 10-year-old daughter, Ahad, the soldiers violently grabbed it from her and threw it outside in the mud.

Tamimi was eventually indicted by the military prosecution on five separate charges: inciting and supporting a hostile organization, organizing and participating in unauthorized processions, incitement to stone-throwing, failure to respond to a summons to attend a police interrogation, and disruption of legal proceedings. The latter related to an allegation that he gave young people advice on how to act during police interrogation in the event that they were arrested. After 13 months in detention, he was released on 27 April 2012, on bail of NIS 12,000 (around \$3,300).

The case against Tamimi was largely based on the evidence of a 14-year-old minor (known as "A"), also from Nabi Saleh. The defense contended that the statements made by A should be ruled inadmissible; they argued that the violent, demeaning, and illegal nature of A's detention combined with the violation of his dignity and rights during interrogation as a suspect and a minor meant that his statements could not be considered free and voluntary. They pointed to a number of irregularities: the interrogation was conducted over several hours by four interrogators, only one of whom was trained as a youth interrogator, and continued despite A being sleep-deprived; neither of A's parents were present during the interrogation; he was not advised of his right to remain silent; access to his lawyer was delayed and the interrogation began before A had consulted with her. The court, however, rejected the request to declare A's evidence inadmissible.

On 29 May 2012, the Military Court's verdict was handed down. Tamimi was acquitted on three charges and convicted of two: protesting without a permit, and inciting stone throwing. He was sentenced to 30 months' imprisonment, 13 of which he had already served. The remaining months were to be served on probation. His probation was subject

Residents marching through the village of Nabi Saleh during a Friday protest in September 2011.

Source: Mati Milstein / www.matimilstein.com



A Boarder Police guard takes up position under a Palestinian home during a demonstration in Nabi Saleh, March 2010.

Source: Mati Milstein / www.matimilstein.com

to two conditions: were he to be caught participating in an illegal protest in the next two years, he would serve two months in prison; should he be caught participating in “activity against the security forces” in the next five years, he would serve seven months in prison. His response to the sentence was: “I feel that my whole life is under the surveillance of the judge.”

After Tamimi was released, he joined some 80 activists at a demonstration on 24 October 2012 at a supermarket inside


an Israeli settlement. Tamimi was arrested once again for taking part in a protest – his twelfth arrest – when he tried to defend his wife from a soldier. He was indicted for attacking a soldier and sentenced to four months in prison and fined NIS 5,000 (\$1,360). He was released in February 2013.

A veteran activist, Tamimi has spent over three years in administrative detention for demonstrating. Despite being arrested 12 times, he has only ever been convicted and sentenced on two occasions. Military legislation in force in the Occupied Territories allows for the detention of an individual by administrative order – without indictment or trial – for up to six months. This order can be repeatedly extended for six-month periods, with no maximum term. An individual can therefore be incarcerated for years (indeed, this has happened more than once) without due process, without the suspicions being put to the test of a fair trial, and without the fundamental right of defending oneself against these suspicions. Tamimi had faced charges on other occasions – sometimes without even being told the nature of the allegations against him, while in other instances both he and his attorney were denied access to “secret evidence” shown to the judge.

During his weeks-long interrogation, he was tortured by the Israeli Shin Bet in order to draw a confession from him. Tamimi collapsed and had to be evacuated to a hospital, where he lay unconscious for seven days.

Tamimi’s time in detention has also been marked by mistreatment and torture. In 1993, for example, Tamimi was arrested on suspicion of murdering an Israeli settler in Beit El. He was eventually entirely cleared of the charge. During his weeks-long interrogation, he was tortured by the Israeli Shin Bet in order to draw a confession from him. Tamimi collapsed and had to be evacuated to a hospital, where he lay unconscious for seven days. He underwent surgery for a subdural hematoma that resulted from excessive shaking during his interrogation by the Israeli security forces.

As one of the organizers of the Nabi Saleh protests and coordinator of the village’s popular committee, Tamimi has been the target of harsh treatment by the Israeli army. This has extended to his family. Since demonstrations began in the village, their house has been raided numerous times, his wife arrested three times and two of his sons injured: at the age of 14, Wa’ed was hospitalized for five days when a rubber-coated bullet penetrated his



Border Police cautioning activist Bassem Tamimi during a demonstration in Nabi Saleh in June 2010.

Source: Mati Milstein / www.matimilstein.com

leg, while Mohammed, aged 8, was injured by a tear-gas projectile that was shot directly at him hitting him in the shoulder. Shortly after demonstrations in the village began, the Israeli Civil Administration served ten demolition orders to structures located in Area C; Tamimi's house was one of them, despite the fact that it was built in 1965 – before the start of the Israeli occupation of the West Bank.

Every year, ACRI holds an annual Human Rights March, marking International Human Rights Day, and in 2011, a moving speech by Tamimi's wife, Niraman, was read out by one of ACRI's legal team.² She highlighted the egregious violations of freedom of expression committed every day in the Occupied Territories, a situation of which her husband and son Wa'ed are two of a large number of victims. "During a time when the entire world is experiencing a wave of demonstrations and social protests," she explained, "Bassem and his friends are languishing in the darkness of continuing imprisonment because, in the shadow of the Occupation, there is no dignity and no freedom of expression."

Tamimi's family lives under constant threat of police action as a result of exercising their right to freedom of expression: Wa'ed was arrested in November 2012, at the age of 16, for participating in one of Nabi Saleh's weekly demonstrations and Niraman was arrested for the third time in June 2013. She has been charged with breaching a Closed Military Zone Order, after participating in the weekly Friday protest – even though the army itself admits that the protest was nonviolent, with no stones thrown.

Protesting in the Occupied Territories

Sadly, the case of Bassem Tamimi is not unique. The West Bank Areas B and C are subject to Israeli military jurisdiction; accordingly, the military have legal oversight of Palestinian public protest.

Restrictions on the right to protest in the West Bank operate at three levels – legislative, operational and judicial.

Legislatively, the military law that applies to the territory (Military Order 101) prohibits virtually all protest activity, including vigils, processions, publications, and even personal items expressing a political viewpoint. The Order even goes so far as to state that "any person who attempts, orally or in another manner, to influence public opinion in the region in a manner that is liable to harm public safety or public order will be charged with violating this Order."



Operationally, the IDF (the Israeli army) views almost every act of protest as a “disruption of public order” and frequently uses excessive force to disperse demonstrations. In response to rock throwing, soldiers deploy tear gas, water cannons and rubber bullets – weapons that are intended to be nonlethal but that can cause serious injuries, including fatal ones, when used at close range. Several demonstrators have died as a result of military and police violence.

Finally, the military justice system contributes to the suppression of protest through its treatment of demonstrators who are brought to trial. Military courts have a crucial role in preserving the status quo of ongoing and sweeping suppression of freedom of expression and the right to protest in the West Bank. The courts essentially choose to avoid judicial review of the military forces’ actions and practices and use of dispersal means during demonstrations. Dozens of leading Palestinian activists and public committee members have therefore been prosecuted in military courts for organizing and participating in demonstrations all over the West Bank.

Administrative detentions in the West Bank are now based on Paragraphs 284-294 of the Order Regarding Security Provisions (a military order that constitutes legislation in the Occupied Territories).³ This order empowers military commanders in the West Bank to issue an administrative detention order when there are “reasonable grounds to assume that the security of an area or public security requires that an individual be held in detention.” The order requires all administrative detainees to be brought before a military judge within eight days of the arrest in order to authorize the detention. However, this hearing is not a legal proceeding for determining the suspect’s guilt, but rather a form of “judicial review.” Most of the evidence related to the suspicion is not disclosed to the detainee and his attorney, nor is the detainee given a suitable opportunity to defend himself. The decision of the judge can be appealed in the Military Appeals Court. Although administrative detainees who have exhausted all military avenues of appeal can turn to the High Court of Justice, experience indicates that the Court generally does not intervene in these decisions. Under international law applicable to the Occupied Territories, there is an absolute prohibition on arbitrary detention. Due to the grave human rights implications of administrative detention and the clear danger of its abuse, international law sets strict limits on its use.

The unfettered power of the military to regulate demonstrations combined with the extent of the material and activities that are outlawed entirely means that virtually all protest in the region is illegal.

The unfettered power of the military to regulate demonstrations combined with the extent of the material and activities that are outlawed entirely means that virtually all protest in the region is illegal. West Bank residents have barely any right to freedom of expression and demonstrators are arrested and jailed in nearly every case, even when protests are entirely peaceful.



ACRI, along with other international and Israeli human rights organizations, continues to push for real solutions to the increased violence and the inability of demonstrators to protest legally in the Occupied Territories.

The authorities' violent response to demonstrations has become so commonplace that a committee established by the government in 2012 to look exclusively at conduct during the Gaza Flotilla incident of 2010 added a second part to their report (known as the "Turkel Report") articulating the need for legal oversight of cases of military or police violence against Palestinians in the West Bank and Gaza.⁴ The report also highlights the significance of regulations that are already in place but not adequately enforced. ACRI, along with other international and Israeli human rights organizations, continues to push for real solutions to the increased violence and the inability of demonstrators to protest legally in the Occupied Territories.

ACRI has recently launched an online Information Center for Demonstrations in the Occupied Territories containing a vast range of material and contact details to assist activists in the Occupied Territories to understand their legal rights when dealing with the police and military forces.⁵ The protest portal is available in English, Hebrew and Arabic. Ultimately, however, a radical shift in Israeli law, policy and practice will be necessary before the rights to freedom of expression and peaceful assembly begin to take on practical meaning for those living within the Occupied Territories. The political authorities intervened to stop the violence. Several individuals were wounded by gunshot; one man, Emiliano Canaviri Álvarez, a 38 year-old Argentine resident originally from Bolivia, received a fatal gunshot wound to the chest.

¹ For more information on the case of "Minor A," see THE ASSOCIATION FOR CIVIL RIGHTS IN ISRAEL (ACRI), "Minor I" from Nabi Saleh: The Rights of Minors in Criminal Proceedings in the West Bank, available at <http://www.acri.org.il/en/wp-content/uploads/2012/02/Minors.pdf>.

² For the video and full text of Nariman Tamimi's speech, see ACRI, *The Struggle of the Village of Nabi Saleh*, 11 December 2011, <http://www.acri.org.il/en/2011/12/11/the-struggle-of-the-village-of-nabi-saleh-nariman-tamimi>.

³ Order Regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651), 5770-2009.

⁴ THE TURKEL COMMISSION: THE PUBLIC COMMISSION TO EXAMINE THE MARITIME INCIDENT OF 31 MAY 2010, *Second Report: Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law*, February 2013, available at <http://www.turkel-committee.gov.il/files/newDoc3/The%20Turkel%20Report%20for%20website.pdf>; ACRI, *New Turkel Report points to serious deficiencies in military investigations*, 10 February 2013, <http://www.acri.org.il/en/2013/02/10/turkel-report-2>.

⁵ ACRI, Information Center for Demonstrators in the Occupied Territories, http://www.acri.org.il/en/?post_type=protestright.

Le Printemps Érable and the Silencing of Students

Introduction

In the spring of 2012, the province of Quebec experienced widespread student protests and a general strike by many postsecondary students opposed to a government-proposed university tuition hike. The ensuing “Printemps érable” (or “Maple Spring”) involved not only a large number of frequent protest actions, but also a multilayered response by police, legislators and the courts. The response included police use of pepper spray, stun grenades and rubber bullets, mass arrests of demonstrators, the enactment of extraordinary antiprotest laws, and the use of the courts to attempt to silence dissent and end the student protests. The multifaceted government response was met by a multifaceted civil society response. The Canadian Civil Liberties Association (CCLA) joined with numerous other civil liberties and human rights organizations to challenge the repressive legislative, law enforcement and judicial responses to the widespread protests.

CANADA



Source: Jeangagnon

The CCLA's involvement in one particular legal challenge provides a specific focal point for this case study. Gabriel Nadeau-Dubois, a student leader, was convicted and sentenced for contempt of court because of comments he made during a media interview about the legitimacy of student picket lines. His case brings into sharp focus the connection between state treatment of protesters and more subtle forms of suppression of fundamental liberties, including freedom of expression.

Student Leader as Symbol and Scapegoat

In mid-February 2012 a vote was held among some student groups in Quebec to engage in a general student strike to protest proposed tuition hikes. The provincial government planned a substantial postsecondary tuition increase (close to 80% over a period of five years) and some students felt an unlimited general strike (i.e., one with no defined end period) would put pressure on the government to change its position. The movement grew quickly. Within a week about 36,000 postsecondary students left their classes and went on strike,¹ and over the course of several weeks protests went from hundreds, to thousands, to tens of thousands. (Some estimates even put the number in the hundreds of thousands). At its peak, the student strike was reported as having the support of around 300,000 students, approximately three quarters of the province's student body.

The strike lasted until September, when an election ousted the party that had proposed the tuition hikes, but between February and September 2012, and particularly in the spring, demonstrations were taking place in Montreal and in other parts of the province regularly, with large assemblies happening on a monthly basis. In seven months of student activism, over 3500 people were arrested and the police used a variety of harsh techniques to disperse protesters. One young man, Francis Grenier, lost the use of one eye when a stun grenade detonated close to his face.²

Within a week about 36,000 postsecondary students left their classes and went on strike, and over the course of several weeks protests went from hundreds, to thousands, to tens of thousands.

In addition to the police presence and use of force to try to curb protests on the ground, the provincial legislature, the Montreal City Council and the Quebec judiciary all waded into the fray. Although the student strike involved a large number of students and the protests drew big crowds, not all students agreed with the strike and many other members of Quebec society had little sympathy for students given the province's comparatively low tuition rates. Some students who did not support the strike took to the courts and sought court orders on the basis that the student pickets were preventing them from accessing the classes that they wanted to attend. An injunction obtained by a student from Université Laval on 12 April 2012 for a ten-day period was later extended by the Quebec Superior Court until mid-September. The order required that picketing students not impede access to courses by those wishing to attend and also ordered that students not obstruct or limit access to classes by means of intimidation. On its face, this court order didn't say that students wishing to picket couldn't do so. However, it became clear relatively quickly that there was more to the injunction than met the eye.



Source: Elias Touil

In mid-May, student leader Gabriel Nadeau-Dubois was interviewed by some media about the student strike, the position of the student organizations supporting it and the court orders obtained by some students. Nadeau-Dubois said he felt it was unfortunate that a minority of students had used the courts in this way given that students had, through their representative associations, voted to strike. In his view, it was legitimate for student groups to take steps necessary to ensure the strike vote was respected and if that took the form of picket lines, that was a legitimate course of action. On their face, Nadeau-Dubois' comments were merely an expression of opinion that was both critical of students and the courts for the injunctions, and affirmed his own view that the student strike was legal.

The Quebec Superior Court found that Nadeau-Dubois, simply by making these statements, was guilty of contempt of court.³ It was claimed that he breached the court's order and that his comments interfered with the orderly administration of justice or impaired the authority or dignity of the court.⁴ The court reasons recognize that Nadeau-Dubois had a right to disagree with the court's orders, but say he had no right to incite individuals to contravene it or to impede students' access to classes. In fact, there was no evidence that Nadeau-Dubois himself had prevented any students from attending their classes or that anyone else had blocked access to students based on his comments. Nadeau-Dubois was sentenced to 120 hours of community service for his contempt of court.⁵ He is currently appealing the lower court's decision to the Quebec Court of Appeal.

In seven months of student activism, over 3500 people were arrested and the police used a variety of harsh techniques to disperse protesters. One young man, Francis Grenier, lost the use of one eye when a stun grenade detonated close to his face.

In May, just a few days after Nadeau-Dubois made his statements to Quebec media, the province's Bill 78 (Law 12) came into effect.⁶ Bill 78, An Act to enable students to receive instruction from the postsecondary institutions they attend, was enacted specifically in response to the student strike. It suspended academic terms, set up guidelines about how and when classes were to resume and included a number of provisions that were specifically designed to curb, if not eliminate, student protests that might hinder access to schools or classes. For example, Bill 78 required organizers of demonstrations involving 50 people or more to provide police with written notice of the time, duration, venue and route of their demonstration at least eight hours prior to its start. The police had the power to unilaterally decide whether the proposed route or venue posed a serious risk for public security and require the organizers to submit a new plan. As a result, Bill 78 created broad and vague requirements and the potential for police to engage in discretionary, and possibly arbitrary and abusive, enforcement.

Along similar lines, Montreal's City Council amended their bylaw P-6 (a municipal bylaw concerning the prevention of breaches of the peace, public order and safety, and the use of public property)⁷ to include a requirement that demonstrators provide route and itinerary information to police in advance of a demonstration and to prohibit demonstrators from covering their faces without "reasonable motive."



Despite the repeal of the legislation, the tuition controversy continues and Montreal's P-6 bylaw remains in force.

Source: Bernard Bujold (lestudio1.com)

Advocacy on Multiple Fronts

The Quebec student strike was a strong social movement with regular protests taking place in major centers across the province. While some groups became involved with the movement in reaction to the proposed tuition increases, the police and government reaction to the strike raised broader concerns regarding the respect for constitutionally protected freedoms of expression and peaceful assembly.

It was concern for these fundamental constitutional guarantees that prompted the Canadian Civil Liberties Association (CCLA) to become involved. CCLA strongly opposed both Bill 78 and bylaw P-6, and as soon as the measures were introduced the organization spoke out against the repressive impact that the provisions would have on freedom of expression, peaceful assembly, and association. Advocacy efforts, initially focused on both legislators and the media, soon expanded to the courts as the organization attempted to support a constitutional challenge to the provincial legislation. Before the case was heard, however, mass public mobilization prompted political action. Bill 78 and, to a lesser extent, bylaw P-6, turned the tide of public opinion. Although many remained unconvinced of the student cause, a significant number were outraged by the province's attempt to curb peaceful protest activities, and themselves took to the streets in response. Bill 78 was repealed when Quebec's new government came into power in September 2012, and in many ways the election results and the law's repeal demonstrated the power and success of the student movement and the critical mass it was able to create.

Despite the repeal of the legislation, the tuition controversy continues and Montreal's P-6 bylaw remains in force. Indeed, the bylaw has been used to dissuade potential demonstrators, and over the course of just a few weeks in 2013 several hundred individuals were detained and given tickets for significant sums (over Cdn \$600 each) for failure to provide an itinerary for their demonstration. These individuals were detained preemptively, so their demonstrations were never even allowed to get off the ground. CCLA's advocacy is ongoing, engaging Montreal City Councillors and the Chief of Montreal's police force with its concerns about the way that protesters have been treated. Although the organization's contact and consultations with City Councillors suggested that many favored repealing the bylaw, ultimately a motion to do so has failed. Clearly, work remains to be done.

There have also been serious questions raised regarding police conduct during the student protests. In the wake of the 2012 protests, Quebec-based civil liberties group la Ligue des droits et libertés was particularly active, conducting a large scale fact-finding mission that culminated in a lengthy report. The report, released in 2013, found violations of individuals'



Source: Pedro fait de la photo, flickr user

rights to freedom of expression, peaceful assembly, association, security of the person, legal rights and equality.⁸ The CCLA joined with la Ligue to strongly call for a public inquiry into government and police conduct. Although the provincial government announced an inquiry in May 2013, at least some of the proceedings will be held behind closed doors – a decision that has been criticized by a wide range of stakeholders, including both student leaders and police organizations.⁹

With respect to the Nadeau-Dubois case specifically, CCLA will appear before the Quebec Court of Appeal to support the appeal of the contempt conviction. The CCLA strongly believes that this use of the contempt power is both abusive and potentially dangerous. It is, of course, important to respect court orders and to use proper legal channels to

challenge orders with which individuals might disagree. It is equally important, however, to allow for critical debate and discussion regarding the role of the justice system.

In airing his views on the legitimacy of student strikes and raising concerns about the court's injunction orders, Nadeau-Dubois was exercising one of the most fundamental of freedoms: the freedom of expression. Contrary to the court's decision, statements that are critical of the courts do not undermine the administration of justice or impair the court's authority or dignity. Rather, allowing our judicial system to silence its critics by finding them in contempt of court does the most damage to our system. The judgment convicting Nadeau-Dubois of contempt failed to even reference freedom of expression or consider how a contempt conviction for comments made in a media interview might impact upon the willingness of others to speak out on issues of importance or take issue with the status quo.

The report, released in 2013, found violations of individuals' rights to freedom of expression, peaceful assembly, association, security of the person, legal rights and equality.



The governmental response – the enactment of a law that significantly curbed peaceful assembly and expressive activities – was highly troubling.

Source: scottmontreal, flifkr user

Conclusion

The student protests in Quebec were unusual for Canada in terms of their size, strength, and sustained nature. The governmental response – the enactment of a law that significantly curbed peaceful assembly and expressive activities – was highly troubling. The police response also gave cause for significant concerns and raised questions about the adequacy of oversight and accountability mechanisms in the province. Finally, the role of the legal system and the judiciary in the Printemps érable, and in particular the Nadeau-Dubois contempt conviction, demonstrate the ongoing need for vigilance to ensure that constitutionally protected freedoms of expression and assembly are respected and promoted. The work of a variety of civil society organizations, including that done by CCLA, remains a crucial aspect of protecting the rights of individuals to protest.

¹ *Montreal students protest tuition hikes*, CBC NEWS, 24 May 2012, <http://www.cbc.ca/news/interactives/montreal-protest>.

² *Police stun grenade blamed for student's eye injury*, CBC NEWS, 8 March 2012, <http://www.cbc.ca/news/canada/montreal/story/2012/03/08/montreal-student-protest-eye.html>. For a more detailed discussion of the student protests and the treatment of protesters, see LA LIGUE DES DROITS ET LIBERTÉS, ET AL., *Répression, discrimination et grève étudiante : Analyse et témoignages*, April 2013, available at <http://liguedesdroits.ca/wp-content/fichiers/rapport-2013-repression-discrimination-et-greve-etudiante.pdf>.

³ *Morasse c. Nadeau-Dubois*, 2012 QCCS 5438 (CanLII).

⁴ Art. 50, C.C.P. (Quebec Code of Civil Procedure).

⁵ *Morasse c. Nadeau-Dubois*, 2012 QCCS 6101 (CanLII).

⁶ An Act to enable students to receive instruction from postsecondary institutions they attend, S.Q. 2012, c. 12.

⁷ R.B.C.M. c. P-6; as amended by Ville de Montréal by-law 12-024.

⁸ LA LIGUE DES DROITS ET LIBERTÉS, ET AL., *Répression, discrimination et grève étudiante : Analyse et témoignages*, April 2013, available at <http://liguedesdroits.ca/wp-content/fichiers/rapport-2013-repression-discrimination-et-greve-etudiante.pdf>.

⁹ *PQ slammed for closed-door inquiry into student protests*, CBC NEWS, 8 May 2013, available at <http://www.cbc.ca/news/canada/montreal/story/2013/05/08/quebec-student-protest-inquiry.html>

Repression and Police Violence at Indoamericano Park

Introduction

On 3 December 2010, hundreds of families, including many migrants, peacefully occupied Indoamericano Park in the City of Buenos Aires to demand access to housing. The occupation provoked a violent police response, and ultimately three people died. This tragic incident exposed not only existing social inequalities, but also illustrates how deeper social problems – such as the chronic lack of housing – are often met with repression on the part of the State, thus aggravating existing social exclusion and inequality. This case led to the creation of the Argentine Ministry of Security, as it exposed the need for oversight of police action. To this day, however, the deeper causes of the conflict remain unresolved and represent an inescapable challenge for Argentina.

ARGENTINA



Source: Subcooperativa de Fotógrafos

Repression at Indoamericano Park

Indoamericano Park is an empty and abandoned lot of land located in one of the poorest parts of the city. It had been abandoned for years, although the Bolivian and Paraguayan communities had been using it as a recreation field. The surrounding neighborhoods have the highest proportions of people living below the poverty line, with the highest recorded rates of overcrowding in the entire city. Some of these neighborhoods are extremely precarious – villas or shantytowns – where homes are built from metal sheets, wood, plastic, and other hazardous materials. Overall, an estimated half million people currently lack adequate housing in Buenos Aires; it was in this context that the decision to occupy the area was made.

Projectiles fired by the police were found across the area. These shots were not fired in isolated incidents, but were instead part of a generalized police response and reflected a level of violence that was sustained throughout the police operation.

On 3 December 2010, over 300 people walked into Indoamericano Park and set up temporary shelters. Upon observing the occupation two days later, the police notified a city judge who, on 7 December, ordered the evacuation of the area, having classified the occupation as “unlawful trespass.” The eviction order was issued at the request of the prosecution; no notice was given to those occupying the park or to the Public Defender, and there were no attempts at negotiation or dialogue. The municipal authorities also refused to establish a dialogue with the occupiers. The next day, 200 Federal Police officers and 350 Metropolitan Police officers entered the park and violently attacked the protesters. The police action resulted in the deaths of two migrants, Rosemary Chura Puña, a 28-year-old Bolivian, and Bernardo Salgueiro, a 24-year-old Paraguayan. Another five people were wounded by lead bullets. Projectiles fired by the police were found across the area. These shots were not fired in isolated incidents, but were instead part of a generalized police response and reflected a level of violence that was sustained throughout the police operation. Despite the elevated level of violence, the attempted eviction failed and the occupation of the park continued.

The city government persisted in refusing to talk to the occupiers, preferring to vilify them, labeling them “trespassers” who had “links to drug traffickers,” and even going so far as to blame the situation and lack of housing on “uncontrolled migration.”

On 9 December, just two days after the original eviction order, there was further violence when a group of men claiming to be residents of the area entered the park and attempted to violently eject the occupiers. Some of these men carried firearms, while others were armed with sticks and metal bars. There is a suspicion that these men were not in fact local residents, but rather armed football hooligans who had been hired to evict the occupiers and create a state of chaos. (It is not uncommon in Argentina for football hooligans to be hired as paid thugs). The area was transformed into a battlefield: journalists were threatened by the hooligans and forced to leave the vicinity, ambulances were blocked from entering the area. For hours shots were fired into the park but, oddly, at no point did the security forces or the political authorities intervene to stop the violence. Several individuals were wounded by gunshot; one man, Emiliano Canaviri Álvarez, a 38-year-old Argentine resident originally from Bolivia, received a fatal gunshot wound to the chest.

The city government claims it was demanding that the national government intervene to resolve the conflict on the ground that the Metropolitan Police did not have the military-style infantry corps that would be necessary for an intervention.

It was not until the next day that the national government intervened in the conflict. In the middle of the crisis, the President announced the creation of a new Ministry of



Source: Nazareno Ausa

Security that would be responsible for establishing political authority and civilian governance over the federal security forces. After difficult tripartite negotiations, on 11 December, the President met with the city government and decided to deploy the national Gendarmería to form a human barricade around the occupiers. Once this was in place, specialized critical assistance personnel from the Ministry of Social Development entered the cordon to initiate negotiations with the protest leaders and to survey the occupiers. Over a two-and-a-half-day period, 320 social workers worked to survey 4075 families. Both national and local governments then announced that a city housing plan would be implemented, financed in equal parts by both jurisdictions. Three years on, however, the families are still waiting for promised housing-policies to be implemented.

Rationale: Criminalization of Social Conflict

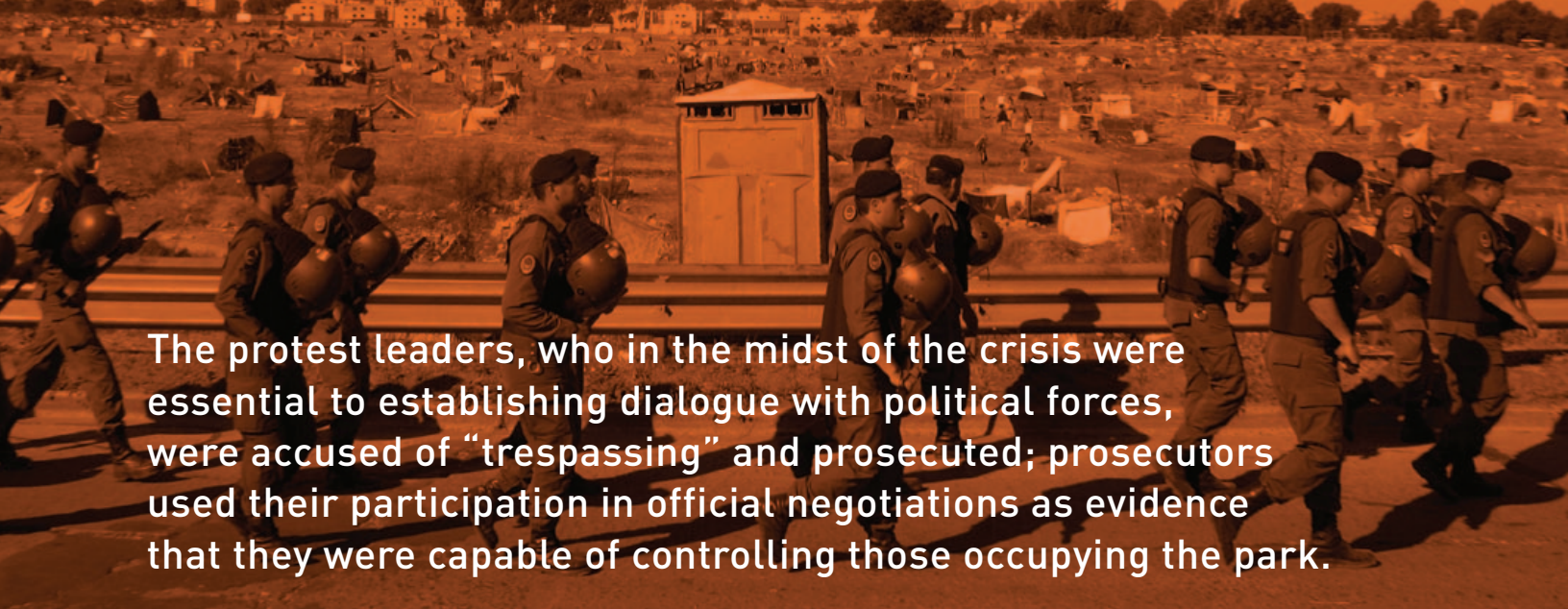
Soon after the events in the Indoamericano Park, CELS initiated research into the roots of this conflict. It was pretty clear that the tragic outcome could be traced back to decisions made by judicial and political actors at the commencement of the occupation. First, the decision immediately to resort to the courts and police placed the protest within the realm of criminal activity, depicting it as a “security threat.” No channels of communication were opened; instead dealing with the occupation was left in the hands of the police, who immediately turned to the use of force. Secondly, the judge and prosecutor ordered the eviction and authorized the use of force without establishing any means for controlling the way in which the police carried out their orders. Thirdly, despite its lawyers claiming that the situation was a social conflict not related to criminal justice, the Public Defender was not notified of the legal proceedings prior to the issuance of the eviction order. Hence, the city’s judiciary authorized the repression of the occupation without first seeking any alternative form of conflict resolution, conferring the appearance of legality on violent police actions.

CELS initiated research into the roots of this conflict. It was pretty clear that the tragic outcome could be traced back to decisions made by judicial and political actors at the commencement of the occupation.

Meanwhile, at the height of the crisis and in light of the fact that two of those killed were of Bolivian and Paraguayan origin, the xenophobic rhetoric of the city government constituted a form of discrimination that served only to sharpen tensions. The comments blaming the migrants for the lack of housing were completely divorced from reality, as the total migrant population from bordering countries has been stable for over half a century. What is even more outrageous is that the government of Buenos Aires praised the actions of both police forces and to this day refuses to initiate any internal investigation of the actions of Metropolitan Police officers during these events.

Investigating the Events

A criminal investigation was opened to determine the responsibility of the officers for the deaths that took place during the events, and CELS became involved as representative for the family of Rosemary Chura Puña. The investigation faced numerous challenges: the judge in charge delayed autopsies, failed to move the case forward and excluded the



The protest leaders, who in the midst of the crisis were essential to establishing dialogue with political forces, were accused of “trespassing” and prosecuted; prosecutors used their participation in official negotiations as evidence that they were capable of controlling those occupying the park.

football hooligans who had used firearms to intimidate the occupants from the scope of the investigation. However, the prosecutor managed to reconstruct the events and concluded that the Metropolitan Police had been responsible for the actual shootings that resulted in the deaths and wounding of several individuals. Thirty-three Metropolitan Police officers were called in for questioning. Because the prosecutor believed these actions were part of a joint operation and that orders were given by the Federal Police, he ordered the questioning of four chiefs of the Federal Police. Eight additional Federal Police officers were also called in for questioning regarding abusive deployment of firepower. The prosecutor also subpoenaed the judge who had authorized the initial operation, on account of her failure to control the eviction from the premises. Despite all the evidence against the defendants, the judge overseeing the investigation dismissed all charges against both the officers as well as the original judge. This decision was appealed and overturned by the Chamber of Appeals of the City of Buenos Aires. The first instance judge was then removed from the case for shameful misconduct, and the legal process is still ongoing.

Prosecutions, however, were not limited to the police. The population affected by the police brutality in Indoamericano Park has not only been denied any sort of improvement in their living situation, but has also received an intimidating message from the criminal justice system. The protest leaders, who in the midst of the crisis were essential to establishing dialogue with political forces, were accused of “trespassing” and prosecuted. Paradoxically, prosecutors used their participation in official negotiations as evidence that they were capable of controlling those occupying the park and had intended to establish conditions that would facilitate drug trafficking and an informal housing market.

Conclusion

The crisis at Indoamericano Park led the Argentine government to a critical point in its approach to security and political response to social conflict. Even though civilian governance of security forces is a *sine qua non* of modern democracies, it required significant political will to establish the Ministry of Security and address this long overdue debt toward Argentine democracy. This represented a highly significant improvement in the institutional framework for security governance.

For the individuals who bore the brunt of the police violence, however, little has actually changed. The joint housing plan announced in the midst of the crisis by the national and city governments has not been translated into actual housing projects. Indeed, three years later, the government has yet to decide even where the houses will be built. There has been no progress toward solving the core problems facing the population that was subject to police brutality in the Indoamericano Park crisis, nor is any other population currently forced to live in such highly precarious housing conditions.¹

¹ For more information about this case see CELS, “Umbral perforados. Muertos y heridos por la represión de conflictos sociales”, *Derechos humanos en Argentina. Informe 2011* (Buenos Aires, 2011) at 146-157. See also “Seguridad y derechos humanos: el modelo de gobierno como clave”, *Derechos humanos en Argentina. Informe 2012* (Buenos Aires, 2012) at 169.

The Mohammed Mahmoud Protests, 18-24 November 2011

Introduction

On 18 November 2011, hundreds of thousands of demonstrators peacefully marched from the main squares of Cairo and Giza toward Tahrir Square, in the center of the capital. The crowds were demonstrating against the interim military rule of the Supreme Council of Armed Forces (SCAF), which had assumed power after the toppling of ex-president Mubarak in February 2011, and demanding an end to military rule and democratic elections by April 2012 at the latest. Like most Friday demonstrations since the start of the January 2011 revolution, the demonstration began at noon after Friday prayers and was effectively over by midnight. But a small number of protesters, estimated to be less than 100, stayed to occupy Tahrir Square. Most were from the families of martyrs and those injured during the revolution and were demanding reparations from the government.

EGYPT

Source: Ahmed Abdel Latif for Al Shorouk



On the morning of Saturday 19 November, the Central Security Forces, commonly referred to as the Riot Police, backed by a small number of military police personnel, moved into Tahrir Square and forcibly dispersed the sit-in. This provocation compelled more crowds to descend on Tahrir Square and the surrounding area and initiated what became known as the Mohamed Mahmoud protests, as they centered on the street by this name that connects Tahrir Square with the Ministry of the Interior complex. Over the course of the next few days, the police responded to the protests with extreme brutality, one of the worst examples of police and army brutality since the start of the revolution in January 2011. The clashes lasted until 24 November. By the end of that day, at least 45 protesters had been killed, hundreds injured, and hundreds more arrested.

Scale and Types of Violations Committed by Police and Military Police

The thousands of protesters that gathered in Tahrir Square on 19 November to protest against the dispersal of protesters that morning were overwhelmingly peaceful. The police response, by contrast, was unlawful, violent, indiscriminate, and, in light of comments made by police officers during the clashes, apparently driven by a desire to exact vengeance.

Over the course of the next few days, the police responded to the protests with extreme brutality, one of the worst examples of police and army brutality since the start of the revolution in January 2011.

The disproportionate and violent police response led to an escalation of protests, and over the following five days hundreds of thousands joined the demonstrations and re-occupied Tahrir Square. A series of street battles erupted in the vicinity, particularly on Mohammed Mahmoud Street. Clashes between protesters and the police and military police lasted for nearly a week with a few brief periods of disengagement. The police used tear gas, shotgun pellets, live ammunition, while the protesters responded with rocks and Molotov cocktails. The protests quickly spread to Alexandria, Suez, Ismailia, Mansoura and most of Egypt's big cities. These demonstrations occurred against the backdrop of months of escalating protests against SCAF's interim rule, which was marked by excessive violence and an absence of democratic reform.

Throughout these five days the police used disproportionate and lethal force and firearms. Various kinds of impact munitions were used – mostly multiple pellet shot shells of varying sizes and types (rubber, wood and steel), which are commonly used policing weapons in Egypt – as well as live ammunition. Tear gas was also used in an excessive and lethal manner. Police and military police arbitrarily arrested and detained protesters, using brutal force in the process. Detained protesters were tortured for days in illegal detention facilities.¹ Field clinics established by protesters and doctors in the area of the demonstrations were targeted; doctors were beaten and arrested as well.

The police's use of force was clearly not just aimed at breaking up the demonstration; violence was employed in a manner that was obviously punitive. Tear gas canisters were fired at the bodies of some protesters, the upper body area of others were targeted with



Source: Zeyad Hussein for Al Shorouk

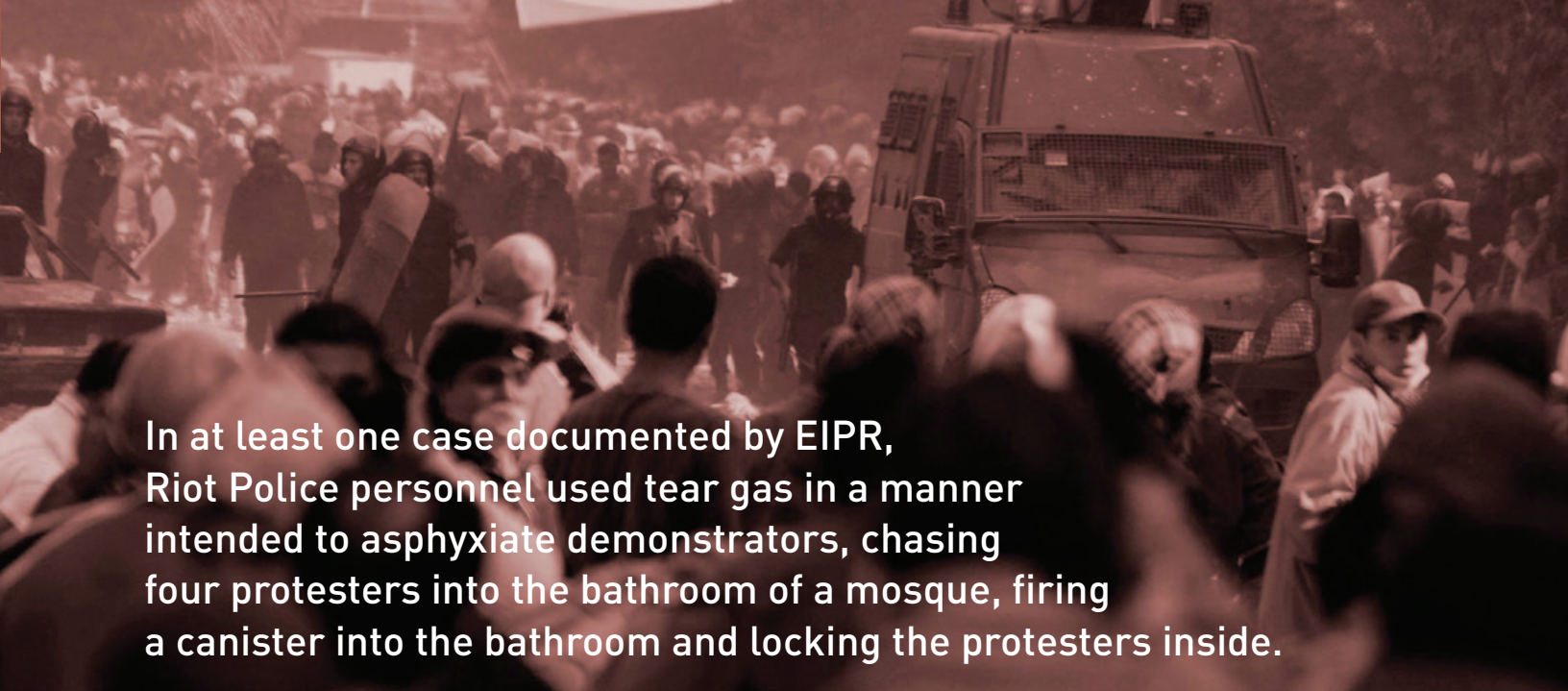
shotgun pellets. These tactics were clearly intended to cause unnecessary injury and inflict physical harm. This was evidenced by the number of upper body and facial injuries documented, and in the shocking number of eye injuries – including complete eye loss – sustained at close range. Kasr Al Aini Hospital alone, the public hospital closest to the area where the protests and clashes occurred, treated 60 eye injuries between 19 and 25 November.² The types of injuries included corneal ruptures and fractured eye sockets, the majority of which resulted from being hit with the different types of shotgun pellets used by the Riot Police.

The amount and types of tear gas used by the police has also been the subject of major controversy, prompting a wide debate about the use of tear gas as a policing weapon and the degree of its lethality. While it is practically impossible to accurately gauge the amount of tear gas used in November 2011, the police fired tear gas canisters continuously for six days, at a rate estimated by EIPR researchers and witnesses to be between three and six canisters every five minutes. A steady pattern was observed: protesters would try to move ahead and the police would fire canisters directly into the crowd. This pattern persisted for six days, with the exception of a few hours when a “truce” was declared. The rate normally slumped slightly during the early hours of the morning. In some cases, when the protests were at their peak, field hospitals would receive more than 20 unconscious protesters every quarter of an hour. At least three people died of asphyxiation due to tear gas exposure. Documented injuries ranged from skin irritation and vomiting to severe cases of convulsion. EIPR collected dozens of spent canisters, most of which were of the “CS” variety of crowd-control gas. Some of the canisters, however, were unmarked, and there have been allegations that the more potent “CR” variety and other more lethal gases were used, but no evidence has been found to support this claim.

In some cases, when the protests were at their peak, field hospitals would receive more than 20 unconscious protesters every quarter of an hour. At least three people died of asphyxiation due to tear gas exposure.

Even in the absence of precise evidence proving the amount of tear gas used, estimates as to the strength of gas used based on witness accounts and EIPR’s investigation appear to be significantly higher than the incapacitation concentration threshold (ICt50) for the chemical substance used in CS. In at least one case documented by EIPR, Riot Police personnel used tear gas in a manner intended to asphyxiate demonstrators, chasing four protesters into the bathroom of a mosque, firing a canister into the bathroom and locking the protesters inside.

On the evening of 24 November, the street battles came to a spontaneous end. The Egyptian Armed Forces built a concrete wall across Mohammed Mahmoud Street to create a physical barrier, a practice it would resort to repeatedly in the future. Peaceful protests continued without casualties for a further two days. The total number of deaths, according to the official figures from the Ministry of Health, was 45, the majority of whom were killed in Cairo. Most deaths were caused by live ammunition and shotgun pellets, and to a lesser extent asphyxiation as a result of overexposure to tear gas.



In at least one case documented by EIPR, Riot Police personnel used tear gas in a manner intended to asphyxiate demonstrators, chasing four protesters into the bathroom of a mosque, firing a canister into the bathroom and locking the protesters inside.

Source: Ahmed Abdel Latif for Al Shorouk

Political Outcomes, Trials and Criminalization of Protestors

As a result of the upheaval, the Supreme Council of Armed Forces – which had up until that time been evasive on the subject of presidential elections – set June 2012 as the election date. Transfer of power to an elected civilian government, one of the main demands of the November wave of protests, was, at least formally, completed on 30 June 2012. Accountability and justice, including for crimes committed during the November protests, is still elusive.

EIPR has undertaken legal action on three levels. First, the organization was involved in the criminal defense of hundreds of protesters on trial for involvement in the Mohammed Mahmoud protests. Most of the charges were for rioting, vandalism and assaulting public officials. An amnesty was issued in October 2012, three months after Mohammed Morsi's election to the presidency, by way of a presidential decree (Decree No. 89 for the year 2012). The amnesty included a presidential pardon for protesters sentenced or undergoing prosecution for "crimes committed to advance the objectives of the revolution." A total of 471 defendants benefited from the amnesty, including 378 who were being tried in connection with the Mohammed Mahmoud protests in November 2011.

Secondly, in January 2012, a coalition of five NGOs including EIPR filed a lawsuit in the Administrative Court on behalf of activist Malek Mustafa, who lost an eye to a shotgun pellet fired by a Riot Police officer at close range. The shooting occurred on 19 November, at the very beginning of the protests. The lawsuit demanded the repeal of Administrative Decree No. 156 for the year 1964, issued pursuant to the Egyptian Police Act Article 102, which regulates the use of force and firearms.³ The decree does not meet international minimum standards for the use of force and firearms and gives the police a free hand to use lethal force to break up demonstrations. In March 2013, the Administrative Court transferred the case to the Supreme Constitutional Court of Egypt to rule on the constitutionality of Article 102 of the Police Act.

Finally, EIPR was involved in a criminal case against one police officer – the only policeman to be brought before the courts for human rights violations committed during the six-day protest. Officer Mahmoud Al Shennawy was identified in a video where he aimed his shotgun at protesters, took a shot, and was congratulated very audibly by a colleague: "You got his eye, Sir."⁴ The police officer was quickly identified by activists. He was detained, possibly for his own safety, and later put on trial. Although the state of accountability for




Source: Hossam El Hamalawy

police officers involved in human rights abuses is very poor in Egypt, this was one rare case where it was nearly impossible to evade liability. EIPR represented one of the victims, and after a prolonged court battle, the officer was sentenced to three years in prison for attempted murder. Although the sentence is the lowest sentence available under the Egyptian Criminal Code, this nonetheless is a rare case in which a public official who abused his power in Egypt was convicted and imprisoned.

Criminalization of protest continues as a general trend in Egypt. The presidential amnesty was an exception: one of the few measures that could be viewed as an attempt to break with the repressive past and an early attempt to consolidate political power. A presidential Fact Finding Commission, which was established by presidential decree in July 2012, filed a report that included a chapter on the Mohammed Mahmoud protests. The report identifies state agents involved in grave human rights abuses, and according to public statements made by members of the High Committee

Criminalization of protest continues as a general trend in Egypt. The presidential amnesty was an exception: one of the few measures that could be viewed as an attempt to break with the repressive past and an early attempt to consolidate political power.

of the Fact Finding Commission, the chapter on the Mohammed Mahmoud protests also implicates state actors. The report of the commission has not been made public yet. And no systematic legal process has been initiated seeking accountability for rights violations committed by the police and military police during the six-day protest. Unfortunately, this accountability vacuum extends to the various other grave human rights violations committed throughout the revolution.



The police's use of force was clearly not just aimed at breaking up the demonstration; violence was employed in a manner that was obviously punitive

Source: Hossam El Hamalawy

¹ EGYPTIAN INITIATIVE FOR PERSONAL RIGHTS (EIPR), *A Week of Rich Pickings in Tahrir – 383 Arrests in Cairo Alone*, 25 November 2011, <http://eipr.org/en/pressrelease/2011/11/25/1293>.

² EIPR, *Bullets of the Ministry of Interior Were Aimed to Leave Demonstrators Permanently Disabled*, 26 November 2011, <http://eipr.org/en/pressrelease/2011/11/26/1294>.

³ EIPR, *Will the Court of Administrative Justice Stop the Killing of Demonstrators?*, 16 January 2012, <http://eipr.org/en/pressrelease/2012/01/16/1365>.

⁴ The video can be viewed online: <http://www.youtube.com/watch?v=420EJbud4wk>.

Unlawful Bans against the Budapest Pride March

Introduction

Budapest Pride, the pride march of the Lesbian, Gay, Bisexual, Transgender and Queer community in the Hungarian capital, has been organized annually – with some interruptions – since 1992. In Hungary, as in much of Central Europe, the LGBTQ community still faces discrimination in broader society and in their access to legal protection. Given this social and legal context, while the Pride March has always had a strong festive element, it very definitely remains a civil rights protest drawing attention to the unequal rights of the community.

The organization of the March is regulated by the Hungarian *Act on the Right of Assembly*. While the Act makes it a legal requirement to give the police advance notice of assemblies, the police can only ban an assembly in limited, clearly defined circumstances. In both 2011 and 2012 the police sought to abuse

HUNGARY



this power by banning the Pride March. The Hungarian Civil Liberties Union (HCLU) successfully challenged the ban in the Metropolitan Court of Budapest in 2011 and the March went ahead. Despite the clear court win, the police attempted to prohibit the March again in 2012 – on much the same grounds as in 2011 – once again without success.

The Social Context of Hungarian Pride

Although Hungarian society was no more tolerant in the 1990s than it is now, Pride Marches during that decade and the early 2000s never had more than 4000 participants and rarely attracted significant attention. Since 2008, however, the March has been repeatedly subject to violent attack by right-wing extremists.¹ In the build-up to the Pride March in that year, highly inflammatory postings were spread on the Internet. Hundreds of extremists attacked the March, throwing stones and eggs at the participants, and spraying them with acid and feces. Battles between the extremists and the police ensued but no one was arrested. Some of the participants in the March made criminal complaints to the police on grounds of incitement to hatred and violence against a member of a community. In 2013, it is still unclear whether charges have ever been brought against any of the aggressors.

Although Hungarian society was no more tolerant in the 1990s than it is now, Pride Marches during that decade and the early 2000s never had more than 4000 participants and rarely attracted significant attention.

In every subsequent year, the Pride March has been secured by cordons and an extremely large number of police officers. Despite this, trouble has recurred. Every year people thought to have taken part in the Pride March have been subject to insults and attacks, yet no one has ever been investigated by the police for violating freedom of assembly or committing a hate crime. Instead, as noted above, in both 2011 and 2012, the police tried to ban the March.

The Legal Framework

Article VIII of the *Fundamental Law of Hungary* protects the right of peaceful assembly,² and *Act III of 1989 on the Right of Assembly* (ARA) sets out the detailed rules on holding assemblies. The local police department should be given 72 hours' notice of any political assembly³ – marches, demonstrations, parades, protests, etc. – held in a public venue. Holding an assembly in a public place without notifying the police is a petty offense. Notification – which is not an application for permission – is aimed at providing the police with information so that they can decide whether there are legitimate grounds for banning the assembly, and, if not, so that they can plan for the march and make arrangements to facilitate or protect it. Under the ARA there are only two strictly defined grounds on which an assembly can be banned in advance: (1) if the assembly would seriously threaten the operation of the democratic representative bodies or the courts, or (2) if traffic could not be diverted to any alternative route. The ARA also regulates the expression and conduct of those taking part in lawful assemblies: participants may not incite offenses or seek to violate others' freedoms and basic rights, and they must not commit any crimes or carry weapons. As interpreted by



the Hungarian Constitutional Court,⁴ the ARA sets out clear content-independent rules for the authorities, defining the limits of protesters' rights and also determining the balance of the conflicting rights of participants and nonparticipants having regard to the time, place and manner of the assembly.

To protect the right to protest from violation the ARA also prescribes tight time lines. Once notice has been given, the police have 48 hours to decide whether either of the two legitimate grounds for banning the assembly applies. If they fail to react, the notification is deemed to have been accepted and the assembly may go ahead. If the police ban the assembly, the organizers have three days in which to request a judicial review; the court must then give its ruling on the

legitimacy of the ban within three days. If the court strikes down the ban, the assembly may be held.⁵

The Police's Attempt to Ban the 2011 March

The police originally raised no objections to the 2011 Pride March, accepting the proposed route and the timing of the event. However, a few months later – still well before the March was due to take place – the organizers decided to extend the route and lengthen the duration by half an hour; in reaction to the right-wing government's unilateral attempt to re-write the constitution, they decided to end the march near Parliament to protest against the government's plans.

...well before the March was due to take place – the organizers decided to extend the route and lengthen the duration by half an hour; in reaction to the right-wing government's unilateral attempt to re-write the constitution, they decided to end the march near Parliament to protest against the government's plans.

When the police were notified of this change of plan they responded by banning not only the extended route, but the original route as well. The police justified their decision on four grounds. First, they argued that the extension to the March could not be treated as a separate event, to be considered only on its own merits; rather it modified the original route, and therefore the decision already made concerning the original event could be reconsidered. Second, in complete disregard to the letter of the permissible restrictions under the ARA, the police relied on expert advice that the March would necessitate reorganizing traffic routes in the city so as to ensure the flow of traffic during the event. Third, the police asserted that they had a discretionary power to weigh the relative importance of conflicting freedoms – freedom of movement, which would be limited by traffic congestion, and freedom of assembly, which would be limited by prohibiting the event – and concluded that the nonparticipants' freedom of movement outweighed the participants' freedom of assembly. Fourth, the police claimed that the Pride March was likely to attract a large number of protesters opposed to the event's aim – promoting the rights of LGBTQ people – thereby endangering the participants, as the organizers of the event could not ensure their safety.



The police claimed that the Pride March was likely to attract a large number of protesters opposed to the event's aim – promoting the rights of LGBTQ people – thereby endangering the participants, as the organizers of the event could not ensure their safety.

Representing the organizers of Budapest Pride, the HCLU asked the Metropolitan Court to strike down the ban issued by the police. The Court agreed for a number of reasons. First, the Court accepted the HCLU's argument that the police violated the ARA when they banned the original route of the March together with its extension. The original plan had already been accepted and the proposed extension did not modify the original route. Moreover, the extension would not increase the disruption to traffic, as the roads covered by the original route could be opened up once the March had moved on to the extended route. The police had no grounds to reconsider the original route, and hence they unlawfully prohibited the original route months outside the 48-hour deadline set out in the ARA. The Court also emphasized that the police's prohibition of the original route of the March after the deadline set by ARA violated not only the ARA but also the constitutional principle of the rule of law.

Second, the Court accepted the HCLU's claim that the police have no discretionary power to weigh conflicting liberties against each other. Upon Hungary's admission to the EU in 2004, the ARA was amended to remove police power to weigh the degree of disruption to traffic caused by an assembly against the rights to freedom of speech and assembly of those organizing it. The Constitutional Court had already explicitly endorsed the legislators' decision – reflected by the strict criteria under the ARA for imposing a ban – that rights related to communication, such as freedom of speech and assembly, take priority in cases of conflict with other basic liberties. Accordingly, the police have no discretionary power in these circumstances. Under the ARA, where an assembly causes disruption to traffic, the police should only consider one issue: whether it would be impossible for traffic to and from the areas affected by the assembly to be accommodated by alternative routes. The expert advice the police relied on provided no evidence of this. It merely showed that the event would result in traffic disruption, a legally irrelevant consideration and the inevitable effect of any significant demonstration that chooses a prominent location to communicate an opinion.

Third, adopting the HCLU's argument, the Court emphasized that the anticipated presence of counterdemonstrators threatening the march is no grounds for banning the assembly; otherwise, virtually all assemblies could be prohibited. In accordance with the jurisprudence of the European Court of Human Rights, freedom of assembly not only involves a negative right to be free from state interference, but also imposes a positive protective obligation on the state to ensure the safety of all peaceful assemblies.⁶



The Court's decision in 2011 to strike down the ban came in sufficient time for the March to go ahead.

The 2012 March

The following year, despite the Metropolitan Court's ruling, the police reacted to the original and only notification of assembly by banning the March again. The reasons given by the police for the ban were broadly the same as in the previous year: the police's discretion to balance conflicting liberties, and specifically that permitting the participants' freedom of assembly would disproportionately restrict nonparticipants' freedom of movement. So, the HCLU –

in cooperation with the Hungarian Helsinki Committee – turned to the Metropolitan Court again, submitting the same arguments as in 2011, along with an additional argument based on the requirement of nondiscrimination. The HCLU pointed out that other marches of similar magnitude – such as right-wing marches – had followed roughly the same route but had not been banned on the grounds that it was impossible to secure the flow of traffic on alternative routes. The HCLU argued that the police could not discriminate between assemblies causing a similar level of traffic disruption on the basis of the cause promoted, or message conveyed, by the event. The Court again accepted the HCLU's arguments, the police's ban was struck down, and the March was free to go ahead in 2012 as well.

Budapest Pride, so much more than a parade, has become a march about not only the equal civil rights of the LGBTQ people, but also everyone's right to peaceful assembly.

Conclusion

The HCLU's recent experience defending the expressive rights of the LGBTQ community should be read as both a success and a cautionary tale. On the one hand, the Court's decisions striking down the police bans in both 2011 and 2012 allowed the Pride Marches to go ahead, reaffirming the importance of freedom of expression and the right of peaceful assembly. On the other, the Hungarian police's inclination to completely disregard both an Act of Parliament and past decisions of the Court is profoundly disturbing. Even though the 2013 March was not banned by the police, it has become clear that the police will all too often err on the side of restricting the right to peaceful assembly, rather than seek to safeguard it against violent opposition. Budapest Pride, so much more than a parade, has become a march about not only the equal civil rights of the LGBTQ people, but also everyone's right to peaceful assembly.



On the other, the Hungarian police's inclination to completely disregard both an Act of Parliament and past decisions of the Court is profoundly disturbing.

¹ There are also reports on the increasing number of homophobic crimes since that time. See the Athena Institute, *Hate Crime Record* (consulted 14 June 2013), http://athenaintezet.hu/en/hatecrimerecord_full/?q=homophobia.

² The Fundamental Law has been in force since 1 January 2012, but the former Constitution, which was operative in 2011, also protected the same right.

³ Nonpolitical events – such as religious, cultural or sporting events – are excluded from the scope of the ARA.

⁴ Spontaneous assemblies and assemblies of which less than 72 hours' notice has been given were brought within the framework for regulating assemblies by Resolution 75/2008 (V. 29.) of the Constitutional Court.

⁵ This right to an effective remedy extends not only to explicit attempts by the police to ban a protest, but also their administrative refusal to accept the notification. According to Resolution 3/2013 (II. 14.) of the Constitutional Court, the judicial review procedure applies to all police orders regarding the right to protest.

⁶ See, for example, *Alekseyev v. Russia*, nos. 4916/07, 25924/08 and 14599/09, ECHR 2010.

Police Excesses in Kisumu, Kenya, as Citizens Protest the Supreme Court Ruling on the March 2013 General Elections

Introduction

After the 2007 elections were marred by widespread violence, Kenyans nervously anticipated the presidential election on 4 March 2013. Tense but largely peaceful, the vote produced an incredibly close result. Uhuru Kenyatta was declared elected with 50.51% of the vote, just avoiding the need for a run-off election. This result was contested in the Supreme Court of Kenya by Kenyatta's main opponent, Raila Odinga.

On 30 March, the Supreme Court issued its decision affirming Mr. Kenyatta's victory. That same day demonstrations erupted in Kisumu, a city in western Kenya and a stronghold of support for Odinga. Five people were shot dead and more than twenty injured when police used live ammunition to disperse protesters. These atrocities were committed in total disregard for the letter and spirit of the Constitution of Kenya, which is anchored on the

KENYA

Source: AP Photo/James Kari



principles of respect for human rights, the rule of law, equality, freedom, democracy and social justice. Furthermore, as many of the protesters were unarmed, the police actions violated the Public Order Act, which requires that the police should use no more force than is reasonably necessary.

It is disappointing that, after all the gains made by Kenyans in the exercise of constitutional rights and freedoms and the expansion of political space, the police still operate outside the law with impunity.

Policing in the Run-up to the 2013 Elections

The police violence in Kisumu has its roots in policing decisions taken well in advance of the elections. In the months leading up to the polls, a contingent of police officers was deployed to Kisumu to guard against the possibility of electoral violence. The National Police Service explained the deployment and urged the public to support the officers in taming insecurity in the county. However, election monitors deployed by civil society organizations reported that the high police presence in the area was causing unnecessary tension, with residents alleging that the officers deployed to police the Odinga-friendly area of Kisumu were sourced from the town of Eldoret, a stronghold of Kenyatta's Jubilee Coalition. Beyond the political differences between the two communities, rivalries between the Luo and Kikuyu ethnic groups added to the tensions.

These tensions were heightened further on 3 February 2013 by allegations that imposters posing as police officers in full police uniform had been deployed to Kisumu to intimidate residents into voting for Jubilee Coalition candidates. A police spokesperson downplayed the allegations, but a number of civil society organizations petitioned the Inspector General of Police to investigate and make its findings public. This report has yet to be released.

In the months leading up to the polls, a contingent of police officers was deployed to Kisumu to guard against the possibility of electoral violence.

Finally, on 29 March, the day before the Supreme Court's election decision was released, the Inspector General of Police warned that the police would not permit political gatherings,¹ reminding the population of a countrywide directive issued earlier that month that banned all forms of demonstrations, celebrations, political rallies and gatherings. The directive clearly contravened Article 37 of the Constitution, which guarantees everyone "the right, peaceably and unarmed, to assemble, to demonstrate, to picket and to present petitions to public authorities." Nevertheless, media reports quoted the Inspector General as stating that the ban "should not be construed as denial of right to association, but a precaution to ensure criminal elements do not hijack such demonstrations to engage in lawlessness."² The police sought to justify the ban as necessary to maintain security and the fragile peace between rival groups as tensions mounted in anticipation of the results of the court challenge. In the view of the Kenyan Human Rights Commission, however, the exceedingly broad ban was not founded on a legitimate security threat.



Source: Associated Press

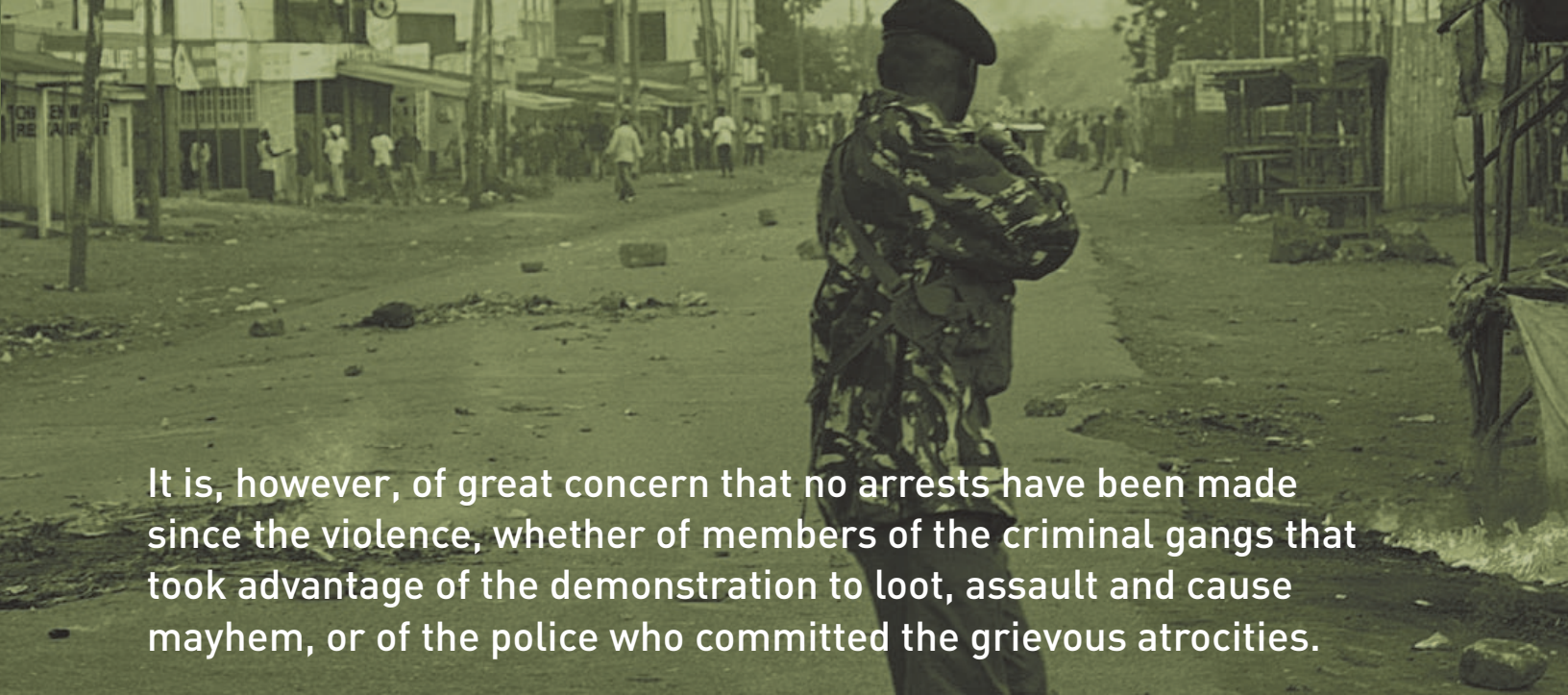
Demonstrations and a Violent Police Response

Demonstrations in Kisumu broke out immediately after the Supreme Court's verdict on 30 March 2013, upholding the narrow win of President-elect Kenyatta. Some of the demonstrators were violent, as crowds barricaded roads, looted shops and burned tires. In response, security forces attempted to disperse the demonstrators using tear gas, rubber bullets and live ammunition. Police also used sticks and batons to violently disperse crowds, reportedly using these tactics indiscriminately and without regard to whether individuals were actually participating in the violence.

Civil society organizations including the Kenya Red Cross,³ the Independent Medico-Legal Unit (IMLU) and Human Rights Watch⁴ reported that five people were killed and more than twenty were hospitalized as a result of police actions, although police have acknowledged only two deaths.⁵ One of the casualties was an unarmed demonstrator. Another, a carpenter, was shot when police stormed into the neighboring Kibuye market, broke the gate and shot both tear gas canisters and live ammunition at the people sheltering within the market. IMLU commissioned postmortems on the two bodies, which revealed that the demonstrator died of bleeding from a single gunshot to the abdomen while the carpenter died as a result of bleeding from a single gunshot to the left thigh.⁶ Three other deaths were reported by Human Rights Watch, including two women who were nonviolent bystanders and not involved in the demonstrations.

Medical records generated from exams commissioned by IMLU revealed that twenty-one people suffered injuries, including gunshot wounds, broken ribs, broken arms and bruises. Of these injured individuals, five were shot at by the police, four were attacked by police with gun butts, kicks or batons, and twelve were brutalized by criminal gangs that took advantage of the demonstration to loot, vandalize and attack residents of Kibuye, Kondele and Nyalenda estates.

Of these injured individuals, five were shot at by the police, four were attacked by police with gun butts, kicks or batons, and twelve were brutalized by criminal gangs that took advantage of the demonstration to loot, vandalize and attack residents of Kibuye, Kondele and Nyalenda estates.



It is, however, of great concern that no arrests have been made since the violence, whether of members of the criminal gangs that took advantage of the demonstration to loot, assault and cause mayhem, or of the police who committed the grievous atrocities.

Source: Stringer/AFP/Getty Images

In one incident the police reportedly broke down the front and back doors of a hotel at a place known as Nyamasaria and attacked the patrons and the hotel owners with batons, kicks and blows. The wife of the hotel owner suffered a fracture on her lower right hand, but is unable to report the incident or get a P3 form (a form provided by the police confirming an injury) for fear of being arrested and falsely charged.

Despite being on the ground since late February 2013, with extra reinforcements and plenty of opportunity to gather intelligence with the aim of forestalling violence, the police response to the situation that unfolded on the afternoon of 30 March 2013 was violent and disproportionate. Moreover, police used force indiscriminately on nondemonstrators, with both innocent bystanders and owners of nearby businesses caught up in the police violence.

Aftermath

The disproportionate and unique deployment of police officers in only one area of the country revealed an underlying assumption that the people of Kondele and other estates in Kisumu are generally violent and have to be handled in a violent manner. This is a disturbing suggestion that merits further investigation, including in particular as to what instructions and orders were given to police officers. Also disturbing are reports that police attempted to conceal evidence of the shootings by confiscating bullets that hospital workers had removed from injured victims and threatening patients with arrest.

In response to these violent demonstrations, and the deaths and injuries resulting from police actions, the Independent Policing Oversight Authority has instituted an independent investigation. The Inspector General of Police has also committed to carrying out its own investigations into the incidents and to determine the details of police conduct during this operation.

It is, however, of great concern that no arrests have been made since the violence, whether of members of the criminal gangs that took advantage of the demonstration to loot, assault and cause mayhem, or of the police who committed the grievous atrocities. This repeats the failings that followed the 2007 presidential election: 115 people died when the police used live ammunition against protesters in Kisumu. These killings have never been adequately investigated or prosecuted. All evidence indicates police used excessive force in violation of Kenyan and international law. All killings and injuries should be investigated immediately and those responsible held to account. For appropriate legal



Source: Associated Press

action to be brought against the responsible individuals, it is critical for the state witness protection program and the police to accord the necessary assurances of security and confidentiality to victims and witnesses who may be willing to provide crucial information on the identity of the perpetrators. Based on reports from monitors on the ground, it is without doubt that some of the perpetrators are well known by the victims and residents of the affected areas.

Although it has not yet been made public, the report of the commanding officer of the operation is crucial for any investigations into whether the use of lethal force was justified. All indications clearly show that those who were killed were unarmed, and some were not even involved in the confrontation or demonstrations.

All indications clearly show that those who were killed were unarmed, and some were not even involved in the confrontation or demonstrations.

Conclusion

There is an alarming tendency on the part of the state security apparatus to seek to roll back the constitutional gains realized in Kenya with respect to democracy, civil and political rights under the guise of preserving “peace and security.” This was seen in the Police Inspector General’s post-election decree banning public gatherings and demonstrations, which he asserted was necessary to protect the nation’s security and the peaceful coexistence of rival political groups. It can also be seen in the violent police crackdown in response to the demonstrations that occurred in Kisumu. The KHRC, in contrast, maintains that sustainable and positive peace and security cannot be realized outside the framework of democratic governance and rights-centered security sector reforms. Security forces must operate within the structures of accountability, rule of law, respect for human rights and other core values established by the Constitution, and avoid the temptation to revert to old habits of acting as an arm of the regime in power and a tool for political repression and persecution.



There is an alarming tendency on the part of the state security apparatus to seek to roll back the constitutional gains realized in Kenya with respect to democracy, civil and political rights under the guise of preserving “peace and security.”

Source: Associated Press

- ¹ *Kimaiyo bans political rallies, prayer gatherings*, THE STANDARD, 6 March 2013; *Police ban demos ahead of court's ruling*, DAILY NATION, 29 March 2013.
- ² *Warning: All demos after Supreme Court ruling tomorrow are banned: Kimaiyo*, THE KENYAN DAILY POST, 29 March 2013, available at <http://www.kenyan-post.com/2013/03/warning-all-demos-after-supreme-court.html>.
- ³ Lillian Leposo, *Clashes kill 2 in western Kenyan [sic] after election verdict*, CNN, 1 April 2013, <http://edition.cnn.com/2013/03/31/world/africa/kenya-election-clashes>.
- ⁴ HUMAN RIGHTS WATCH, *Kenya: Witnesses Describe Kisumu Killings by Police*, 23 May 2013, <http://www.hrw.org/news/2013/05/23/kenya-witnesses-describe-kisumu-killings-police>.
- ⁵ *Police defend use of live bullets in riots*, DAILY NATION, 1 April 2013, <http://www.nation.co.ke/News/politics/Police-defend-use-of-live-bullets-in-riots--/1064/1736590/-/o59uuv/-/index.html>; Olive Burrows, *Oversight authority probes Kisumu weekend killings*, CAPITAL NEWS, 2 April 2013, <http://www.capitalfm.co.ke/news/2013/04/oversight-authority-probes-kisumu-weekend-killings>.
- ⁶ INDEPENDENT MEDICO-LEGAL UNIT (IMLU), *Monitoring the 2013 General Elections in Kenya: Focus on Kisumu County* (on file with authors).

Introduction

The *Bill of Rights* in the South African Constitution, on its coming into force on 27 April 1994, established wide-ranging protection for fundamental human rights and freedoms denied to the majority of the country's population during three centuries of colonialism and systematic racial discrimination. In its founding provisions, the Constitution proclaims a commitment to constitutional supremacy, the rule of law and a system of multiparty democracy to ensure accountability, responsiveness and openness.

Section 17 of the *Bill of Rights* protects the right of everyone to peacefully assemble, demonstrate and present petitions. The related rights to freedom of expression and freedom of association are entrenched in section 16 and section 18. Read together, these rights are the foundations of the Constitution's

SOUTH AFRICA



vision of a society in which human rights are respected and democratic values of equality, human dignity and freedom are protected and promoted.

The duty of the State to respect, promote and protect the right to protest and peaceful assembly is central to the proper functioning of any democracy, more so one as young as South Africa's. In a society characterized by historical inequality, massive disparities in wealth and increasing abuse of state resources through corruption and maladministration, the right to advance causes and voice dissent through protests, demonstrations and pickets is critically important.

The duty of the State to respect, promote and protect the right to protest and peaceful assembly is central to the proper functioning of any democracy,

However, while the legal protections afforded to right to peaceful protest in South Africa are worthy of praise, the government's record in respecting and protecting this right requires a more critical reflection. Faced in recent years with mounting social unrest over rising unemployment, widespread chronic poverty and a lack of delivery of basic services, the reaction of government officials to social protests has ranged from heavy handed and on occasion lethal use of force by the security services to legalistic and restrictive application of national laws governing protests and demonstrations.

The death of 34 striking and violently protesting mineworkers on 16 August 2012, shot by members of elite South African tactical police units in what has now become known as the Marikana Massacre, captured international attention. The Marikana Massacre can justifiably be argued to occupy the extreme end of the spectrum when assessing the government's reactions to protests and demonstrations. On the other end of the spectrum, but just as much a threat to the vision of participatory democracy in the Bill of Rights, has been government reaction to applications for protest marches and a resort to bureaucratic delay, formalism and obfuscation to frustrate and impede social protests.

The Legal Context

The Regulation of Gatherings Act 205 of 1993 ("the Gatherings Act") came into effect at the end of 1996. The Gatherings Act is the primary law regulating assemblies, demonstrations and gatherings in South Africa. The Gatherings Act is a notable improvement on preceding laws used during the apartheid era. Previously, South African law provided the government with unrestrained powers to ban any gathering at any place or area and for any period of time.



Source: Emma Boster, LRC Durban

A distinction is drawn in the Gatherings Act between “gatherings” and “demonstrations.” A “demonstration” is defined as an assembly of less than 15 people and does not require prior notification to the authorities. A “gathering,” on the other hand, is defined to consist of more than 15 persons, and requires considerably more bureaucratic approval.

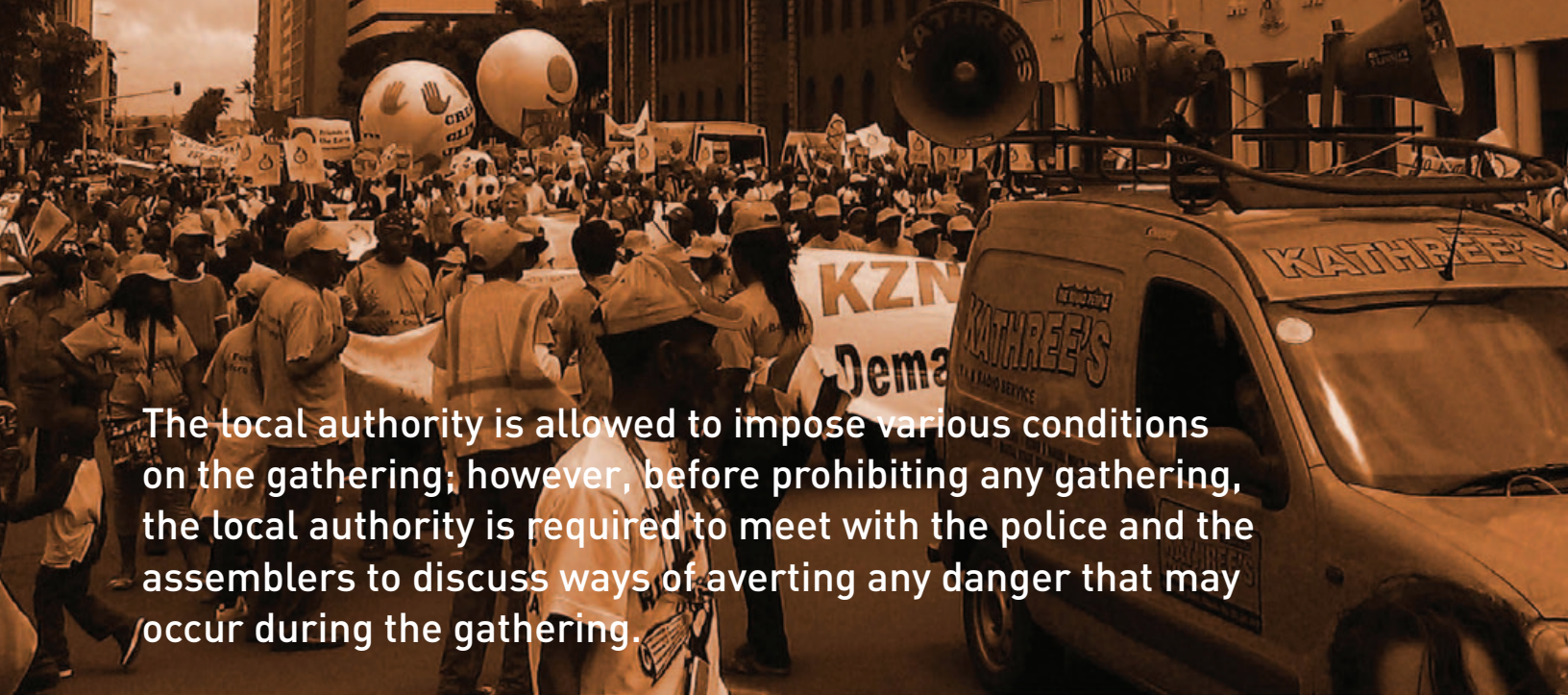
The Gatherings Act provides for roles for three parties: the relevant local authority, the police, and participants in the assembly who must appoint a convener to represent them in discussions with the police and the local authority on the proposed gathering. Written notice of the details of the gathering must be given to the local authority seven days in advance. The Gatherings Act also requires consultations to

take place between the parties regarding any aspect of the proposed gathering. The local authority is allowed to impose various conditions on the gathering; however, before prohibiting any gathering, the local authority is required to meet with the police and the assemblers to discuss ways of averting any danger that may occur during the gathering. The Act permits the convener of a gathering to appeal to the High Court against any decision to prohibit a gathering or any condition imposed by a local authority.

In a 2005 report on the experiences of social movements in the implementation of the Gatherings Act, the FXI identified a disturbing pattern where social movements and organizations stridently opposed to government policies were isolated and targeted by local authorities through an overly technical interpretation of the Gatherings Act, imposition of unreasonable conditions on protest marches and outright prohibitions of gatherings based for flimsy and unsupported reasons.

The Freedom of Expression Institute (FXI), one of South Africa’s leading NGOs, has questioned the extraordinary powers given to local authorities by the Gatherings Act to prohibit gatherings in which less than 48 hours’ notice has been given. The FXI has also argued that the requirement of seven days’ written notice of the gathering has worked to suppress dissent as it grants the government a grace period within which it can prohibit the proposed gathering. In a 2005 report on the experiences of social movements in the implementation of the Gatherings Act, the FXI identified a disturbing pattern where social movements and organizations stridently opposed to government policies were isolated and targeted by local authorities through an overly technical interpretation of the Gatherings Act, imposition of unreasonable conditions on protest marches and outright prohibitions of gatherings based for flimsy and unsupported reasons.

Few cases illustrate the FXI’s concerns as clearly as the reaction of local authorities to an application for a mass civil society march to the proceedings of the 17th Conference of the Parties to the United Nations Framework Convention on Climate Change (COP17), which was held in the South African coastal city of Durban from 28 November 2011 to 9 December 2011.



The local authority is allowed to impose various conditions on the gathering; however, before prohibiting any gathering, the local authority is required to meet with the police and the assemblers to discuss ways of averting any danger that may occur during the gathering.

Source: Emma Boster, LRC Durban

Case Study: Civil Society Protests at the UN COP17 Conference

Since 2005, citizens and guests of host nations of the UN climate change negotiations have organized a Global Day of Action to call on world leaders to take urgent action on climate change. In South Africa, the Civil Society Committee for COP17 ("the Committee") spearheaded the planning of the civil society protest action in Durban during December 2011. The Committee was comprised of a wide range of civil society groups, including environmental activists, unions, and faith-based organizations. The Committee's key objective was to facilitate civil society mobilization for climate justice and strengthen local environmental justice movements.

The main event planned by the Committee was a protest march through central Durban on 3 December 2011 ending at the UN conference, where a memorandum of demands would be handed over. As early as June 2011, the Committee had applied for permission to hold their procession, which would follow a route traditionally used by groups marching in Durban, through the city and ending at Speaker's Corner outside the International Convention Centre where the UN conference was being held.

After submitting their application, the Committee approached the Durban office of the Legal Resources Centre (LRC) to provide assistance at the numerous meetings with the police and city authorities regarding the proposed route. The chairperson of the Committee later described these meetings as the highest level of official resistance to a protest march that he had encountered in his entire career as a social justice activist.

The city authorities highlighted three main areas of concern regarding the planned protest march: disruption to traffic, strain on police resources and security concerns within the United Nations Precinct. The City Manager urged the Committee to agree to an alternative route proposed by the Metro police that bypassed the center of town, thereby reducing the effect on traffic flow as well as the potential disruption to business activity in the city center.

The Committee responded by arguing that the proposed route change would defeat the aims and objectives of the protest march, which was to disseminate information and raise awareness within the wider community of the important issues being discussed at the COP17 conference. In addition, the Committee pointed out that concerns regarding traffic disruption and public safety had not prevented various trade unions from marching along the same route a few weeks before. These groups were similarly large numbers, and the marches took place on a weekday rather than the weekend.



A final meeting was held with the authorities and the City Manager on 28 November 2011. No agreement could be reached as the authorities insisted on the earlier route proposed by the Metro police.

On 29 November 2011, less than three days before the planned march, the City authorities confirmed that the march could proceed, but only along the route determined by the authorities that bypassed the center of the city.

The High Court Intervenes

The Committee instructed the LRC to launch court proceedings, as its view was that the route approved by the city bypassed the entire center of town and that if the protest march had to proceed on that route, it would fail to come to the attention of many individuals and groups, such as workers and inner city dwellers, who may not previously have been exposed to information about the UN climate change talks under way in Durban.

On 30 November 2011, the LRC filed an urgent application in the Durban High Court for orders setting aside the restrictions imposed on the march. The LRC argued that it was essential for the Committee to be given the opportunity to disseminate information to the Durban community regarding the issues being discussed at the UN climate change talks. The LRC argued that the decision of the city to place unreasonable conditions on the planned protest march violated the constitutional rights of the organizers, the participants in the march and the rights of the broader public to peaceful assembly and freedom of expression. The application was set down for hearing on 2 December 2011.

A lasting commitment to protecting and promoting the right to peaceful protest will not be achieved through court orders alone, but through states recognizing the importance of freedom of speech, freedom of expression and the right to peaceful protest as ends in themselves and the lifeblood of democracy.

On the evening of 1 December 2011, the convenor was notified that the City Manager had reversed his decision and that the march could proceed along the original route. However, in the light of the long history of negotiations, the LRC argued that the application should still proceed to ensure that the Committee obtained a court order confirming their right to march along their original route.

Judge Sishi agreed with the LRC's arguments and granted an order authorizing the protest march to proceed along the route planned by its organizers. The city was ordered to pay the costs of the court application brought by the LRC

The day after the High Court ruling, hundreds of activists took part in the COP17 protest march through the Durban city center, disseminating leaflets and pamphlets about climate justice for the Global South and raising awareness about environmental pollution in the city's South Durban area. In a final mass rally outside Speakers Corner at the Durban International Convention Centre, the Committee handed over their written demands to the United Nations representative.



Conclusion and Lessons Learned

The Committee's legal battle with the authorities over their right to a peaceful protest action at COP17 highlights the importance of public awareness of laws governing gatherings and demonstrations, as well as access to legal advice and resources. Without access to legal advice and assistance, civil society groups are at a significant disadvantage when interacting with the authorities, especially when protests are either restricted or prohibited at the last minute or unreasonable conditions imposed that leave no room for further negotiation and the courts as the only alternative.

However, while litigation regarding the interpretation of the Gatherings Act and similar laws is important for ensuring accountability and developing jurisprudence on the right to peaceful protest, the cooperation of the state is essential if these rights are to be effectively respected and protected in the long term. A lasting commitment to protecting and promoting the right to peaceful protest will not be achieved through court orders alone, but through states recognizing the importance of freedom of speech, freedom of expression and the right to peaceful protest as ends in themselves and the lifeblood of democracy.

Anti-Terrorism Powers used against Protesters

Introduction

The laws regulating the organization of protests vary across the United Kingdom. In England and Wales demonstrations are governed by the *Public Order Act 1986*. The Act does not require advance notice of a static demonstration. Organizers of a protest march need to give a week's advance notice to the police – although shorter notice, or none, is permissible in urgent situations. The police can ban marches in extreme cases with the consent of the Home Secretary, and are otherwise only empowered to place restrictions on static and moving protests where serious disorder, disruption, damage, or intimidation is feared. There is a concern that police overuse this power, unnecessarily limiting freedom of peaceful assembly and expression.

UNITED KINGDOM



Police can also use powers created for a different purpose against demonstrators, often inappropriately and sometimes, it is suspected, with the deliberate aim of discouraging protest. One such case arose in 2003, when a search power created to combat terrorism was applied to demonstrators protesting against an arms fair in London's Docklands. Although this specific case dealt with an anti-terror measure enacted before 2001, it takes on an added significance when viewed in light of the new, broad anti-terror powers that were passed after 9/11.

Police can also use powers created for a different purpose against demonstrators, often inappropriately and sometimes, it is suspected, with the deliberate aim of discouraging protest.

Search Powers under the Terrorism Act 2000

Section 44 of the *Terrorism Act 2000* gave the police the power to search members of the public even where there was no cause to suspect that the individual being searched was connected with terrorism or engaged in illegal acts. This contrasts with almost all other search powers in British law, which can only be exercised where an officer has reasonable grounds for suspecting that the person to be searched is carrying prohibited or stolen items. The power was, however, subject to some limitations: it could only be exercised in areas designated for the purpose by a senior police officer; the officer could only give such an authorization where he or she considered it "expedient for the prevention of acts of terrorism"; the designation had to be confirmed by the Home Secretary and could only last for up to 28 days (although this was renewable); finally, officers conducting section 44 searches could only search for "articles of a kind which could be used in connection with terrorism."

Anti-DSEI Protests and Police Searches

Defence Security and Equipment International ("DSEI") bills itself as the world's leading defense and security event,¹ and is frequently attended by weapons developers and manufacturers. It is also a frequent target for activists protesting against the arms trade.

Kevin Gillan and Pennie Quinton both attended anti-DSEI protests in 2003 and were searched by the police under section 44. Kevin was a PhD student who planned to join a "fluffy protest" (i.e., a nonviolent one) organized by the NGO Campaign against the Arms Trade. Cycling to the demonstration he got a bit lost and was in fact cycling away from the ExCel Centre, where the arms fair was being held, when he was stopped by two police officers. The officers informed him that he was going to be searched under anti-terrorism powers. He challenged this and one of the officers responded that there were lots of protesters around – "so we have to be careful." The police went through his backpack and found printouts from the "Disarm DSEI" website providing details of the demonstrations planned against the arms fair; these they seized. One of the officers also took a keen interest in a notepad containing notes of confidential interviews conducted as part of Kevin's PhD research into protest groups in Sheffield. After 20 minutes or so Kevin was given a search notice and was allowed to go on his way.

Pennie is a freelance journalist who planned to make a documentary about the anti-DSEI protests. She had started filming the previous day and had already been searched by the



police then – but under the main *reasonable grounds* power. As she approached the ExCel Centre on 9 September she saw that the police had formed a cordon to prevent protesters getting near. She decided to make her way round the cordon to a better vantage point behind police lines. She started filming as a small group of protesters was grabbed by police officers after charging the police line. She then became aware that an officer was approaching her. The officer insisted Pennie accompany her to where the protesters that had just been rounded up were being held. When Pennie asked what was going on and why she was being detained she was told that the protesters were being searched for drugs – and that she might well be too. Shortly after she was taken aside and

given a cursory pat-down body search. The officers went through her bag. They snatched and switched off her camera. After a further wait, Pennie was given her search notice. This recorded that the search took five minutes; Pennie estimates that she was actually held for about half an hour.

Kevin and Pennie were both quite clear that the reasons they were searched had nothing to do with terrorism; it was their association with the protest that led to the police's interest in them.

They were not the only protesters searched that day under section 44. Liberty agreed to represent Kevin and Pennie in a test case challenging the legality of the searches. Our involvement provoked the alarming revelation that a continuous, rolling designation under section 44 had been in place for the whole of Greater London since the day that the Terrorism Act came into force, some 2½ years previously.


The Legal Challenge

The focus of the challenge was initially the lawfulness of the designation, and particularly whether a continuous, pan-London designation was really an “expedient” measure to combat terrorism. But as it progressed through the courts – the High Court, Court of Appeal and then the House of Lords (now the Supreme Court) – the case increasingly came to focus on whether the search power was compatible with the European Convention on Human Rights.

Giving the lead judgment, the senior Law Lord, Lord Bingham, ruled that, as it would not involve arrest, handcuffing, confinement or removal to a different location, a relatively brief search could not constitute a deprivation of liberty.

This 1950 Convention is binding on all 47 members of the Council of Europe. While the United Kingdom was one of the Convention's first signatories, Convention rights were not justiciable in British courts until the *Human Rights Act 1998* came into force in 2000. For the first time UK courts were empowered to rule on whether legislation was compatible with the rights set out in the European Convention.

Liberty argued that the power under section 44 was incompatible with Article 5 of the Convention (the right not to be arbitrarily detained), Article 8 (the right to respect for privacy) and, as the search power was used against our clients in the context of a



Not only were we able to argue that the power had been used inappropriately against a protester and journalist, but statistics published by the UK government now showed that the power was used disproportionately (even more disproportionately than the reasonable suspicion search powers) against black and other minority ethnic groups.

demonstration, Articles 10 and 11 (the rights respectively to freedom of expression and assembly).

The case lost at all three levels of domestic court. Of greatest disappointment was the judgment of the House of Lords.² Giving the lead judgment, the senior Law Lord, Lord Bingham, ruled that, as it would not involve arrest, handcuffing, confinement or removal to a different location, a relatively brief search could not constitute a deprivation of liberty. Nor would an ordinary search of the person show a lack of respect for a person's privacy such as to amount to an interference with his or her rights under Article 8. Moreover, Lord Bingham could not conceive that a search conducted against a protester following the proper procedures would interfere with the protester's Article 10 and 11 rights. Interestingly, he suggested that there might well be a breach of these rights were section 44 to be used to silence a heckler at a public meeting – exactly the situation that had arisen the previous year when 82-year-old Walter Wolfgang was ejected from the Labour Party conference for shouting "Nonsense" during the then Foreign Secretary's speech.

Liberty was undeterred. Not only did we use every opportunity to press Parliamentarians to repeal or at least amend section 44, we also took the case on to the European Court of Human Rights, the international court based in Strasbourg, which is the final arbiter in cases concerning rights under the European Convention.

By the time we got to Strasbourg the case against section 44 had become stronger. Not only were we able to argue that the power had been used inappropriately against a protester and journalist, but statistics published by the UK government now showed that the power was used disproportionately (even more disproportionately than the reasonable suspicion search powers) against black and other minority ethnic groups. For example, statistics published for the year 2007/8 showed that across England and Wales Asian people were five and a half times more likely to be searched than white people, while black people were almost seven times more likely to be searched. The statistics also showed how ineffective the search power was as a tool to combat terrorism: of the 117,278 searches conducted in England and Wales in 2007/8 just over one percent (1,180) resulted in an arrest; of these only 72 were in connection with terrorism. There was no evidence that anyone had been charged with a terrorism offense following a search.

The Strasbourg court gave its judgment on 12 January 2010, ruling that Kevin and Penny's privacy rights had been violated by the searches.³ The Court started by correcting the House of Lords': noting the coercive nature of the power, the Court concluded that requiring an individual to submit to a detailed search of his or her person, clothing and personal



belongings was a clear interference with the right to respect for privacy.

That was not, however, the end of the matter. Like several other of the rights set out in the Convention, Article 8 is a qualified right: interferences with the right can be justified provided that the interference is “in accordance with the law” and is “necessary in a democratic society” in pursuit of one of a number of legitimate aims. The Court did not find it necessary to consider the test of necessity; in its view section 44 failed the test of legality.

While the Court accepted that section 44 provided a legal basis for the searches, it considered that the minimal legislative safeguards were inadequate and had proved ineffective in practice. It expressed grave concern at the breadth of discretion given to individual officers. In its view there was a clear risk that the power would be exercised in an arbitrary manner, as the statistics on the ethnicity of those searched appeared to confirm.

The Court concluded that Kevin and Pennie’s rights under Article 8 had been violated. In view of this finding it did not go on to consider the claims under Articles 10 and 11.

Statistics published for the year 2007/8 showed that across England and Wales Asian people were five and a half times more likely to be searched than white people, while black people were almost seven times more likely to be searched.

Subsequent Legal Reform

The Strasbourg Court’s judgment only became final shortly after the 2010 election, which brought the present coalition government to power. The new government quickly replaced section 44 with a much more limited power – one very much along the lines that Liberty had been lobbying for. Under what is now section 47A of the *Terrorism Act 2000*, searches without individual suspicion can still be conducted in designated areas. But a designation can only be made when a senior police officer reasonably considers that a terrorist act is about to take place, that a designation is necessary to prevent it and that the location to which the designation will apply and its duration are no more than is necessary.



Protesters are often at the sharp end of new police tactics; while measures applied to them may also be applied to the broader population, they come into sharper focus when applied to those who are publicly expressing dissenting views.

Conclusion

As the case progressed through the courts, the ineffectiveness of section 44 as a counterterrorism measure and its potential for abuse became ever clearer. The case came to be about much more than vindicating the rights of protesters. But the fact that the case arose from a demonstration should not be forgotten. Protesters are often at the sharp end of new police tactics; while measures applied to them may also be applied to the broader population, they come into sharper focus when applied to those who are publicly expressing dissenting views. This makes protecting protesters' rights by all available legal and political means all the more important.

¹ DSEI: The World Leading Defence & Security Event, <http://www.dsei.co.uk/page.cfm>.

² R (on the application of Gillan) v. Commissioner of Police for the Metropolis, [2006] UKHL 12.

³ Gillan and Quinton v. the United Kingdom, no. 4158/05, ECHR 2010.

Promotion and Protection of Human Rights in the Context of Social Protests: Main International Standards Regulating the Use of Force by the Police

Throughout history, protests and other diverse forms of public participation have formed an essential element of vibrant democratic societies. Although the word “protest” does not appear in the text of any international treaty, both universal and regional human rights agreements clearly protect the right to protest through the recognition of rights to freedom of assembly, freedom of expression and opinion, and freedom of association, including trade union rights.¹ In recent years, however, the growing protest movements around the globe have frequently been met with violent reactions from State authorities. Too often, governments tend to impose abusive restrictions, both legal and practical, that curb the effective enjoyment of these fundamental human rights. It is against this background that the present analysis offers a brief overview of the main international standards regulating police behavior, and particularly the use of force, in the context of protest.

States’ prerogative to use force with a view to maintaining law and order is regulated under international law. International standards establish a series of general parameters that domestic legal regulations should follow. Because public assemblies will most frequently cause some degree of disruption, how the police manage this disruption is a central concern. As explained below, however, the existing international standards provide insufficient direction – particularly when seen in light of the complex nature of policing protest, which is an activity that requires the reconciliation of multiple diverse interests and rights.

Global standards

At the global level there are only two sets of documents that deal specifically with the regulation of the use of force by law enforcement officials:² the Code of Conduct for Law Enforcement Officials of 1979,³ its interpretative Commentary,⁴ and the Guidelines for its Effective Implementation from 1986;⁵ and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990 (the “Basic Principles”).⁶ Only the Basic Principles, which contains three specific provisions gathered under the heading of “policing of unlawful assemblies,” expressly refers to policing in the context of assemblies. Though both of those documents are nonbinding, the standards they set out have been largely taken as authoritative statements of international law.⁷ Indeed, these instruments have frequently been referred to by regional human rights mechanisms and have been repeatedly referenced by various UN bodies.⁸ The two main corollaries that follow from these instruments are the principles of proportionality and strict necessity. Above all, the use of force, and particularly the use of potentially lethal force, must always remain exceptional.⁹

The right to peaceful assembly would be another logical starting point for detailed regulations on the permissible use of force during protests, but to date there is relatively little interpretative text elaborating this fundamental freedom. The Human Rights Committee has yet to adopt a general comment on Article 21 of the International Covenant on Civil and Political Rights (ICCPR). Moreover, despite the fact that various UN bodies have adopted a considerable number of resolutions referencing this right,¹⁰ it was only in 2010 that a Special Rapporteur on the rights to freedom of peaceful assembly and of association was established. The Special Rapporteur has since supplemented the existing international texts on the use of force and policing with specific directions for law enforcement during protests. As a result, despite some gradual clarifications regarding the scope and protection offered by this right,¹¹ an interpretative gap remains.¹²

Finally, other protected rights establish certain obligations that are crucial for the regulation of police conduct.¹³ For instance, the rights to liberty and security of the person ground the prohibition on indiscriminate mass arrests. Similarly, the right to life dictates important limits on the use of lethal force during assemblies. The work of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions has been of utmost importance in advancing such links.¹⁴ Further constraints are also set out by broader norms of international human rights law, such as the duty of nondiscrimination and the prohibition of torture and inhumane or degrading treatment.

Regional standards

Standards at the regional level provide some more detailed regulation. The Inter-American Commission on Human Rights (“IACHR”), for example, has recognized that the “right to protest” derives from broader human rights guarantees as a “collective form of expression” and has detailed some best regional practices in protecting this right.¹⁵ The Commission has also considered standards for police conduct and appropriate use of force in response to human rights violations that have occurred during protests. In the IACHR’s 2009 Report on Citizen Security and Human Rights and the 2012 Report on the Situation of Human Rights Defenders in the Americas, the Commission set out concrete parameters to govern the policing of protests, which include, *inter alia*, the prohibition of the use of lethal force, the need for adequate training for policing during mass gatherings, and the requirement of clear and individual identification for law-enforcement personnel. Overall, the IACHR’s parameters also reinforce the principles of proportionality and strict necessity.

European human rights bodies have also elaborated more detailed standards. In 2001, the Council of Europe adopted the European Code of Police Ethics, which was accompanied by an Explanatory Memorandum. These more general codes of conduct were supplemented in 2007 by the Guidelines on Freedom of Peaceful Assembly, which was elaborated by the Organization for Security and Co-operation in Europe (OSCE) in partnership with the Council of Europe’s Commission for Democracy through Law (Venice Commission). The Guidelines set out the minimum thresholds for national regulation, and include an entire section dedicated to the policing of public assemblies. Topics covered include the procedural and substantive obligations placed on security forces prior to, during and after demonstrations take place. There is also a particular focus on police obligations when security forces take steps to disperse a crowd.¹⁶

Since their publication, the Guidelines have been referenced and relied upon by European bodies, including the European Court of Human Rights (ECHR),¹⁷ and different universal mechanisms. Although portions of the Guidelines remain controversial from an international perspective, including the temporal limits to the scope of freedom of peaceful assembly and the seemingly uncritical acceptance of prior notification schemes, they remain an important and detailed resource. The Guidelines are also complemented by other OSCE manuals and guides that review tools for monitoring the right to freedom of peaceful assembly and police conduct more generally.¹⁸

The European Court of Human Rights has also considered and elaborated on policing in the context of protest activities. In a number of cases the Court has emphasized that there is a presumption in favor of the peaceful character of all assemblies.¹⁹ In the view of the ECHR, even if protests may cause a certain degree of disruption to daily life, the State must be tolerant and regard them as equally legitimate uses of public space as other more routine activities.²⁰ The ECHR has ruled, moreover, that the conduct of the individual must be assessed separately from that of the crowd,²¹ and that the burden of proving demonstrators’ violent intentions or actions lies with the authorities.²²

Existing gaps, directions for future development

Although both regional and global bodies have started to elaborate standards on protests and policing, a number of concerning gaps and questions remain. Because both the rights to freedom of expression and freedom of peaceful assembly integrate permissible limitations, determining the precise contours of what constitutes an acceptable limit requires interpretative clarification.²³ Governments in various countries have abused the ability to impose “permissible” restrictions as a pretext to repress or ban demonstrations, or use excessive force against nonviolent participants. Opportunities for state regulation of protests and gatherings also provide the opportunity for discriminatory treatment of unpopular issues or stigmatized minority groups.

Moreover, despite the central importance of the international instruments that establish limitations on the use of force by law enforcement, they have also been the target of a significant amount of criticism.²⁴ It has been suggested that the principles lack clarity and precision, and that their broad provisions are not easily translatable into concrete, practical guidelines that can be readily applied

at the domestic level. Contemporary changes such as the increase in privatization of policing functions and evolutions in weapons technology pose significant challenges to concrete domestic application. Moreover, very little targeted regulation has been developed to guide the use of “less-than-lethal weapons.” Key knowledge gaps remain relating to the lethality of these weapons, and international public bodies have yet to establish specific guidelines for their appropriate use or training standards.²⁵ The proliferation of these weapons without adequate training or restrictions has led to abusive deployment and, as a result, the weapons are in actuality much more lethal than advertised. In recent years individuals have died from tear gas asphyxiation, tear gas canisters shot directly into crowds, various kinds of shotgun ammunition and rubber and rubber-coated bullets.²⁶ The weapons used during public order responses, and indeed the term “nonlethal” itself – a term that is frequently applied to describe these weapons – require closer examination and regulation.

Although recent developments have helped elaborate the scope and content of the applicable rights, there are also persistent interpretation gaps.²⁷ For instance, there is no precise definition of “peaceful.” It is far from obvious what this term means under international human rights law, although it seems to be taken for granted that it corresponds to the absence of weapons and violence. This often leads to a lack of clarity regarding the extent of protection granted to participants of assemblies that are, in some aspects, “nonpeaceful.” Many governments will consider all persons in an area to be participating in the violence, even though only a few members of the crowd are engaged in criminal acts. Moreover, although the more general limitations on law enforcement actors, including the requirements of proportionality and necessity, will still apply, too often discussions of the government obligations in the context of protests are ambiguously limited to “peaceful” assemblies. Unfortunately, it is not uncommon to hear governments recite the legally incorrect and overbroad statement that “only peaceful assemblies are protected” under international human rights law. The majority of relevant human rights norms, including restrictions on the use of force, apply regardless of how an assembly is characterized; many human rights violations occur during events that started peacefully, but escalated.

There are also several issues that, although they are canvassed in the international standards, could be further clarified and emphasized through jurisprudence. It is crucial, for example, to provide an increased focus on the differentiation between a “peaceful” protest and a “legal” protest. These distinctions are referenced in the various international documents, which have multiple overlapping characterizations for assemblies: “lawful and peaceful,” “unlawful but nonviolent” and “violent.” Too often, however, governments will justify use of force against “unlawful” assemblies, without reference to whether such force was in response to violence, or generally proportionate or necessary in the specific circumstances. In addition, excessive state regulation²⁸ of the right to assembly has the potential to significantly chill the exercise of peaceful protest. The dangers of excessive regulation, both in allowing for abusive government decisions and chilling protest pre-emptively, need to be further explored.

Finally, new domestic laws are posing novel threats and challenges to the right to protest. Governments have increasingly relied on counterterrorism legislation when responding to peaceful domestic dissent. In recent years, for example, most of Latin-American countries have passed new counterterrorism legislation.²⁹ These statutes generally have very broad definitions of “terrorism” and “terrorists,” and human rights defenders and regional social groups have noted that individuals are shying away from protesting out of fear that the authorities will subsequently prosecute them under these provisions.³⁰

Across the globe, large numbers of individuals are engaging in a wide variety of forms of protests and demonstrations. There is a clear need for more detailed international standards protecting this vital democratic right. The number of people who have been seriously injured and killed during police responses to largely peaceful protests amply demonstrates that there is no such thing as “nonlethal weapons” – these tools can, and do, kill. The conduct of police officers, the use of force and the employment of all manner of weapons must be strictly regulated – and the legal standards already in place must be translated into police practice on the ground.

- ¹ See, for instance, Report of the Special Representative of the Secretary-General on human rights defenders, UN Doc. A/62/225 (13 August 2007) at para 12.
- ² The use of the expression “law enforcement officials” has been criticized as an unsatisfactory term, as it does not fully encompass the nexus between human rights and policing. For example, the notion could allow for the deployment of military personnel in responding to a public protest, a situation that is not adequate. The military should not be involved in public order activities, since protesters should not be seen or treated as a threat to the nation.
- ³ Adopted by the UN General Assembly Resolution No. 34/169.
- ⁴ Elaborated by the UN Office for Drugs and Crime.
- ⁵ Adopted by the UN Economic and Social Council Resolution No. 1986/61.
- ⁶ Adopted by the UN Crime Conference.
- ⁷ See, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc A/66/330 of 30 August 2011, para 36.
- ⁸ Among others, Resolutions of the Human Rights Council, the concluding observations of various treaty-bodies such as the Human Rights Committee, and the Committee Against Torture, also the reports of special procedures.
- ⁹ See, in particular, Principles 4, 5, 12, 13 and 14 of the Basic Principles and Article 3 of the Code of Conduct together with its Commentary. Such parameters have been recalled in Operative Paragraph 6 of the UN Human Rights Council Resolution No. 19/35 of 2012.
- ¹⁰ See, for instance, UN Security Council resolutions adopted on Libya and Yemen, according to which the Council “deplores the repression of peaceful protesters and demands the immediate end to violence, and respect to the freedoms of peaceful assembly and expression”, UN Doc S/RES.1970 of 26 February 2011 and UN Doc S/RES.2014 of 21 October 2011.
- ¹¹ The Special Rapporteur on extrajudicial, summary or arbitrary executions, for example, has also noted that “the standards applicable to the use of force cannot be dealt in isolation” because “if peaceful public protests are managed in such a way that they are less likely to escalate into violent confrontation, the need to decide whether or not to react forcefully will arise less frequently.” Christof Heyns, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc A/HRC/17/28 (23 May 2011) at paras 12 and 13.
- ¹² See, for instance, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/HRC/23/39 (24 April 2013), which emphasizes that this right entails both negative and positive obligations to States, including the obligation to facilitate access to public spaces, as well as to protect participants from violence and any kind of external interference that might disrupt the assembly.
- ¹³ See OHCHR (2004) Human Rights Standards and Practice for the Police: Expanded Pocket Book on Human Rights for the Police, Professional Training Series No. 5/Add.3. UN Doc HR/P/PT/5/Add.3 (2004).
- ¹⁴ See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc A/HRC/17/28 (23 May 2011), paras 61 – 63. In this report, based on a study covering a sample of 76 countries, the Special Rapporteur concluded that many domestic legal systems still do not adhere to the very minimum international standards.
- ¹⁵ See Inter-American Commission on Human Rights, Office of the Special Rapporteur on Freedom of Expression, The inter-American legal framework regarding the right to freedom of expression, OAS official records: OEA Ser.L/V/II CIDH/RELE/INF (2009) at 103.
- ¹⁶ See paragraph 176 of the OSCE Guidelines (2nd ed.) (detailing, for example, the obligation to set out decontamination procedures where irritant chemicals may be used, the prohibition to use force against peaceful protesters who are unable to leave the scene, the duty to keep detailed records of the kind of force used, and the obligation to investigate where injuries or deaths have been caused, among others).
- ¹⁷ See, for example, *Oya Ataman v. Turkey*, no. 74552/01, § 16, ECHR 2006.

- ¹⁸ See also, the OSCE Handbook on Monitoring Freedom of Peaceful Assembly (2011) and the OSCE Guidebook on Democratic Policing (2008).
- ¹⁹ An assembly will be deemed peaceful as long as the participants remain peaceful, even if the organizers have not complied with all legal requirements prior to the assembly, see *Oya Ataman v. Turkey*, no. 74552/01, ECHR 2006. See also *Cisse v. France*, no. 51346/99, § 37, ECHR 2002.
- ²⁰ *Patyi and Others v. Hungary*, no. 5529/05, §§ 42-43, ECHR 2008; *Balçık and Others v. Turkey*, no. 25/02, § 52, ECHR 2007; *Ashughyan v. Armenia*, no. 33268/03, § 90, ECHR 2008.
- ²¹ In the words of the ECHR, “an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour”. *Ziliberberg v. Moldova (dec.)*, no. 61821/00, ECHR 2004.
- ²² *Christian Democratic People’s Party v. Moldova (No. 2)*, no. 25196/04, § 23, ECHR 2010.
- ²³ Standard limitations must be imposed in conformity with the law and serve one of the legitimate purposes listed in the treaty, which generally include: national security, public safety, public order, the protection of public health or morals, and/or the protection of the rights and freedoms of others.
- ²⁴ For example, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, UN Doc A/HRC/17/28 (23 May 2011), at para 64.
- ²⁵ For example, research from Omega Foundation on Crowd Control Technologies.
- ²⁶ Centro de Estudios Legales y Sociales (CELS), *Derechos Humanos en Argentina. Informe 2008, Siglo XXI*, Buenos Aires (2008) at 150-152 (detailing the case of a schoolteacher who died after being shot with a can of tear gas).
- ²⁷ See, for instance, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/HRC/23/39 (24 April 2013), which emphasizes that this right entails both negative and positive obligations to States, including the obligation to facilitate access to public spaces, as well as to protect participants from violence and any kind of external interference that might disrupt the assembly.
- ²⁸ Those measures include prior approval permitting schemes, notification time periods, fees, imposition of liability on organizers, and intrusive searches on protesters.
- ²⁹ Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Honduras, México, Paraguay, Peru, Uruguay and Venezuela have all introduced new counterterrorism legislation in the past few years.
- ³⁰ There are instances of such prosecutions under counterterrorism legislation. See Report of the Special Representative of the Secretary General on Human Rights Defenders, in accordance with General Assembly resolution 57/209, UN Doc A/58/380 (18 September 2003) at para 25. In addition, in 2011, for example, the Inter-American Commission of Human Rights submitted the first case to the Inter-American Court of Human Rights about the excessive use of force against leaders of and activists for the Mapuche Indigenous People in Chile. The government used provisions in the antiterrorism act to respond to their protest claiming rights to their ancestral lands.

Conclusion

Governments all around the world too often treat protest as at best an inconvenience to be controlled or discouraged, and at worst a threat to be extinguished.

Participation in protest and public assembly should be viewed not as a “necessary evil” in democratic countries, but as a healthy democratic exercise that ensures good governance and accountability. It is a social good that is a vital part of a vibrant democracy. Unfortunately, however, the case studies profiled in this publication highlight that, whether through violence, criminalization or unnecessarily obstructionist laws, protest is being stifled rather than encouraged.

The introduction to this publication highlighted some of the common themes that emerge from the case studies: excessive use of force, lethal deployment of “less-than-lethal” weapons, the criminalization of community leaders, repurposing of antiterror laws and regulatory frameworks facilitating repression and discrimination. Each domestic organization that contributed to this report has already issued numerous recommendations to its respective government – recommendations that should be carefully studied and implemented. In this conclusion, we would like to look forward rather than back, to reflect on some basic gaps in the current international debate on the right of protests and assembly, and suggest some direction for the future if this right is to remain meaningful and vibrant.

Recommendation 1:

Increase regulation of less-lethal weapons

- Governments should establish and enhance domestic and international regulatory frameworks to control police use of less-lethal weapons, with particular attention to limits on deployment during protest
- Thorough, independent, scientific testing of less-lethal weapons should occur prior to deployment to establish lethality and health impacts
- Strict deployment guidelines and training must be implemented based on thorough, independent scientific studies, and reviewed regularly to ensure compliance and currency

There is much work to be done with respect to the way in which less-lethal weapons (misleadingly referred to as nonlethal weapons in some literature) are deployed in response to protest. There are no robust international regulatory frameworks governing the usage of less-lethal weapons, which leads to abusive deployment by police forces that sometimes assume that, as the weapons are “less-lethal,” they have a free hand to use them without restraint. The case studies of Egypt and the USA provide graphic examples of the injuries and deaths that can result. There is also a gap in the study and understanding of the possible effects, including health hazards, of these weapons – a gap that needs to be addressed in order to inform the development of more accountable policy and legal frameworks regulating the use of these types of weapon systems.

Recommendation 2:

Increase precision and clarity regarding the scope of human rights protection for protests

- States should explicitly affirm that even protests that are strictly “unlawful” are equally protected by the right to freedom of peaceful assembly.
- States should explicitly recognize that individuals who are exercising their peaceful assembly rights continue to receive protection, even when other individuals within a crowd commit acts of violence
- Government statements on the limits of peaceful assembly should be accompanied by an affirmation that other human rights norms, including limits on state use of force, remain relevant

As illustrated by the cases of Argentina, Kenya and others, the use of lethal force during protests continues to be a predominant concern across the globe. The organizations that have contributed to this publication have spent decades monitoring policing and protest in their respective countries. Collective experience suggests that many governments are quick to classify a particular protest as “nonpeaceful,” even when the vast majority of individuals remain nonviolent. This general classification is then used to justify a wide range of repressive state measures, including lethal use of force. Avoiding this problematic distinction is the primary reason this publication refers to “a right to protest” rather than a right to peaceful assembly.

The blanket classification of an entire assembly as nonpeaceful arbitrarily abrogates the peaceful assembly rights of a large number of individuals. The right to peaceful assembly must be interpreted in a way that ensures that individuals who are exercising their peaceful assembly rights continue to receive protection, even when other individuals within a crowd commit acts of violence. Moreover, while the right to peaceful assembly is necessarily limited to nonviolent gatherings, all other human rights protections remain directly applicable to all forms of protest, whether or not they are classified as violent. Limitations on use of force, for example, are particularly important and apply generally to all police actions. Too often, a universal “gloves off” approach is taken when a few members of the crowd engage in criminal behavior.

Recommendation 3:

Increase attention to, and vigilance of, legal and administrative limitations on the right to protest

- States should review domestic legislation to ensure that any administrative or legal regulations that could restrict protest are demonstrably necessary and proportionate
- All legislation that could restrict protest should explicitly state that the role of the state is to facilitate the right to protest
- Governments should carefully monitor the operation of these laws and policies to ensure they are not being implemented in a discriminatory or unnecessarily restrictive manner

Greater attention must be placed on the suppression of protests through legal mechanisms and government discretion. This is a common problem in many countries in the world, and, perhaps because of the fact that its stifling effect on protest is less “visible” than illegal or excessive use of force, this issue receives less attention in international discussion fora. Criminalization and regulatory suppression of protest does not only take the form of repressive, blanket restrictions on freedom of assembly such as those found in some undemocratic regimes. It also operates more subtly, through laws that are used to stifle or put a chilling effect on participation in public assembly or in protest. This includes legislation governing the right to protest that has obstructionist legal requirements, such as unnecessary notification periods; insurance requirements that reproduce systemic socioeconomic discrimination; *de facto* prohibitions on spontaneous protest; limited legal definitions of “legitimate” protests; and police responses that fail to recognize that some criminality occurring during a protest is not synonymous with “violent protest.” Governments also too often fail to accept that an important aspect of protest is that it should deliver a strong message and exert pressure on public officials – a reality that means that meaningful protest will often cause disruption in daily routines or access to public space. These disruptions, however, should be regarded as an integral part of democratic life, not aberrations to be regulated away or minimized. Finally, the use of antiterrorist laws to deal with nonviolent political activity and domestic dissent is an increasing risk that needs to be proactively addressed. These means of stifling dissent – less violent but potentially equally suffocating – are illustrated in many of the cases in this publication. The international community must clearly recognize and eliminate these more subtle, but pervasive, limits on democratic freedom.

The global situation of protest and the protection afforded to it by the state – especially in times of high societal mobilization such as the world is living through today – demonstrates that these concerns are very real. The global debate on the right to protest and assembly should not shy away from affirming that protest is a healthy, democratic exercise that can be very effective in bringing government to accountability and re-affirming values of democracy, human rights and social justice, and thus should be protected and encouraged by democratic states.

