



JOINT SUBMISSION TO THE SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM OF ASSEMBLY AND ASSOCIATION AHEAD OF THE DEVELOPMENT OF PRACTICAL TOOLS TO ASSIST LAW ENFORCEMENT BODIES IN PROMOTING AND PROTECTING HUMAN RIGHTS IN THE CONTEXT OF PEACEFUL PROTESTS

SEPTEMBER 2023

The #UnitedAgainstTorture consortium brings together the World Organisation Against Torture ([OMCT](#)), the Association for the Prevention of Torture ([APT](#)), the International Federation of ACATs ([FIACAT](#)), the International Rehabilitation Council for Torture Victims ([IRCT](#)), [Omega](#) Research Foundation and [REDRESS](#).¹

The members of the #UnitedAgainstTorture consortium and the civil society networks represented are concerned about widespread violations of the right to be free from torture and other ill-treatment in the context of protests and other expressions of the right to freedom of assembly across the globe.

Amidst a world with increasing health emergencies and struggling against multiple, simultaneous, crises, freedom of assembly emerges as an essential pillar to peacefully raise criticism and channel social unrest. Yet, the repression of protests and silencing of protesters and those documenting human rights violations is commonplace.

Torture is not only used in dark detention and interrogation cells, but also openly, in bright daylight. In addition to the recent and ongoing conflicts (Ukraine, Ethiopia, Yemen, Democratic Republic of Congo, Syria, etc.), the world is witnessing violent repression of peaceful protest movements by law enforcement officials in so many other countries (Chile, China, Chad, Colombia, Iran, Sri Lanka, Sudan, Belarus, Nicaragua, Nigeria, France, Spain, Russia, the United States, India, Kazakhstan, and too many others to mention), with many violations taking place in contravention of the absolute prohibition of torture and other ill-treatment. Repression extends from environmental, pro-democracy and rights activists to those who document the violence, including journalists and protest monitors.

That is, what it is often framed as “police brutality” in the context of protests often amounts to breaches of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment,² yet it is hardly identified or treated as such.

¹ More details can be found [here](#).

² UN General Assembly, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 20 July 2017, A/72/178, paras. 46 and 47. See also OMCT, [Thematic briefing report: Extra-custodial use of force amounting to torture and other ill-treatment](#), 2021; Human Rights Council, “Torture and other cruel, inhuman or degrading treatment or punishment: the roles and responsibilities of police and other law enforcement officials”, [A/HRC/RES/46/15](#), 1 April 2021.

Repressive policing practices go hand in hand with an increasing diversity of crowd control weapons, including in some instances former military grade weaponry, resulting in severe health consequences. In parallel, civilian police forces around the globe have been on a worrisome militarisation trend.

Too often, regulations, policies, internal rules or laws legislating the use of weapons, tools, tactics and equipment at the national level are overlooked and not fully implemented. Failure to comply with these standards inevitably lead to systematic acts of torture and ill-treatment, including cases of death or severe injury.

Such policing operations and interventions often have the greatest impact on those affected by multiple levels of marginalisation, precarity, and vulnerability (migrants and undocumented workers, caste, linguistic and racial minorities, women, indigenous peoples, children, LGBTIQ+, etc.) and face intersectional discrimination. That is, policing is interpreted as a 'social control' tool rather than a 'public service', visible both in the policing of potential dissent and protest, but also in broader policing approaches affecting notably poor communities, the marginalised and excluded.

In the following lines, key principles, laws, protocols and practices, extracted from specific country examples, regional and international bodies, are outlined, with the aim of contributing to the questionnaire circulated by the mandate of the Special Rapporteur on freedom of peaceful assembly and of association ahead of the upcoming report to be presented at the 55th session of the UN Human Rights Council.

1) What laws, guidance, protocols, and mechanisms or strategies/practices related to the facilitation and policing of protests did you find to be effective in ensuring human rights are respected and protected by law enforcement **before, during and after protests?**

- Can you provide examples of positive measures and practices by law enforcement authorities that resulted in protecting human rights by law enforcement specifically in the context of spontaneous and/or mass protests?

States have the legal obligation under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) to take measures to prevent torture and other cruel, inhuman or degrading treatment or punishment.³ However, in practice, State's agents, including law, enforcement are rarely held accountable. Addressing the issue requires structural changes for a holistic transformative impact. Such change includes measures relating to the composition of the police, profile of police officers, inclusiveness and diversity, independent monitoring bodies as well as accountability (including independent and impartial investigation mechanisms) and strong leadership. It also requires training on the proper use of weapons and equipment and human rights and clear document and reporting procedures when force has been used.

³ UNCAT, articles 2 and 16.

There are a number of principles that should guide the facilitation and policing of protests, and that should be prescribed by law and enforced. There is a tendency to conceive the police as a social control tool instead of a service designed to protect the community and keep them safe, especially the most vulnerable. In fact, the most vulnerable, often racial or ethnic minorities, women, children, or those socially excluded or marginalized on various grounds are the most exposed to police abuse it has been observed on a regular basis.

The prevalence of the social control approach is visible both in the policing of dissent and protest, but also in broader policing approaches. In this sense, States should redouble their efforts to shift from a control-oriented approach to a service-oriented approach, particularly in the context of the exercise of the right to freedom of peaceful assembly. **The policing of protests should be guided by democratic values and the protection of fundamental rights and freedoms, in particular personal integrity, life, protection from discrimination and the exercise of civic rights and freedoms.**⁴

There are a wide range of measures that States and law enforcement authorities ought to undertake to effectively facilitate and protect the right to freedom of peaceful assembly, including spontaneous and/or mass protests. The **basic principles are compiled in the *Human Rights Handbook on Policing Assemblies*** published by the Organization for Security and Co-operation in Europe (OSCE) in 2016, as well as in their Guidelines on Freedom of Peaceful Assembly.⁵ As stated in the mentioned Handbook, “the role of police in facilitating assemblies is paramount. Being the most visible manifestation of government authority, the police demonstrate a State’s commitment to upholding the rule of law and protecting fundamental human rights and freedoms”.⁶

Basic general principles on the use of force by law enforcement officials, namely: legality; precaution; necessity; proportionality; non-discrimination and accountability, are articulated in two main documents: The Code of Conduct for Law Enforcement Officials (1979) and The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990).

Other instruments and documents issued by international human rights mechanisms complement the mentioned guidelines and include: [Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa](#), adopted by the African Commission on Human and Peoples’ Rights in 2017, the [Standards on the rights involved in social protest and the obligations to guide the response of the State](#), adopted by the American Commission on Human Rights in 2019, the [UN Guidance on Less-Lethal Weapons in Law Enforcement](#), adopted in 2020, and the [UNODC/OHCHR Resource Book on the Use of Force and Firearms in Law Enforcement](#), published in 2017.

⁴ This principle is linked to the need to adopt a human rights based approach to all aspects of the planning, preparation and policing of assemblies. For further details, see OSCE-ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly* (3rd Edition), 2019, pp. 11-13.

⁵ OSCE-ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly* (3rd Edition), 2019.

⁶ Ibid, p. 7.

Facilitation includes dialogue, mediation, negotiation and other forms of communication between police and protest organisers and participants, as well as other stakeholders through all stages of a protest. **Communication before, during and after an assembly is an indispensable condition** to prevent the escalation of tensions and conflict, entailing violence on both sides. Communication enables a protective approach, and builds trust and reassurance.

As outlined in the OSCE *Handbook on Monitoring Freedom of Peaceful Assembly* “Generally, the overall policing approach should be driven by communication, seeking to prevent conflicts from occurring through dialogue and mediation, as well as to de-escalate and peacefully settle any conflicts that do occur”.⁷ Whenever communication breaks down, the re-introduction of lines of communication, the use of dialogue and forms of mediation or reassurance should be the norm.

Spaces for communication and dialogue ahead, during and after demonstrations, as the Inter-American Commission on Human Rights (IACHR), among other international bodies, are key for State authorities to engage and liaise with protesters to coordinate protest activities and public security operations to avoid conflict situations.⁸

Communication with organisers and protesters is a skill that needs specialised officers or units trained in communication, mediation and de-escalation techniques and tactics, “which require designing operations with an understanding of crowd dynamics and anticipation of the likely impact of police behaviour on protesters and bystanders”.⁹

In many countries, however, there are no negotiation mechanisms between law enforcement officials and organisers prescribed by law. Dialogue, mediation officials and de-escalation tactics are conspicuous by their absence in a vast majority of jurisdictions and law enforcement interventions in the framework of protests. In many protests, the use of force is employed without considering its legality, proportionality and necessity and the prevalence of peaceful means, or without seizing the opportunities for de-escalation or setting mechanisms for genuine channels of communication with protesters. When the use of force (or the deployment of specific weapons, including chemical agents, kinetic impact projectiles, water cannons or firearms) is necessary, often protesters are not warned or notified in advance, or when they do, law enforcement officers are not equipped to deliver the message effectively and massively (e.g. with megaphones) to disperse or move, which could prevent injuries or even deaths.

Although almost any tool or instrument can be used for torture and ill-treatment, monitoring the use of firearms, less lethal weapons, and means of restraint may help

⁷ OSCE-ODIHR and Venice Commission, *Handbook on Monitoring Freedom of Peaceful Assembly*, 2020, p. 48.

⁸ IACHR, Protest and Human Rights, Standards on the rights involved in social protest and the obligations to guide the response of the State, OEA/SER.L/V/II, CIDH/RELE/INF.22/19, September 2019, para. 182. See also *Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa*, para. 6.4.

⁹ International Network of Civil Liberties Organizations (INCLEO) and the International Human Rights Clinic (IHRC), [Defending Dissent: Towards State practices that protect and promote the rights to protest](#), p. 9.

civilian oversight mechanisms such as National Preventive Mechanisms (NPMs) in preventing torture in non-traditional places of deprivation of liberty including during protest and peaceful assembly. NPMs and civil society organisations play a crucial and complementary role in monitoring the excessive use of force and equipment and contribute to a better implementation of the UNCAT and other international standards at the national level.¹⁰

Police shall issue at least one clearly audible and understandable order to disperse using an amplification system or device, and shall provide the participants a reasonable and adequate time to disperse and a clear and safe route for dispersal.

The enforced dispersal of assemblies should be a measure of last resort when law enforcement officials have taken all reasonable measures to facilitate and protect a protest from harm, and only if there is an imminent threat of violence.¹¹

Against this backdrop, there are examples of good practice at the domestic level:

In **Colombia**, protest organizers and protest monitors have taken part in meetings of the Unified Command Post (*puesto de mando unificado*, PMU),¹² at different phases, including during the planning and preparation of operations. The PMUs are a platform for dialogue and coordination between all concerned State entities (interior, national police, Public Prosecutor's Office, Attorney General's Office, Ombudsman, fire department) prior, during and after assemblies, particularly in the context of protests foreseen to be massive or violent. This platform has ensured collaboration between police commanders, the National Network of Civil Society Commissions of Verification and Intervention in the framework of social mobilisation and State-led human rights mechanisms including *Procuraduría and Defensoría del Pueblo*.

In the same country, the [Manual](#) recently adopted by the National Police of Colombia to regulate actions to protect the right to freedom of assembly and the use of force in the context of public assemblies reaffirms the primacy of dialogue and introduces specific mechanisms within law enforcement units intervening in assemblies, such as "dialogue teams" or *Policía de diálogo* (article 10). The Manual develops specific provisions on how these teams will be in charge of promoting dialogue and mediation with protest organisers. Yet, these officers will have to be trained and skilled in facilitating dialogue, negotiation and mediation skills.

In **Spain**, the Catalan police force, *Mossos d'Esquadra*, has set up a mediation team that has been operating in a number of protests, to engage in a dialogue with organisers to prevent the escalation of conflicts. This development is considered a good practice by

¹⁰ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, article 1.

¹¹ *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, 1990, Principle 13: "in the dispersal of assemblies that are unlawful but nonviolent, law enforcement officials shall avoid the use of force, where that is not practicable, shall restrict such force to the minimum extent necessary".

¹² Government of Colombia, Decree 003, 2021, article 8.

human rights organisations, yet the resources of this team are very limited and hence their operational capacity and deployment in large protests is insufficient.

In **France**, a newly appointed chief of police, *Préfet de Police*, in September 2022, has promoted the restoration of dialogue and coordination of protests with trade unions. This and other recent practices have contributed to a positive change in the way protests were conducted prior to the events of early 2023.¹³

-> Domestic laws and protocols should develop the operational steps required to apply a dialogue and negotiation-focused approach in managing protests, which is crucial to prevent acts of violence, including torture and other ill-treatment.

-> Operational commanders must give priority to de-escalation tactics that favour the presumption of the right to assemble freely with others – such as open communication, negotiation and dialogue with assembly organisers and participants.

2) What are the gaps and which of the protocols and guidance to law enforcement, and mechanisms related to facilitation and policing of protests did you find to be restrictive, undermining human rights protection, or encouraging or facilitating human rights abusive practices by law enforcement authorities in the context of protests? How should these be improved?

Criminalisation of dissent

The current widespread trend toward the criminalisation and silencing of dissent, documented across the globe, paves the ground for laws and practices that contravene international human rights standards in the context of protests. There are numerous examples of countries where protesters, including, among others, climate and environmental protesters, human rights activists, indigenous peoples, minorities and people of African descent, are considered a security threat.

As a result, both laws and practices are designed to suppress dissent, including by resorting to the use of force in the context of protests. The world is witnessing, from violent repression of protest movements by law enforcement officials in contravention of the absolute prohibition of torture and other ill-treatment.

In **Switzerland**, social movements against police repression are considered part of the “violent extreme left”, according to the [Federal Intelligence Service](#). In **Spain**, the Office of the Attorney General, in the 2021 [annual report](#), under the summary of activities carried out to address terrorist activities on Spanish soil, includes an assessment of the actions conducted by “violent radical ecologists”, activists against the imprisonment of a [rapper](#) and members the “violent Catalan independentist movement”.

¹³ “Mr. Laurent Nuñez, new Paris’ chief of police, made a break with the offensive strategy of his predecessor, Mr. Didier Lallement” (https://www.lemonde.fr/societe/article/2023/01/20/a-paris-des-operations-de-maintien-de-l-ordre-en-rupture-avec-la-methode-lallement_6158617_3224.html)

In **France**, according to [UN Special Rapporteurs](#), a trend towards stigmatisation and criminalisation of people and civil society organisations working to defend human rights and the environment, including referring to them with terms such as “eco-terrorists”, is increasing and it has served to justify heavy-handed policing against them.¹⁴ For instance, during the demonstration against the agricultural mega-basin project in Sainte-Soline in March 2023, communications from French authorities, before and after the demonstration, show a desire to criminalise the participants and to legitimise an excessive deployment of force against them, according to a [report](#) from *Observatoires des libertés publiques et des pratiques policières*.¹⁵

In other countries, legislation is used to restrict freedom of assembly and prosecute persons participating in public assemblies or demonstrations. In **Turkey**, human rights violations of law enforcement agencies are creating a climate of fear and intimidation that is stifling the civic space, with recent amendments to law enforcement legislations that have expanded the powers of law enforcement officials to use force, including firearms, and have raised concerns about impunity for police brutality and misconduct.¹⁶

In **Nicaragua**, hundreds of persons who participated in the 2018 protests were detained and prosecuted for terrorism and organised crime offences under several national provisions defined broadly.¹⁷ The CAT has expressly recommended Nicaraguan authorities to repeal or amend those legislations to define clear, precise and narrow offences, and refrain from using these as a tool to persecute those who have participated in or supported social protests.¹⁸

In **Benin**, the UN Committee on Economic, Social and Cultural Rights expressed concern about the recent legislative amendments which may deter human rights defenders from carrying out their work and restrict their freedom of assembly.¹⁹ Section 237 of the new Criminal Code, in conjunction with its section 240, provides for a penalty of two months to one year’s imprisonment (involving compulsory labour) for delivering public speeches

¹⁴ United Nations Special Procedures, press release, “La France doit respecter et promouvoir le droit de réunion pacifique, déclarent des experts de l’ONU”, 15 June 2023.

¹⁵ [Rapport](#) des observatoires des libertés publiques et des pratiques policières sur la mobilisation contre le projet de méga-bassine à Sainte-Soline (24-26 mars 2023), 10 July 2023.

¹⁶ See Turkish Law No. 2559 on the Powers and Duties of the Police (Article 16), the Law on Gendarmerie, Anti-Terrorism Law (Additional Article 2) and Law No. 2911 (Section 4). See also “[Briefing note on police brutality in Turkey and excessive use of force against assemblies and demonstrations](#)”, OMCT, 2021.

¹⁷ See vagueness of the definitions of terrorism under Act No. 977 of 2018 on Combating Money Laundering, the Financing of Terrorism and Financing for the Proliferation of Weapons of Mass Destruction; the broad scope of Act No. 1055 of 2020 on the Rights of People to Independence, Sovereignty and Self-Determination for Peace; the Special Cybercrime Act (No. 1042 of 2020), Act No. 1040 of 2020 on the Regulation of Foreign Agents and articles 410 and 412 of the Criminal Code, relating to collusion with a view to undermining national integrity.

¹⁸ Nicaragua, CAT/C/NIC/CO/2, 2022, para. 24.

¹⁹ Benin, E/C.12/BEN/CO/3, 2020, para. 9.

or preparation and distribution of written materials during unarmed gatherings, which can disturb the public peace.²⁰

In **Burundi**, the UN Human Rights Committee recently expressed concerns about the existing legal provisions which requires prior authorisation to hold an assembly, in contravention with international standards.²¹ It also deplored that police officers, the National Intelligence Service, the *Imbonerakure*²² and local authorities have arbitrarily detained demonstrators or prevented demonstrations from taking place, in particular those organised by opposition political parties or trade unions; and that people have been forced to take part in meetings organised at local level by the ruling party or the *Imbonerakure*.²³

Lack of accessible and comprehensive legislation and protocols on the use of force

The UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement provides that “States and law enforcement agencies should be transparent about their regulation of the use of less-lethal weapons and related equipment and the policies on and criteria for their lawful use.”²⁴

Yet, use of force seems to be exercised, often, in a legal vacuum. Rules and regulations on the policing of assemblies, including the use of force and special equipment in the context of crowd management operations, are found in law enforcement manuals and protocols, particularly those regulating the tasks of anti-riots police. However, these protocols and rules of engagement are often not accessible to the public. Many law enforcement agencies refuse to publish such information, frequently using the justification that to do so could jeopardise their operations. Moreover, in many countries, rules are not systematically compiled in a single regulation and the thoroughness of regulations on the use of weapons is in doubt.²⁵

In this sense, the UN CAT has recently recalled that such protocols should be made public by State authorities.²⁶ The CAT has also established that protocols regulating the conduct of law enforcement officials during protests must comply with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials²⁷ and the UN Human Rights

²⁰ Act No. 2018-16 of 28 December 2018.

²¹ Burundi, CCPR/C/BDI/CO/3, 2023, para. 39.

²² The *Imbonerakure* are members of the youth wing of the ruling party CNDD-FDD, attributed with numerous human rights violations. For recent updates, see last [report](#) of the UN Special Rapporteur on the situation of human rights in Burundi.

²³ *Ibid.*

²⁴ UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement, HR/PUB/20/1, 2020, para. 4.4.1.

²⁵ This concern has been pointed out on numerous occasions by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), including CPT, [Report](#) to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 31 May to 12 June 2011, Strasbourg, 30 April 2013, CPT/Inf (2013) 6, para. 107.

²⁶ Spain, CAT/C/ESP/CO/7, 2023, para. 16.

²⁷ Kenya, CAT/C/KEN/CO/3, 2022, para. 12.

Guidance on the Use of Less Lethal Weapons in Law Enforcement.²⁸ It has also reminded on multiple occasions that legislation on the use of force and weapons should incorporate the principles of lawfulness, necessity and proportionality and the precautionary principle.²⁹ All State officers, in particular law enforcement officials, should be systematically trained on such protocols and on the use of force in the context of protests in conformity with international human rights standards.³⁰

In the United Kingdom, the authorities in certain jurisdictions make their policies and guidance on the use of force during assemblies freely available online. In the jurisdiction of England and Wales, the [College of Policing](#) is responsible for developing police guidance called “Authorised Professional Practice (APP)”, covering topics including “Public order public safety” and “Armed Policing”. A certain amount of information is restricted, for example on training materials and tactical advice. The information that is made public includes the effects, some of the associated risks and the intended use of certain weapons and munitions, including projectile electric shock weapons (Taser), kinetic impact projectiles (called Attenuating Energy Projectiles - AEPs) and chemical irritant and other pyrotechnic munitions.

-> In short, current regulatory frameworks on the use of force in the context of assemblies and demonstrations are insufficiently clear, accessible and systematic, falling thus short of the principle of legal certainty and casting doubt on the existence of a system with adequate and effective safeguards against arbitrary or abusive practices, namely an excessive use of force causing serious injuries or even death.

Use of inappropriate, dangerous or unlawful weapons and equipment

Globally, police continue to use inappropriate, dangerous or unlawful weapons and equipment. Some less lethal ammunition should never be used by law enforcement as it causes serious unwarranted injuries. This includes ammunition containing multiple projectiles, and certain types of single projectiles which are inherently inaccurate or inconsistent. Kinetic impact ammunition containing small rubber, plastic or metal pellets can be particularly dangerous, causing life changing eye injuries.

For example, in the protests that took place in **Chile** beginning in October 2019, carabineros fired over 100,000 rounds of ammunition containing rubber pellets (rubberised buckshot) at protesters resulting in hundreds of eye injuries.³¹ It subsequently came to light that the projectiles’ composition was not solely rubber, but also contained metal, highlighting the importance of rigorous testing and selection processes.

²⁸ Spain, CAT/C/ESP/CO/7, 2023, para. 16; State of Palestine, CAT/C/PES/CO/1, 2022, para 33.

²⁹ Iraq, CAT/C/IRQ/CO/2, 2022, para. 33; State of Palestine, CAT/C/PES/CO/1, 2022, para 33; Ethiopia, CAT/C/ETH/CO/2, 2022, para. 45.

³⁰ Spain, CAT/C/ESP/CO/7, 2023, para. 16.

³¹ National Institute for Human Rights (INDH), “INDH entrega nuevo reporte de cifras a cuatro meses de iniciada la crisis social”, 19 February 2020 (indh.cl/indh-entrega-nuevo-reporte-de-cifras-a-cuatro-meses-de-iniciada-la-crisis-social/)

The use of chemical irritants in the context of public gatherings is often contrary to international human rights standards. The UN Guidance on Less Lethal Weapons states that “chemical irritants should only be deployed where a law enforcement official has reason to believe there is an imminent threat of injury”. In addition warnings should be given, time given to comply, and an easy route of escape to a place of safety given to participants.

The use of kettling (containment of protesters) has been used in the **United Kingdom** in the policing of protests, and has been adopted in a growing number of jurisdictions.³² This tactic should never be used to stifle or discourage protest but only to prevent either ongoing or imminent violence and the risk of injury. OSCE-ODIHR monitors were present during the COP26 protests in Glasgow in 2021. They questioned the necessity and proportionality of the use of kettling on two occasions, with particular concerns including the failure to distinguish between violent and non-violent participants or to identify vulnerable participants such as children, the failure to provide food, water or access to toilets, and attempts to gather intelligence concerning kettled participants. ODIHR also described as “striking” the lack of communication by police as to the reasons for and duration of the containment.³³

In **France**, anti-riot police have used weapons, including less lethal weapons, which are not suited to the context of protests.³⁴ Moreover, the deployment of untrained law enforcement personnel who have no training in using such weapons makes their interventions even more hazardous.

Lack of appropriate training concerning the use of weapons

In the context of increasing right wing and anti-immigrant protests, Irish police representative bodies have denounced the lack of training and “operational guidelines” received by their members for managing assemblies.³⁵ The European Court of Human Rights has emphasised the importance of law enforcement officials not being “left in a vacuum when performing their duties”.³⁶ Law enforcement agencies should have human-rights based guidance on the use of each type of weapon and piece of equipment used by their officers. Officers should receive initial and refresher training on all the weapons and equipment they are authorised to use. This training should be both scenario-based and theoretical with human rights principles embedded into the training.

The selection and testing process should consider the risks of particularly likely or expected uses of the weapons, in scenarios of the expected use and particular consideration should be given to assess the potential effects on persons who may be especially at risk, for example children, the elderly, pregnant persons and the medically

³² See ECtHR, *Austin and others v UK*, Applications nos. 39692/09, 40713/09 and 41008/09, 15 March 2012.

³³ OSCE-ODIHR, *Report: Monitoring of Freedom of Peaceful Assembly in Selected OSCE Participating States* (September 2019 – November 2021), 2023, para. 249.

³⁴ ACAT France, <https://www.acatfrance.fr/rapport/l-ordre-et-la-force>; <https://www.acatfrance.fr/rapport/lordre-a-quel-prix>

³⁵ <https://www.thejournal.ie/protests-gardai-6071829-May2023/>

³⁶ ECtHR, *Izci v Turkey*, Application no. 42606/05, 23 October 2013, para. 63.

unwell. Ongoing monitoring of injuries caused by less lethal weapons is crucial in providing data to feed back into the testing and selection process, as well as to inform changes in policy, procedure and guidelines for use.

One example of positive practice is the United Kingdom, which has an established process for selecting, testing and deploying firearms and certain less lethal weapons. The UK Home Office's [Code of Practice on Armed Policing and Police use of Less Lethal Weapons](#) outlines requirements for police Chief Officers to follow, and although it is not legally binding, Chief Officers 'must have regard to the code'. The Scientific Advisory Committee on the medical implications of less-lethal weapons (SACMILL) provides independent advice on the biophysical, biomechanical, pathological and clinical aspects of less-lethal weapon systems. A statement of the medical implications of the tested device is provided by SACMILL.³⁷

- What further guidance, protocols and measures should be put in place to improve the protection of human rights by law enforcement while facilitating protests, including spontaneous and/or mass protests?

Principle of non-stigmatisation: to prevent the stigmatisation and criminalisation of protesters, a risk factor for violent responses by law enforcement, recent protocols enacted by the Colombian government on the facilitation and policing of protests establish the principle of non-stigmatisation.³⁸

Dialogue and mediation: There is a need to enact laws setting out the need for law enforcement officers to systematically engage in mediation strategies to de-escalate conflict before employing force; the latter should truly be a last resort and laws should set clear consequences when this rule –exceptional use of force- is infringed.

3) What are the main obstacles for law enforcement authorities in your country to facilitate and police protests in compliance with international human rights law and standards?

- Which of the measures taken by the law enforcement authorities did you find to be effective in order to overcome these challenges?

- What further measures should be taken by the authorities?

In **England and Wales** the political climate, and political interference in operational policing, are the main obstacles preventing compliance with international human rights law and standards. The new Police, Crimes, Sentencing and Courts Act (2022) and the Public Order Act (2023) both restrict the right to protest. Issues of concern with the new legislation include, for example, that it allows for protests to be stopped if they are

³⁷ See for example SACMILL [Statement](#) on Taser.

³⁸ Government of Colombia, Decree 003, 2021, *Protocolo de acciones preventivas, concomitantes y posteriores, denominado "Estatuto de reacción, uso y verificación de la fuerza legítima del estado y protección del derecho a la protesta pacífica ciudadana"*, article 3(l).

deemed too noisy or likely to be a nuisance but without any definition of “nuisance”, allowing very broad interpretive application of restrictions.

In **France**, a shortage of candidates to become police officers has prompted recent governments to ease the criteria for entering the profession. Training has also been drastically limited, due to a lack of resources coupled with a lack of political will to provide them with adequate resources. Law enforcement officers are not at all trained to respect human rights, and there seems to be a lack of understanding regarding this issue. Evidence suggests that most officers prosecuted for intentional violence during demonstrations are part of units mobilised for demonstrations, despite never having been trained to do so.

Moreover, the European Committee on Prevention of Torture (CPT) underlined that the wearing of visible identification numbers or names on law enforcement uniforms represents a key safeguard against ill-treatment and the fight against impunity. It therefore recommended on the authorities to ensure that police officers abide by the clear regulations in force on identification and that failure to do so should be sanctioned appropriately.³⁹

4) In the context of protests in crisis situations, which specific strategies and practices undertaken by law enforcement authorities **prior, during and after** protests did you find to be successful in order to ensure respect for and protection of human rights during protests in such contexts (such as during public health or security-related crisis, and/or during states of emergency)?

- What should be improved and how? What further guidance, protocols and other measures should be developed and what main elements these should include in order to prevent any unlawful restrictions, and to promote and protect human rights when facilitating protests in crisis situations?

During the COVID-19 pandemic many countries brought in emergency restrictions on the right to assembly due to what were stated as public health concerns. However, in many countries these restrictions were enforced with excessive force by law enforcement. Between 2020-2022 Omega documented instances of excessive use of force by police in these circumstances in at least 23 countries.⁴⁰

As part of this monitoring Omega also documented the use of chemical irritants in at least 18 countries during Covid.⁴¹ The American Thoracic Society called for a moratorium on the use of tear gas and other chemical agents deployed by law enforcement against protestors participating in demonstrations, citing “the lack of crucial research, the

³⁹ See e.g. CPT, 2017 Visit to Montenegro – CPT/Inf(2019)2, para.22; 2022 Visit to Montenegro CPT/Inf(2023) 1, para. 21.

⁴⁰ See, Omega Research Foundation, 2020, Coronavirus: [Mapping cases](#) of excessive use of force by law enforcement. See also OMCT, [Briefing report: Challenging detention and torture in times of COVID-19](#), February 2022.

⁴¹ Omega Research Foundation, “[Lowering the risk - Curtailing the use of chemical irritants during the COVID-19 pandemic](#)”.

escalation of tear gas use by law enforcement, and the likelihood of compromising lung health and promoting the spread of COVID-19". A large number of medical professionals and public health experts also underlined the risk presented by chemical irritants used during the pandemic, particularly in the context of the Black Lives Matters protests in the United States of America (US). Nearly 1,300 medical professionals stated their opposition to the use of chemical irritants, which "could increase the risk of COVID-19 by making the respiratory tract more susceptible to infection, exacerbating existing inflammation, and inducing coughing". The research highlighted the need for clearer guidance on the use of tear gas and other chemical irritants during public health emergencies.

5) Are you aware of any protocols for law enforcement and have you observed any positive measures taken by law enforcement authorities to prevent and protect protesters and activists from sexual and gender-based violence in the context of protests? How can these be improved?

In the context of feminist demonstrations and protests against gender-based violence against women, it is of utmost important that authorities refrain from making stigmatising statements in the lead up to the protest.

In **Argentina**, as detailed in the report [Defending Dissent: Towards State practices that protect and promote the rights to protest](#), after several episodes of repression following a demonstration for women rights in the city of Buenos Aires, a pre-event dialogue between organisers and officials in advance of a march on Women's Day helped to promote and facilitate the event. The protest proceeded peacefully.⁴²

A good practice observed in several countries, including Colombia, is the presence of women dialogue facilitators within the police managing the protest or as mediators from other State agencies, including National Human Rights Institutions.

6) What measures should be adopted by law enforcement authorities to prevent unlawful arrests and detention in the context of protests; as well as to ensure the human rights of those lawfully detained in the context of protests are respected according to the international standards, including being protected from torture and ill-treatment or sexual and gender-based violence?

- Kindly share any positive examples of measures and practices by law enforcement to protect protesters and activists from arbitrary arrest and detention, and to protect the human rights of those lawfully detained in the context of the protest.

To effectively prevent torture and ill-treatment in the context of peaceful assembly and protest, States should not only integrate basic general principles on the use of force by law enforcement officials and other instruments or documents issued by human rights mechanisms related to crowd management and the use of force, but also ensure a full

⁴² International Network of Civil Liberties Organizations (INCLLO) and the International Human Rights Clinic (IHRC), [Defending Dissent: Towards State practices that protect and promote the rights to protest](#), p. 47.

implementation of key legal and procedural safeguards from the first moment of arrest.⁴³ The moment of arrest and the first moments of custody by law enforcement are the periods during which a person is at highest risk of torture and other ill-treatment.⁴⁴ These are the moments when the power imbalance between law enforcement officials and those being deprived of liberty is the starkest. That risk can be further increased by discrimination and racism, thus placing person suffering from intersectional discrimination at even higher risk of torture, ill-treatment, and arbitrary arrest.

In this regard, torture prevention combined with an effective implementation of safeguards are paramount to address the excessive use of force by law enforcement specifically regarding racial profiling and systemic discrimination practices. As part of their obligation under article 2 of UNCAT to take preventive measures, States have the obligation to protect “certain minorities of marginalized individuals or population especially at risk of torture”. In fulfilling this treaty obligation to prevent torture and other ill-treatment, States are notably encouraged to implement certain basic guarantees, which when applied effectively, act as safeguards against torture and other ill-treatment.⁴⁵

Within this context, for example, law enforcement authorities should apply the [Principles on Effective Interviewing for Investigations and Information Gathering](#) – also known as the Méndez Principles – to prevent the use of torture and other ill-treatment during interviews of arrested persons, and throughout their detention. In accordance to the Principles, authorities responsible for questioning persons deprived of liberty should conduct interviews based on investigating interviewing methodology in association with the implementation of legal safeguards. Accordingly, interviewing officers are recommended to conduct interviews based on a relationship, rather than on confession and other coercive measures, to obtain more accurate and reliable information. In addition, authorities should ensure the application of safeguards and due process guarantees throughout the interview process, to ensure that no person is subject to coercion, torture and other ill-treatment. Importantly the Principles also call for law enforcement authorities to implement enhanced protections and special measures to address the specific needs and rights of persons in situations of heightened vulnerability, in particular as it relates to non-discrimination and protection against compelled self-incrimination. This may include an assessment of the situation and needs of the persons being interviewed, including on risks factors such as gender, gender identity or expression, and sexual orientation, to prevent sexual and gender-based violence.

It is also crucial, as stated in General Comment no. 37 of the UN Human Rights Committee:

30. The role of journalists, human rights defenders, election monitors and others involved in monitoring or reporting on assemblies is of particular importance for the full enjoyment of the right of peaceful assembly. Those persons are entitled to protection under the Covenant. They may not be prohibited from, or unduly limited in, exercising these functions, **including with respect to monitoring the actions of law enforcement**

⁴³ Human Rights Council, Resolution adopted by the Human Rights Council on 24 March 2016, “Torture and other cruel, inhuman or degrading treatment or punishment: safeguards to prevent torture during police custody and pretrial detention”, A/HRC/RES/31/31, 21 April 2016,

⁴⁴ See for e.g. CPT, [28th General Report](#), 2019, paras. 64-5.

⁴⁵ UNCAT article 2 (1).

officials. They must not face reprisals or other harassment, and their equipment must not be confiscated or damaged. Even if an assembly is declared unlawful or is dispersed, that does not terminate the right to monitor.

As mentioned above, civil society organisations can have a key role in promoting human rights-based policing and, thus, the peaceful development of a protest through the presence of monitors and observers. It is a good practice when law enforcement authorities, following their international obligations, stemming, among others, from articles 2, 12 and 13 of the UN Convention against Torture, facilitate such monitoring activity, especially in the context of police operations to disperse assemblies.

Yet, it is increasingly common to receive reports indicating that protest monitors, observers, human rights defenders and journalists have been targeted and arrested in the context of their coverage – monitoring of protests. In many countries there is legislation that bans or has attempted to ban the coverage of policing during assemblies.

Going back to General Comment no. 37 of the UN Human Rights Committee, it is mentioned that: “It is a good practice for **independent national human rights institutions** and non-governmental organizations to monitor assemblies”.⁴⁶

The undersigned organisations recommend that independent State institutions, including National Human Rights Institutions and National Preventive Mechanisms (NPMs), conduct monitoring activities relating to protests and demonstrations where the risk of torture and other ill-treatment is considered high.

As a matter of fact, a number of National Preventive Mechanisms (NPM) have started to monitor the use of force in extra-custodial settings, particularly in the framework of protests and demonstrations. This is the case, for example, of the ‘Preventive Human Rights Monitoring’ undertaken by the **Austrian Ombudsman Board (AOB)** that hosts the NPM, the body monitors the application of “coercive measures” including demonstrations, among a wide array of police operations.⁴⁷

Following a wave of arrests and violence during demonstrations at the beginning of 2021, the **Tunisian NPM**, for instance, undertook to monitor demonstrations and other political or social protests. According to the Tunisian NPM, this form of monitoring is part of the so-called “indirect” prevention, reducing risk factors for torture and ill-treatment. To this end, the NPM deploys its members to observe the facilitation and management of the demonstration, documents arrests made during and afterwards, and visits the centres where protestors are subsequently brought to. In the context of Tunisia, a country marked by the hegemony of the security apparatus with little checks and balances and where repression is rising, an NPM has an important role to play during demonstrations and protests.

⁴⁶ UN Human Rights Committee, General Comment no. 37, para. 30.

⁴⁷ <https://volksanwaltschaft.gv.at/en/preventive-human-rights-monitoring>

A recent practice that States should endorse and apply has been encouraged by the CPT and highlights the need for "zero tolerance " towards use of ill-treatment by police. For instance, in the case of Armenia, the CPT recommended "that the Armenian authorities continue to deliver, at regular intervals and from the highest level, a firm message of "zero tolerance" of ill-treatment to all police officers. As part of this message, it should be made clear that any police officer committing, aiding and abetting or tolerating ill-treatment, in any form, will be punished accordingly."⁴⁸

One positive development, advocated by many civil society organisations, is the use of **body worn video cameras** to increase oversight and accountability during policing in general, but for protests particularly. Adoption of BWV/BWC by police continues to increase in many jurisdictions. Such technology is by no means a panacea and there are many factors that influence the outcome of its use. Concerns include the failure to switch cameras on, or switching them off during use of force incidents, the deliberate or accidental loss of footage, the length of time audiovisual materials may be stored for and the possible chilling effect on assembly participants.⁴⁹ Nonetheless, as UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns encouraged States to consider the use of body-worn cameras as a means of preventing violations of the rights to life and the excessive use of force.⁵⁰

In relation to body worn cameras, the CPT has stated, in the context of a visit to Montenegro,⁵¹ that:

The Committee also underlines that in many countries, the use of body-worn cameras is a particularly effective means of preventing ill-treatment, as well as in protecting the police against false accusations. **The CPT recommends that the Montenegrin authorities consider the introduction of body-worn cameras for police officers effecting the apprehension of suspects, during escorting of suspects in police vehicles and during initial stages of deprivation of liberty, as well as for officers in front-line/ direct contact with suspects, or citizens, on police premises.**

In the same vein, in the wake of significant reductions in deaths arising from police operations in Sao Paulo following the roll-out of body worn video, many civil society groups have demanded its introduction elsewhere. However, the importance of choosing the right technology, establishing adequate oversight mechanisms and ensuring high level buy-in cannot be under-estimated. For example, body worn video will not lead to increased accountability for unlawful force where access to audiovisual materials is denied to the competent authorities. In Rio the Janeiro, the Public Defender's Office denounced that in the period from 27 April to 31 July 2023, police failed to respond to

⁴⁸ Visit Armenia CPT/Inf (2016)31, para. 16. See also visit Montenegro CPT/Inf (2023) 10, para. 24; visit Romania CPT/Inf (2022) 06, para. 14.

⁴⁹ See for example: "Police accused of widely misusing body-worn video in England and Wales" (<https://www.theguardian.com/uk-news/2023/sep/28/police-accused-widely-misusing-body-worn-video-england-wales>)

⁵⁰ A/HRC/29/37 para. 119.

⁵¹ CPT, Visit Montenegro, CPT/Inf (2023) 1), para. 22.

57% of its requests to access audiovisual materials and provided the complete recording in 3 of 90 incidents.⁵²

7) What law enforcement strategies and practices undertaken by law enforcement authorities **prior, during and after protests did you observe/experience to be effective for successfully de-escalating potential and actual tension/violence in the context of protests?**

- What have been the gaps and how these should be improved?

- *What is the role of civil society, protest organisers and communities in helping with de-escalating tension/violence in the context of protests?*

This question and subquestions are answered in previous and following points.

- *How law enforcement should involve civil society and protest organisers **prior, during and after** protests in order to prevent and de-escalate tension arising in the context of protests?*

As mentioned above, a good practice is the active and meaningful participation of civil society organisations in the design and preparation of a police operation ahead of a protest, especially those foreseen to be massive or involving high levels of tension (or the presence of counter-demonstrators). The developed example of **Colombia**, where protest organisers and protest monitors have taken part in meetings of the Unified Command Post (*puesto de mando unificado*, PMU),⁵³ at different phases, including during the planning and preparation of operations, is believed to constitute a strong reference in favour of such practices to prevent the occurrence of human rights violations, involving the right to liberty and the right to be free from torture and other ill-treatment.

It is equally critical to recognise, respect, protect and promote civil society participation in the monitoring, documentation and oversight of law enforcement operations in the context of protests. Networks of monitors across the globe have proven to be an efficient tool to de-escalate tensions, ensure the effective facilitation of assemblies and build trust among participants and law enforcement bodies. Civil society monitors are also a crucial safeguard to prevent excessive use of force and arbitrary arrests. According to the OSCE *Handbook on Monitoring Freedom of Peaceful Assembly*, “monitoring might involve a variety of activities, depending on the aims and objectives of the monitoring project. These include observing, recording and documenting assemblies, reporting on the monitoring findings and advocating for the implementation of recommendations”.⁵⁴

In **Spain**, CSO networks composed of human rights monitors created in [Barcelona](#) (#SomDefensores) and more recently in Madrid and Granada have been crucial to prevent

⁵² “In an event in Sao Paolo, Black Movement calls for body cameras against police violence” (<https://www.otempo.com.br/brasil/em-ato-em-sp-movimento-negro-cobra-cameras-corporais-contra-violencia-policia-1.3216897>)

⁵³ Government of Colombia, Decree 003, 2021, article 8.

⁵⁴ OSCE-ODIHR, *Handbook on Monitoring Freedom of Peaceful Assembly*, 2nd edition, 2020, p. 16.

human rights violations, document abuses and pursue accountability in the context of assemblies. These networks are not affiliated with the organizers of the protests and their role is the observation of the policing of assemblies. They wear a distinctive vest to be easily identifiable. Monitors inform the police in advance when a specific protest has been chosen to deploy an observation team.

In **Colombia**, Decree 003, 2021, recognises and regulates the existence of *Comisiones de verificación*, commissions composed of civil society observers in charge of the monitoring of the promotion and protection of human rights during assemblies. In order to generate greater coordination and dialogue with the authorities in charge of guaranteeing peaceful demonstrations and protests, the members of these Commissions must be identified by means of a visible badge.⁵⁵

Among their activities, verification commissions may, among others: observe, dialogue and mediate in the context of the exercise of the right to assembly; sit in the coordination tables (*mesas de coordinación*) prior, during and after assemblies to participate in the design of police operations and verify in real time the development of demonstrations.⁵⁶

It is worth highlighting that if organisers choose to liaise with law enforcement prior to protests, **law enforcement should act in good faith and treat these meetings as an opportunity to facilitate protest, build trust and de-escalate tension, not to gather intelligence with the aim of preventing protests**. In the United Kingdom, in 2023, the campaign group Republic informed the police that they would be holding a peaceful protest along the route of the coronation of King Charles III. In multiple prior meetings with police, the organisers were assured that their right to peaceful protest would be upheld. However on the day of the planned protest, members of Republic were arrested on conspiracy to cause a public nuisance whilst unloading protest placards.⁵⁷ This action by police will discourage future protest organisers from discussing plans with police.

8) What other measures have you found/experienced of law enforcement authorities undertaking to prevent and minimise the harm to protesters, journalists and other actors involved in monitoring and/or reporting on protests, and bystanders in the context of protests; especially:

- a) *in cases when the use of force may be justified as lawful; and*
- b) *to protect protesters from non-state actors?*

⁵⁵ Government of Colombia, Decree 003, 2021, *Protocolo de acciones preventivas, concomitantes y posteriores, denominado "Estatuto de reacción, uso y verificación de la fuerza legítima del estado y protección del derecho a la protesta pacífica ciudadana"*, article 17.

⁵⁶ Government of Colombia, Decree 003, 2021, *Protocolo de acciones preventivas, concomitantes y posteriores, denominado "Estatuto de reacción, uso y verificación de la fuerza legítima del estado y protección del derecho a la protesta pacífica ciudadana"*, article 18.

⁵⁷ "It massively backfired": Republicanism in spotlight after arrests"

(<https://www.theguardian.com/world/2023/may/09/it-massively-backfired-republicanism-in-spotlight-after-arrests>) and "Anti-monarchy protester suing Met chief over coronation day arrest

(<https://www.theguardian.com/uk-news/2023/sep/12/anti-monarchy-protester-suing-met-chief-over-coronation-day-arrest>)

During the OSCE-ODIHR Monitoring Mission to France in May 2022, to monitor the May Day 2022 protests in Paris, it was observed that whilst police use of force and chemical irritants was widespread during the protests, police did allow some participants, and ODIHR monitors, through police cordons to escape the effects of the tear gas. Thus they could move to safer spaces, and monitors were then allowed back to continue monitoring, once tear gas had dispersed. Protestors generally were not allowed to cross police lines.

9) What strategies, tools and techniques implemented by law enforcement authorities did you observe/experience to be successful (and which of these have been harmful and should be absolutely avoided) in order to facilitate the exercise of the right to freedom of peaceful assembly and protect the rights of groups particularly at risk in the context of protests, including:

- a) children and youth;
- b) women and girls;
- c) LGBTI persons;
- d) people with disabilities;
- e) indigenous peoples;
- f) minority groups;
- g) migrants;
- h) refugees and asylum seekers.

Law enforcement authorities should take into account, in the planning of operations to facilitate protests, other specific rights linked to groups such as gender equality in women's movements, or rights protecting migrants, children and adolescents, or indigenous peoples.⁵⁸ For instance, mediators appointed by law enforcement officials or other State agencies to facilitate or de-escalate tensions in a protest staged by indigenous peoples should be trained to understand different cultural sensitivities. Protests are also important for certain groups to express their identity and challenge intolerance and discrimination, such as LGBTQIA+ people and populations of African descent. It should however be underlined that in some countries, LGBTQIA+ people are not even allowed to participate in peaceful assemblies and demonstration, because of domestic law criminalising them (e.g. domestic laws criminalising homosexuality).

Ideally the police should reflect the make-up of the populations they are policing, and measures should be put in place to recruit, retain and promote persons from diverse backgrounds across all police functions. Such processes should be reported annually, with regular reviews of their effectiveness by independent oversight bodies.

States are encouraged to provide mandatory training to law enforcement officers to prevent torture, ill-treatment and excessive use of force against groups in vulnerable situations. Trainings can be provided to police officers on hate crimes⁵⁹ and on the

⁵⁸ IACHR, *Protest and Human Rights, Standards on the rights involved in social protest and the obligations to guide the response of the State*, OEA/SER.L/V/II, CIDH/RELE/INF.22/19, September 2019, para. 25.

⁵⁹ Bolivia, CAT/C/BOL/CO/3, 2021, para. 19.

identification of gender stereotypes and the repression of sexual and gender-based violence.⁶⁰ Any training should be aimed at improving operational policing outcomes and be measured against that, using suitable metrics, such use of force monitoring and reporting, and disaggregated data on use of force.

10) What strategies, policies or protocols, and measures should be put in place to ensure accountability for law enforcement officials alleged of committing human rights violations in the context of protests?

The lack of identification (or impossibility to identify) of law enforcement officials in the context of protests is one of the most common grounds for the discontinuation of investigations and prosecutions of cases of excessive use of force, including torture and other ill-treatment. Thus, **States should pass legislation and enforce requirements for every officer on duty to wear visible identification to ensure individual accountability and protection against torture and other ill-treatment.**⁶¹ Identification has to be marked on the helmet as well as on the upper body and back to be seen from different angles. Police officers not wearing or concealing their identification should be sanctioned.⁶²

In this sense, the CPT has underlined that the wearing of visible identification numbers or names on law enforcement uniforms represents a key safeguard against ill-treatment and the fight against impunity. It has therefore recommended authorities to ensure that police officers abide by the clear regulations in force on identification and that failure to do so should be sanctioned appropriately.⁶³

Systems should be put in place that ensure any means to project force are linked to the individual officer using them. This should include the logging out, and subsequently post-shift return of weapons, devices and equipment – this would include, for example, the weight of chemical irritant sprays to measure any loss, ie their use. Use of force reporting should be mandatory and completed each time force is used, with sufficient qualitative data to enable an assessment of protected characteristics such as race, gender etc of the target, and the circumstances of use. Weapons and devices themselves, and their ammunition and projectiles should be forensically marked in order to identify the firer/user. New technologies should be introduced that enable easier data capture, for

⁶⁰ Colombia, CAT/C/COL/CO/6, 2022, para. 17.

⁶¹ Germany, CAT/C/DEU/CO/6, 2019; Russian Federation, CAT/C/RUS/CO/6, 2018; Italy, CAT/C/ITA/CO/5-6, 2017.

⁶² For instance, in France, whereas a certain number of law enforcement officials fail to wear visibly their RIO identification (Référentiel des Identités et de l'Organisation) during law enforcement operations, no sanction has ever been imposed on them. Compulsory since 1 January 2014, all police officers and gendarmes are required to wear their RIO number, with a few exceptions. See: https://www.lemonde.fr/societe/article/2023/04/05/maintien-de-l-ordre-le-conseil-d-etat-doit-se-prononcer-en-urgence-sur-la-difficulte-d-identifier-policiers-et-gendarmes-en-manifestation_6168299_3224.html

⁶³ See e.g. CPT, 2017 Visit to Montenegro – CPT/Inf(2019)2, para.22; 2022 Visit to Montenegro CPT/Inf (2023) 1, para. 21.

example data capture on weapons can now include when it is withdrawn from a holster aimed, fired etc and can link to body worn cameras to ensure activation and recording.

Photographing or video recording the policing operation by participants or third parties, including the media or protest monitors, should not be prevented and any requirement to surrender film or digitally recorded images or footage to the law enforcement agencies should be subject to prior judicial scrutiny. Monitors, journalists and photographers should also be able to observe and record while protests are broken up or force is used. The role of media and protest monitors should be safeguarded and their physical and mental integrity protected. As stated by the European Court of Human Rights, the media provides a crucial role “in providing information on the authorities’ handling of public demonstrations and the containment of disorder (...) The “watchdog” role of the media assumes particular importance in such contexts since their presence is a guarantee that the authorities can be held to account for their conduct *vis-à-vis* the demonstrators and the public at large when it comes to the policing of large gatherings, including the methods used to control or disperse protesters or to preserve public order”.⁶⁴

It is also critical that law enforcement officials maintain a written and detailed record of the weapons deployed and force used. The *OSCE Guidelines* add that: “The use of force should then trigger an automatic and prompt review process after the event. Where injuries or deaths result from the use of force by law enforcement personnel, an independent, open, prompt and effective investigation must be undertaken.”⁶⁵

- *What should be done to ensure that any law enforcement oversight bodies are effective in responding to complaints about human rights violations by law enforcement in the context of protests?*

Allegations of excessive use of force, including those amounting to torture and other ill-treatment, as well as of unlawful arrest should result in timely, impartial, effective investigations. Findings and recommendations should be implemented in a timely way, and an independent body should measure and assess implementation of any recommendations and appropriate reparation, including rehabilitation, to victims and survivors.

In this sense, it is key to establish independent oversight and investigative mechanisms, which are not institutionally dependent on the law enforcement agency accused of committing abuses in the framework of protests.

To ensure that reparations are effective and accessible, they must be provided promptly and in accordance with the standards developed by the CAT, in particular its [General Comment number 3](#).⁶⁶ Furthermore, victims must be included in reparations processes

⁶⁴ See *Pentikäinen v. Finland*, Application No 11882/10, 20 October 2015, para. 89.

⁶⁵ OSCE-ODIHR and Venice Commission, *Guidelines on Freedom of Peaceful Assembly* (3rd Edition), 2019, para. 188

⁶⁶ CAT, General comment No. 3 on the implementation of article 14 by States parties, CAT/C/GC/3, 2012.

already at the design stage and have an effective voice in relation to what and how reparations are provided.

The CAT has recalled that for States to ensure prompt, impartial and effective investigations into all allegations of torture, ill-treatment and excessive use of force by law enforcement officials, investigative bodies have to be independent.⁶⁷ Sufficient financial and human resources must be allocated to the investigation body to effectively carry out its mandate.⁶⁸ States must ensure there is no institutional or hierarchical relationship between investigators for this body and the suspected perpetrators of acts of ill-treatment and excessive use of force.⁶⁹ States must also ensure that suspected officials are suspended from duty immediately and for the duration of the investigation, to avoid the risk that they might otherwise be able to repeat the acts alleged, commit reprisals against the alleged victim or obstruct the investigation.⁷⁰ Alleged perpetrators must be duly tried and, if found guilty, punished in a manner commensurate with the gravity of their acts; victims must be provided with adequate redress.⁷¹

The report [*Who polices the police: The role of independent agencies in criminal investigations of State agents*](#), published by Open Society Justice Initiative in 2021, contains a wide array of recommendations on how independent investigative bodies should operate to investigate and prosecute allegations of serious crimes against law enforcement officials and other State agents.

In the **United Kingdom**, the *Independent Office for Police Conduct (IOPC)*, investigates deaths, serious injuries or serious misconduct. Whilst it is independent in name, in practice it is reliant on police cooperation to carry out its statutory functions – but does not have powers to compel police to cooperate. This leads to lengthy delays in investigations being concluded.

For example, Alfie Meadows, a student severely injured by a baton strike to his head whilst peacefully protesting in 2010, had to wait until 2023 for finally receiving compensation from the police. The situation was: “aggravated by the length of time it has taken to get to this point, through which he faced numerous prosecutions, endured a lengthy investigation by the IOPC and a judicial review by City of London police attempting to prevent police misconduct proceedings, and the proceedings themselves.”⁷²

In **France**, for serious cases, investigations are entrusted to internal inspection services, such as the National Police General Inspectorate (IGPN) or the National Gendarmerie General Inspectorate (IGGN). In most cases, however, investigations are entrusted to the police or gendarmerie themselves. In both instances, institutional independence is

⁶⁷ Sweden, CAT/SWE/CO/8, 2021, para. 31.

⁶⁸ Kenya, CAT/C/KEN/CO/3, 2022, para. 30.

⁶⁹ Nigeria, CAT/C/NGA/COAR/1, 2021, para. 34.

⁷⁰ Nigeria, CAT/C/NGA/COAR/1, 2021, para. 34; Somalia, CAT/C/SOM/CO/1, 2022, para. 18.

⁷¹ Iceland, CAT/C/ISL/CO/4, 2022, para. 30; Kenya, CAT/C/KEN/CO/3, 2022, para. 12; Uruguay, CAT/C/URY/CO/4, 2022, para. 13.

⁷² “Met police agree six-figure payout to student hit by baton at protest “

(<https://www.theguardian.com/uk-news/2023/sep/15/met-police-agree-six-figure-payout-to-alfie-meadows-hit-by-baton-at-protest>)

virtually non-existent. IGPN and IGGN are internal inspection bodies staffed by police officers or gendarmes under the direct supervision of the national police or gendarmerie directorates, with questionable impartiality. While law enforcement is monitored by an independent body, the Ombudsman, its decisions are not binding. By the end of his mandate in 2020, the *Défenseur des droits* Jacques Toubon noted that, out of 36 suggested sanctions submitted to the Ministry of Home Affairs by his office, none had been followed by legal action against the designated officers. An independent institution with binding authority is needed to ensure systematic, thorough and effective investigation of all allegations against law enforcement officers.



Ending torture, seeking justice for survivors



For more information please contact: Helena Solà Martín at: hs@omct.org