



PROTESTING DURING A PANDEMIC

STATE RESPONSES DURING COVID-19

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INCLO

INTERNATIONAL NETWORK OF
CIVIL LIBERTIES ORGANIZATIONS

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ABOUT INCLO

The International Network of Civil Liberties Organizations (INCLO) is a network of fifteen independent national human rights organisations from different countries in the Global North and South. They work together to promote fundamental rights and freedoms by supporting and mutually reinforcing the work of member organisations in their respective countries and by collaborating on a bilateral and multilateral basis. Each organisation is multi-issue, multi-constituency, domestic in focus, independent of government, and each advocates on behalf of all persons in its country through a mix of litigation, legislative campaigning, public education, and grassroots advocacy.

The members of INCLO are: the Agora International Human Rights Group (Agora, Russia); the American Civil Liberties Union (ACLU, United States); the Association for Civil Rights in Israel (ACRI, Israel); the Canadian Civil Liberties Association (CCLA, Canada); the Centro de Estudios Legales y Sociales (CELS, Argentina); Dejusticia (Colombia); the Egyptian Initiative for Personal Rights (EIPR, Egypt); the Human Rights Law Centre (HRLC, Australia); the Human Rights Law Network (HRLN, India); the Hungarian Civil Liberties Union (HCLU, Hungary); the Irish Council for Civil Liberties (ICCL, Ireland); the Kenya Human Rights Commission (KHRC, Kenya); KontraS (Indonesia); the Legal Resources Centre (LRC, South Africa); and Liberty (United Kingdom).

INCLO advocates against government and police repression, and criminalisation of social protests and human rights activism. In fulfilling its mandate, INCLO has published three reports compiling standards and practices from INCLO jurisdictions. In 2013 INCLO published its first report, Take Back the Streets: Repression and Criminalization of Protest around the World, which documents case studies of police responses to protests from INCLO jurisdictions globally, drawing out the common trends and underlying problems. The second report, Lethal in Disguise: The Health Consequences of Crowd-Control Weapons, was released in 2016 in collaboration with Physicians for Human Rights and documents the misuse and abuse of crowd-control weapons, their detrimental health effects, and the impact of

their use on the meaningful enjoyment of the rights to freedom of assembly and expression. The third report Defending Dissent: Towards State Practices that Promote and Protect the Right to Protest was published in 2018 in collaboration with the International Human Rights Clinic (IHRC) of the University of Chicago Law School. The report provides a roadmap on how states, and their policing and security institutions can find ways to better serve the people, to protect their rights, and to identify and address counterproductive strategies and practices related to policing protests and assemblies.

Learn more at <https://inclo.net>

A. INTRODUCTION

The health, economic, and social emergency caused by the COVID-19 pandemic cannot be gainsaid. It has had an enormous global impact since it was first detected in late-2019. States have taken a wide array of measures in response to the crisis, ranging from limiting non-essential travel to severely curtailing movement and ordering full country lockdowns to attempt to mitigate and prevent the spread of the deadly virus. In most instances, these measures have had an immediate impact on civil liberties. More than 96 countries have enforced emergency measures, while 130 countries have introduced measures that affect the right to assembly and 50 that affect free expression.

Despite the need for quick and effective responses to the pandemic, the manner in which these measures have been implemented has highlighted existing practices by some governments that curtail civil liberties, and how crisis responses may exacerbate authoritarian tendencies and worsen existing inequalities. From the beginning of the crisis,

civil liberties and human rights organizations have monitored and warned against the immediate and long-term impacts these measures can have on human rights. They have highlighted the need for responses that — while based on science and following the advice of health experts and professionals — focus on protecting people and their rights during the pandemic and do not unnecessarily, disproportionately, and in discriminatory ways limit basic civil liberties.

Despite governments imposing significant restrictions on gatherings, protests have played a prominent part in the pandemic, whether as a part of ongoing social movements like in Chile, Hong Kong and India or catalyzed by ineffective governmental responses to the pandemic such as in Brazil. New protests have also emerged during the pandemic in response to police brutality, both inspired by the Black Lives Matter (BLM) movement or due to ongoing human rights violations like the anti-SARS protests in Nigeria. In response to the police murder of George Floyd in

FOR MORE ON UN GUIDANCE DURING THE COVID-19 CRISIS, HEAD TO PAGE 57.

Minneapolis, United States, anti-racism and anti-police brutality demonstrations were organized in more than 2,000 cities and towns in the United States and in more than 60 countries. During these protests, law enforcement officials not only failed to protect and facilitate the right to protest, but used disproportionate and unnecessary force and arbitrary arrests that targeted peaceful protesters, paramedics, and journalists, and caused several deaths and injuries.

In some instances, protestors have found creative ways to express their grievances and communicate their demands while following social distancing guidelines, such as the car caravan protests in Hungary and the United States, or placing flags on windows or balconies to indicate an urgent need for help in Colombia. In other instances, protestors' willingness to risk their health in order to protest was an indication of the dire situations they found themselves in, struggling to have enough to eat in India and South Africa, or facing overcrowded prison conditions in

Indonesia, Colombia and Argentina.

The excessive and discriminatory use of force by law enforcement and the criminalization of protests are ongoing and well-documented problems. Members of the International Network of Civil Liberties Organizations (INCLO) such as the Association for Civil Rights in Israel (ACRI), the American Civil Liberties Union (ACLU), the Centro de Estudios Legales y Sociales (CELS) in Argentina, the Egyptian Initiative for Personal Rights (EIPR) the Legal Resources Center (LRC) in South Africa, and the Kenya Human Rights Commission (KHRC) have all done work in this area. INCLO has also addressed these issues in its previous reports **Defending Dissent** (2018), **Lethal in Disguise** (2016),¹ and **Take Back the Streets** (2013).

Comparing government responses and civil society tactics during the COVID-19 pandemic is a unique opportunity to form a global perspective on the issues of criminalization of protest, and excessive and discriminatory forms of policing. It also offers

FOR MORE ON THE HUMAN RIGHTS FRAMEWORK AROUND THE RIGHT TO PROTEST, HEAD TO PAGE 56.

an entry point to ongoing questions and debates regarding government responses in times of crises and their impact on the right to protest, especially for marginalized groups. States of emergency are addressed in international human rights law and national laws to allow governments to respond to crises. Human rights law allows restrictions of certain rights where necessary to protect national security, public safety, or order, health or the fundamental rights and freedoms of others. **However, the uneven application of states of emergencies and other restrictions to rights during the pandemic has highlighted pervasive inequalities and exacerbated difficult relationships between law enforcement and communities that are disproportionately targeted. This paper seeks to engage with these challenges and better understand how to protect the right to protest during national and global health crises.**

At the beginning of the pandemic, commentators noted that the crisis would affect everyone, and that the virus would not discriminate. Very quickly, it became clear that this prediction was not entirely correct.

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... the uneven application of states of emergencies and other restrictions to rights during the pandemic has highlighted pervasive inequalities and exacerbated difficult relationships between law enforcement and communities that are disproportionately targeted.

FIND THE OHCHR'S RECOMMENDATIONS ON EMERGENCY MEASURES DURING THE COVID-19 CRISIS IN PAGE 57.

The health crisis did affect everyone, but not in the same manner. In many countries, marginalized communities, including racial minorities, were overwhelmingly affected by the COVID-19 crisis, as has happened with many other social crises. These communities have been severely impacted by lockdowns, faced worse living conditions and disproportionately high numbers of deaths. It may not be a coincidence that the biggest protests against racism in decades arose in the middle of the pandemic.

These communities faced both the impacts of the virus spreading quickly in crowded spaces and the state's failure to alleviate the economic hardships of the lockdowns or to address longstanding structural discrimination. Severe situations of inequality and massive protests demanding a change in social policies were already happening in many countries when the pandemic started. Analysis by INCLO member organizations shows that the pandemic further exacerbated and crystallized existing inequalities which, in turn, contributed to the eruption of protests against systemic racism and exclusion. The

fact that some of these protests were met with police violence and suppression reaffirms the critical need to protect the right to protest and its vital importance for more equal and pluralist societies.

Civil society organizations have sought to support those protesting for their rights during the pandemic and to push back against authoritarian tendencies that sought to misuse and abuse measures meant to respond to the COVID-19 crisis. INCLO member organizations have advocated for more community-led and human rights-centered approaches to pandemic responses. They have highlighted the need for these responses to both address the unique context of each country they are based in, and the common universal challenges that recognised civil liberties — especially the right to protest — face today, while continuing to follow the advice of public health experts. Given the uncertain length of the COVID-19 pandemic, identifying these practices can provide valuable tools and strategies for activists, protesters, civil society, and human rights groups both during this crisis and in future.²

B. GOVERNMENT RESPONSES TO PROTEST DURING THE COVID-19 PANDEMIC

CRIMINALIZATION OF PROTEST

A large majority of countries issued measures in response to the COVID-19 pandemic that placed bans or severe restrictions on public assemblies and thus impacted the right to protest. Protests have continued to take place, with some respecting social distancing guidelines. Protests have mobilized people from a wide political spectrum and communicated discontent related to issues ranging from ineffective pandemic responses, economic hardships occasioned by the pandemic, and ongoing police brutality to discontent instigated by conspiracy theories and far-right rhetoric. Civil liberties and human rights groups have raised concerns about ineffective approaches to the pandemic that have, in certain cases, led to the selective enforcement of criminal charges, fines, and other penalties by governmental authorities towards protesters, and in others, the enforcement of lockdowns that create blanket bans on protests.



George Floyd Protest Donald Trump Birthday Protest - New York City
IRA L. BLACK/CORBIS VIA GETTY IMAGES

“

Civil liberties and human rights groups have raised concern about ineffective approaches to the pandemic that have, in certain cases, led to the selective enforcement [...] and in others, the enforcements of lockdowns that create blanket bans on protests.



Protesters at a Black Lives Matter rally in Melbourne in June 2020. GETTTY / QUINN ROONEY

AUSTRALIA

In June 2020, massive Bla(c)k Lives Matter (BLM) / Aboriginal Lives Matter protests took place across Australia, involving tens of thousands of protesters. Although organizers took extra measures to allow social distancing, government officials condemned the protests, including the Australian Prime Minister who made a statement that protestors marching for BLM threatened the country’s economic recovery from the pandemic and should be charged if they marched. Some government ministers suggested that BLM protesters should lose social security payments, with one minister calling for protesters to return health related payments in advance of attending the protests. This statement came just days before

the Prime Minister announced that sports stadiums with crowds of up to 10 000 people were to reopen the following month. Protests faced similar inconsistent responses by the courts, with some ruling protests unlawful and others allowing them to continue. In Sydney, a last-minute decision by the Court of Appeal reversed the previous day’s Supreme Court ruling, authorizing almost 10 000 protesters to demonstrate without the fear of arrest under the COVID-19 restrictions. Another decision by the New South Wales (NSW) Supreme Court prohibited a protest for refugee rights, which was expected to attract between 150 and 200 protesters, due to health risks.

HUNGARY

In Hungary, the government introduced a general ban on protests allegedly to counter the COVID 19 pandemic. As a result, two independent Members of Parliament (MPs) and an opposition party called for a driving demonstration to protest the government’s decision to evict current patients to free up hospital beds as well as other failures in dealing with the health crisis. The first protest held on 20 April 2020 received little response from law enforcement. When the organizers called for weekly driving protests, police began cracking down and allocating excessive, and in some cases, repeated fines to protesters. The organizers finally decided to cancel the sixth protest after the overwhelming number of fines. Judicial reviews at the end of 2020 modified the fines to warnings. The crackdown on these protests that respected social distancing guidelines were in sharp contrast to the Hungarian government’s response to a protest organized by far-right groups that gathered several thousand people in Budapest on 28 May 2020. The reasons for the different treatment of protests by law enforcement remains unclear, but it has undermined public confidence in the authorities and has led to uncertainty among citizens intending to protest in the future.



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IN RESPONSE, HCLU REPRESENTED SEVERAL PROTESTERS AND CREATED A KNOW-YOUR-RIGHTS GUIDE VISITED BY OVER 1 MILLION PEOPLE. READ MORE ON PAGE 51.

Indonesia - 22 Oct 2020 : A man attempted to invade a transmitting pole and raise a flag during the protest against the Job Creation Act.
RIVANLEE ANANDAR

INDONESIA

Since the beginning of the COVID-19 pandemic, Indonesian authorities, especially the police force, have released several regulations that have impacted the right to protest. Notably, the chief of the Indonesian National Police instructed the police force to criminally charge anyone who, according to the police, was guilty of defamation toward the president, other public officials, or state institutions. These instructions were in direct conflict with a ruling by the Constitutional Court in 2007 that had revoked articles in the Penal Code regarding criminal defamation. The chief of the Indonesian National Police also provided additional instructions to all police branches stating that permission for any gatherings, including protests, should not be given; that the health quarantine law should be used to criminally prosecute anyone who engaged in gatherings; and that the police's public relations strategy should dissuade people from gathering.



These policies and instructions were not consistently applied by law enforcement. The police used pandemic restrictions on gatherings to disperse several protests against special autonomy in Papua and a protest regarding minimum wages in Batam. In contrast, several gatherings organized by public officials were not forcefully dispersed, including a concert arranged by the head of a Regional People's Representative Office in Tegal, Central Java. The Indonesian government also decided to hold simultaneous regional elections in 270 regions, which meant numerous gatherings for political campaigning. KontraS found that many gatherings during the election campaign period failed to strictly implement health protocols such as physical distancing and wearing masks.



Dublin, Ireland - 1 June 2020 : Thousands of people marched through Dublin in solidarity with Black Lives Matter protesters in the United States. SHUTTERSTOCK / 4H4 PHOTOGRAPHY

IRELAND

In Ireland, the COVID-19 crisis gave rise to a debate regarding whether protests should be allowed as a reasonable excuse to leave one's place of residence during COVID-19. At different points during 2020, different sizes of gatherings for events were allowed from 15 to 50 people. However, regulations did not expressly carve out the protest as a reasonable excuse exemption. As a result, protests were policed inconsistently during the pandemic, sometimes depending on region, with police cracking down on protests in Dublin in the early stages of the pandemic, more so than in other regions. However, as restrictions were eased into the summer more and more protests could take place, including those opposing the lockdown.

The debate around whether protest should be allowed became urgent when the first large marches during the pandemic were organized in solidarity with BLM. In contrast with previous protests during the pandemic that ranged from a few protesters to a few dozen, on 1 June, between 1 000 and 5 000 people took part in a BLM solidarity march in Dublin. Although demonstrators largely wore face masks, the Gardaí — the Irish Police Service — took the details of some protesters indicating that despite their attempts to respect social distancing guidelines, they needed to investigate breaches of COVID-19 regulations, in particular the restrictions on organizing events. The media reported that the police had passed files to the Director of Public Prosecutions to potentially prosecute these breaches by BLM protest organizers and by far rights protesters opposing the lockdown. However, there have been no publicly reported prosecutions for organizing protests. Although the Gardaí's response did not stop all demonstrations, it did have a chilling effect on some organizers who cancelled planned protests.

ISRAEL

In mid-March, Israel announced a partial lockdown and several measures, including a ban on gatherings of more than 10 people, to minimize the COVID-19 outbreak. Despite these measures, a wide range of protests were organized throughout the year, despite challenges from police who responded to protests inconsistently and misapplied COVID-19 regulations. Israeli law enforcement reportedly used fines and arrests in an unjustified and discriminatory manner, and as a means for dispersing demonstrations or for punishing demonstrators for participating in the protests. Monitoring groups have also warned of a new practice of law enforcement officers filming protesters on their cellphones, which deter demonstrators and violate their freedom of expression, their right to protest, and their right to privacy.

Among other practices, the police extensively enforced the offence of “refusal of an instruction to disperse a gathering”. Many protestors and passers-by were given fines despite no order to disperse being issued. At demonstrations in Tel Aviv, protestors were fined in instances when the police itself surrounded them and blocked their exit and egress (known as the “kettling”). Demonstrators who organized protests were often fined when they did not present any risk of infection or any danger of any other kind to the public. As early as March 2020, significant fines were issued to hundreds of demonstrators who participated in a convoy to Jerusalem and the Knesset protesting parliamentary and political developments. The fines were issued at dedicated roadblocks established by the police for this purpose. The result of these policing practices during the pandemic is the unjustified denial of demonstrators’ liberty, their stigmatization as lawbreakers, and the deterrence of citizens from participating in the protests.



Around 6000 Israelis and Palestinians protest against Netanyahu's plan to annex parts of the West Bank in July, Rabin square, Tel Aviv, June 6, 2020. ACTIVESTILLS / OREN ZIV



A woman protests the death of George Floyd in Mineapolis. THABO JAIYESIMI/ALAMY LIVE NEWS

UNITED KINGDOM

In the United Kingdom, unclear lockdown regulations — brought in unnecessarily using emergency powers and without effective parliamentary oversight — have been used by police to restrict the right to protest. As a result of the government’s refusal to allow and facilitate protests during the lockdown, people’s administrative law rights to challenge these decisions have been undermined and protesters have been criminalized and intimidated. Threats of prosecution of protesters were made by government officials after the removal of a slave trader statue by protesters in Bristol, which sparked counter-protests from conservative groups. Ministers indicated they would support extending

sentences for damaging statues, while other government authorities put forward a measure under which protesters could be jailed within 24 hours. This was particularly alarming given the growing evidence of widening disproportionality in policing practices in the United Kingdom and the findings of a Liberty Investigates report that found that expanded police powers during the pandemic had been overwhelmingly deployed against people of colour.

TO READ MORE ABOUT LIBERTY INVESTIGATES REPORT AND OTHER ACTIONS THEY TOOK DURING THE COVID-19 CRISIS, HEAD TO PAGE 49.



Los Angeles, California / USA - May 28, 2020: People in Downtown Los Angeles protest the brutal Police killing of George Floyd. SHUTTERSTOCK / MATT GUSH

UNITED STATES

More than any other protest movement of 2020, the BLM demonstrations sparked by the murder of George Floyd by a police officer and other similar incidents have tested and highlighted the disparities in the enforcement of COVID-19 regulations that limit gatherings in the United States. The use of curfews to curb rallies, mass detentions of peaceful protesters and the threats by authorities to prosecute demonstrators indicate a desire to clamp down on protesters, rather than protecting the health of protesters or defending their right to protest. Federal, state, and local governments resorted to excessive and indiscriminate use of force, arrests, and attacks on BLM protesters. Over 17,000 protesters were arrested in the first two weeks following George Floyd's murder alone.³ In the vast majority of these cases, charges against protesters were dropped, dismissed, or otherwise not filed, indicating that the mass arrests were baseless. Police also targeted journalists who had visible press identification, causing injuries and detaining

journalists who were in the process of covering protests. Since 26 May 2020, there have been over 400 instances of journalists being detained, assaulted, or otherwise prevented from performing their duties by police.

Amidst the COVID-19 pandemic, police failures to facilitate peaceful protests (including by refusing to wear masks) also increased health risks for police, protesters, bystanders, and the community at large. Specific police tactics like kettling — essentially trapping protesters and bystanders into a limited, often crowded area with only one point of exit controlled by officers — were even more troubling during a pandemic because they heighten the risk of infection by forcing large numbers of people closer together. Similarly, arresting protesters and holding them overnight would likely exacerbate the spread of COVID-19, pushing more people into jails that had become hotbeds of infection. And public health experts cautioned that the use of particular police weapons, including tear gas and pepper spray, could heighten COVID-19 risks by causing people to cough and gasp for air.



LONDON Zabou, "Racism is a virus," Urban Art Mapping: Covid-19 Street Art, accessed April 8, 2021.

MAIN TAKEAWAYS



In response to the COVID-19 pandemic, governments have introduced measures that have impacted and restricted the right to protest, even when protest organizers have taken measures to follow social distancing guidelines, such as in Hungary, Ireland, and Australia.



Governmental authorities, including law enforcement institutions, have used COVID-19 measures to threaten protesters and activists with fines and prosecution in Australia, Hungary, Indonesia, Ireland, Israel, and the United Kingdom, among others.



Law enforcement officers have been deployed unevenly to respond to protests during the COVID-19 pandemic in Australia, Indonesia, Israel, and the United States, leading to questions around the objective, purpose, and role of law enforcement in a public health crisis.

EXCESSIVE AND DISCRIMINATORY IMPLEMENTATION OF COVID-19 RESPONSE MEASURES

To swiftly respond to the health crisis, many states declared states of emergency, giving authorities and law enforcement more power with fewer restrictions. Civil society groups have been vocal about the potential danger of these expanded powers when their use is not limited to the health crisis response, and there is no clear deadline by when those powers will be scaled back. Without these parameters present, COVID-19 responses have been used by some governments to continue their efforts to expand and concentrate their power and target dissidents. The implementation of COVID-19 governmental responses has also highlighted long-term structural issues which overwhelmingly affect the economically marginalized.

THE CONCENTRATION OF STATE POWER: HUNGARY AND RUSSIA

The COVID-19 responses by the Hungarian and Russian governments have sought to take advantage of an emergency to expand their powers. In March, the Hungarian government declared a national “state of danger” to counter the COVID-19 pandemic and a subsequent law extended the government’s power to rule by decree. On 16 June, the Hungarian Parliament voted to end the controversial emergency powers, but civil rights groups remain concerned that those emergency powers will be integrated into normal law. Their fears were substantiated, as after the parliament enacted a health emergency law, intending to empower the government to tackle the next waves of the pandemic, the government again declared a state of danger.

In Russia, the Parliament approved a law allowing the federal and regional authorities to enact unchecked restrictions on human rights in the course of a so-called “high alert preceding a situation of emergency”. This vague regime of “high alert” was used instead of the pre-existing “quarantine”, “situation of emergency”, and “state of emergency,” all of which had more precise legal frameworks. In both of these cases, these efforts to expand and consolidate power are not a departure from, but rather a continuation of, the current government’s authoritarian tendencies.



RUSSIA
Nikita Nomerz, “Social distance,” *Urban Art Mapping: Covid-19 Street Art*, accessed March 29, 2021.

CANADA

A Bronwyn Schuster, "Woman with face mask," *Urban Art Mapping: Covid-19 Street Art*, accessed March 29, 2021.

ABUSE OF STATES OF EMERGENCY: CANADA, COLOMBIA, IRELAND, AND THE UNITED KINGDOM

Despite there not being a clear timeline for a resolution to the COVID-19 pandemic, the issuing of broad emergency measures with specific time limits has been a primary concern of monitoring groups. The dangers of emergency powers, without a clear end date, mobilized the Irish Council for Civil Liberties (ICCL) who closely monitored proposed emergency legislation. Their in-depth analysis was sent to all members of the Irish Parliament ahead of debates and ultimately secured a sunset clause (a clause that stipulates when specific provisions will cease to have legal effect) in the emergency legislation. Similarly, Liberty alongside a coalition of civil society groups monitored the development of the emergency Coronavirus Act in the United Kingdom. These monitoring efforts led to the inclusion of a provision providing for a parliamentary vote on the extension of the legislation every six months.



In Canada, several provinces took steps to amend their emergency laws, attempting to broaden powers conferred on the executive branch during an emergency. In Alberta, for example, the government rushed through legislation that retroactively sought to validate legal orders that it had previously made as part of the state of emergency and expand the powers of the executive going forward. The changes to the law were widely criticized and a special committee was charged with reviewing the changes. The Canadian Civil Liberties Association (CCLA) made submissions before that committee and the government has since promised to repeal the changes to the law. In Ontario, the provincial government also rushed through legislation to allow it to continue to exercise extraordinary emergency-like powers, despite ending the official state of emergency and significant concerns being raised by the CCLA and other civil society groups.



The Colombian government's COVID-19 response, although more centralized, included over 100 decrees. The first decree, issued in March 2020, declared a state of economic, social, and ecological emergency. Further decrees developed measures to alleviate the crisis caused by COVID-19. Dejusticia intervened in the constitutionality review of the decree declaring the State of Emergency, which was ultimately declared constitutional. Despite the declaration of constitutionality, the decree allowed for certain abusive measures and the excessive use of force from the Police in compliance with the measures decreed by the government. For example, the decree included the imposition of fines for not complying with confinement, the militarization of cities, and the abuse of authority in access control to businesses and public spaces.

People ask for food with red rags hanging from their windows on a poor neighborhood on April 25, 2020 in Bogota, Colombia. JOHN VIZCAINO / VIEWPRESS VIA GETTY IMAGES

THE IACHR'S RECOMMENDATIONS TO COLOMBIA AND OTHER LATIN AMERICAN GOVERNMENTS EMPHASIZED THE CRITICAL NEED TO PROTECT HUMAN RIGHTS DEFENDERS. TO FIND THE FULL GUIDANCE AND OTHERS, HEAD TO PAGE 57.

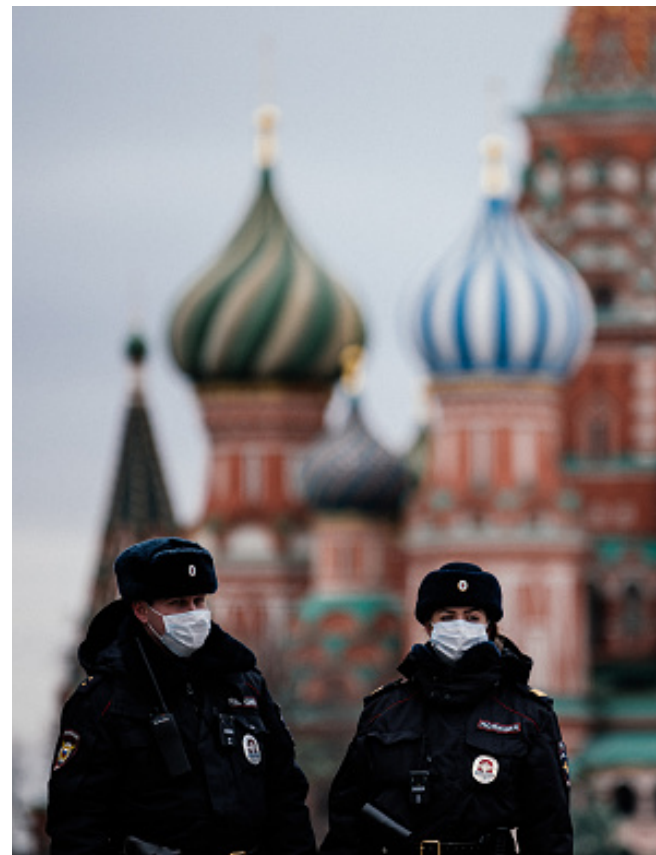


The Fearless Collective is a group of women who street art with local communities. OPEN DEMOCRACY / GAYATRI GANJU

TARGETING DISSIDENTS: KENYA, HUNGARY, INDIA, AND RUSSIA

In response to the pandemic, Russia's Criminal Code was amended to establish prison sentences of three to five years for the public dissemination of false information that threatens public health. The dissemination of information on the pandemic, if deemed false by the authorities, became a regulatory offence punishable by fines. Several convictions occurred under both provisions, with all accused's sentenced to non-custodial sentences, including for a factually verified social media post on the shortages of protective gear for doctors.⁴

Hungary created similar new crimes under its emergency regulations. Based on these regulations, any communication or publishing of a statement one knew to be false or



Police officers patrol on March 30, 2020 on the deserted Red square, Moscow as the city and its surrounding regions imposed lockdowns to slow the spread of the COVID-19.

GETTY IMAGES / DIMITAR DILKOFF

with a reckless disregard for its truth or falsehood with intent to obstruct or prevent the effectiveness of protective measures could be punished with one to five years of imprisonment. Uncertainty about the wording of the measure and the expansion of its applicability beyond scenes of public danger resulted in a chilling effect on critical views on the effectiveness of the pandemic-related governmental measures. Shortly after its commencement, the Hungarian police started to apply the new rule in a demonstrative way: two citizens, one of them an opposition activist, who expressed their opinion on social media had their homes raided and were arrested for scare-mongering. Though the prosecutor decided not to prosecute, the police still published its recordings of the



An activist is detained by security forces during anti-government protests dubbed "Saba Saba People's March", in downtown Nairobi, Kenya July 7, 2020. REUTERS / THOMAS MUKOYA

arrest, demonstrating the legislation's aim of chilling the expression of critical views of the government during the pandemic.

In India, COVID-19 regulations caused a long-lasting sit-in demonstration against a new citizenship law that is discriminatory against Muslims to end. The sit-in demonstration had been in place in Shaheen Bagh, Delhi since December 2019 and had originally gathered hundreds of thousands of people. Despite limiting demonstrators to a few dozen people to respect the government's social distancing guidelines, on 24 March 2020, hundreds of police in riot gear forced the protesters to leave, arresting nine people who resisted and bulldozing the tents and banners at the protest site.

Similarly, in Kenya, pandemic restrictions were used to clamp down on the annual commemorative march known as Saba Saba held on 7 July and arrest the activists that organized it. More than 50 activists were arrested as they marched in Nairobi protesting against police brutality in the enforcement of a curfew to contain the rise of coronavirus cases. Heavily armed police officers were deployed to disperse demonstrators and were accused of infringing free speech as they targeted protest organizers in their arrests. Similar accusations were made when police tear-gassed demonstrations protesting alleged corruption and theft of supplies by government officials in charge of the fight against COVID-19.



In Argentina, in late-October, about 1 400 families living in the informal settlement, Guernica, were evicted and their homes destroyed and burned by law-enforcement officers. ANRed / GERMÁN ROMEO PENIA

FORCED EVICTIONS DURING THE PANDEMIC: ARGENTINA, COLOMBIA, KENYA, AND SOUTH AFRICA

The economic impact of lockdown requirements during the pandemic hit those working in the informal sector and the unemployed especially hard. In some places, the government response to the pandemic has made their situation even worse, increasing the difficulties to meet their basic needs of shelter and food.

In Argentina, in late-October, about 1 400 families living in the informal settlement, Guernica, were evicted and their homes destroyed and burned by law-enforcement

officers. Over 4 000 police officers were involved in the removal of Guernica residents, which included families with children. Many of the residents were removed violently and with the use of pepper spray and rubber bullets. 46 residents were detained. Since the end of July, over 2 500 families — previously homeless or in precarious living situations — had settled in this private land in the periphery of Buenos Aires, although the majority had already agreed to reallocate. CELS and other human rights organizations criticized the handling of the situation, stating that it failed to address the economic and housing crisis the Guernica settlement embodied and that the forced eviction ignored ongoing dialogue that civil groups were facilitating between residents and the provincial government authorities.



People ask for food with red rags hanging from their windows on a poor neighborhood on April 25, 2020 in Bogotá, Colombia. GETTY IMAGES / JOHN VIZCAINO

From the start of the national lockdown, workers in the informal sector in Colombia protested the government measures that decimated their source of income. The protesters have also demanded financial support. At the start of April, people began placing red cloths on their windows to indicate a need for food and other supplies. In an informal settlement in Bogotá, residents were evicted during police raids and had their homes partially destroyed. To carry out these evictions, the Mayor's Office of Bogotá authorized the Mobile Anti-Riot Squad to use force, including the use of irritating gases and other less-lethal weapons.

In Nairobi, officials forcibly evicted 7 000 people living in informal settlements and bulldozed their homes. The evictions were

conducted early in the morning with families saying they had received notice less than 24 hours prior, or no notice at all and in total disregard of a Court order that KHRC had obtained barring any eviction of these residents. Police officers would later on forcefully disperse residents using tear gas and water cannons after they blocked a busy bridge in protest.

In South Africa, social justice organizations highlighted the impossibility of many to follow safety protocols given their lack of adequate housing or proper access to water and sanitation and advocated for better protections for the most vulnerable. Additionally, there were concerns raised about evictions, removals, and demolitions being carried out in different parts of the country. The LRC filed several application proceedings to halt illegal evictions and harassment of residents of informal settlements by the City of Cape Town.

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The economic impact of lockdown requirements during the pandemic hit those working in the informal sector and the unemployed especially hard. In some places, the government response to the pandemic has made their situation even worse, increasing the difficulties to meet their basic needs of shelter and food.

THE DISPROPORTIONATE IMPACT OF COVID-19 MEASURES ON MARGINALIZED COMMUNITIES: CANADA, COLOMBIA, ISRAEL, UNITED KINGDOM, AND THE UNITED STATES

Black, indigenous, and people of colour (BIPOC) communities have been disproportionately impacted by the COVID-19 pandemic and the implementation of regulations.⁵ Structural inequality and pervasive racial disparities in policing practices have become further crystallized in the different responses from law enforcement to those protesting during the pandemic.

In Canada, the CCLA was vocal about the impact of punishing individuals who were unable to obey public health rules (because of personal circumstances like homelessness) and raised concerns that measures like curfews and stay-at-home orders created conditions that were ripe for abuse by law enforcement. When the province of Quebec instituted a curfew during the second wave of infections, the government argued that homeless people would not be exempt, stating, inaccurately, that there were adequate shelter spaces. A legal challenge to the curfew's application to

TO READ ON HOW A COALITION ADVOCATED FOR BETTER CONDITIONS FOR THE HOMELESS POPULATION IN TORONTO DURING THE COVID-19 CRISIS, HEAD TO PAGE 50.

the homeless was successful, but not before several homeless persons were given hefty fines and one homeless man died tragically just steps away from a shelter that was closed for the night.

In Colombia, the relationship between socioeconomic inequality and police abuse has become even more pronounced during the pandemic. After heavy police repression occurred during #9S protests on 9, 10 and 11 September 2020, CeroSetenta, an independent digital journalism platform, conducted an investigation using more than 200 videos collected on social media that indicated that police disproportionately used excessive force when responding to demonstrations in middle-class or poor neighbourhoods. Data regarding shots fired and people injured and killed by police were consistent with the trends found in investigations carried out by Dejusticia in 2013 and 2015, both focused on police forces, security, and inequality. These



Toronto, Canada - Oct 27, 2020: Sign winter is coming we need permanent housing now at homeless tent camp at Trinity Bellwoods Park. SHUTTERSTOCK / ELENA BERD



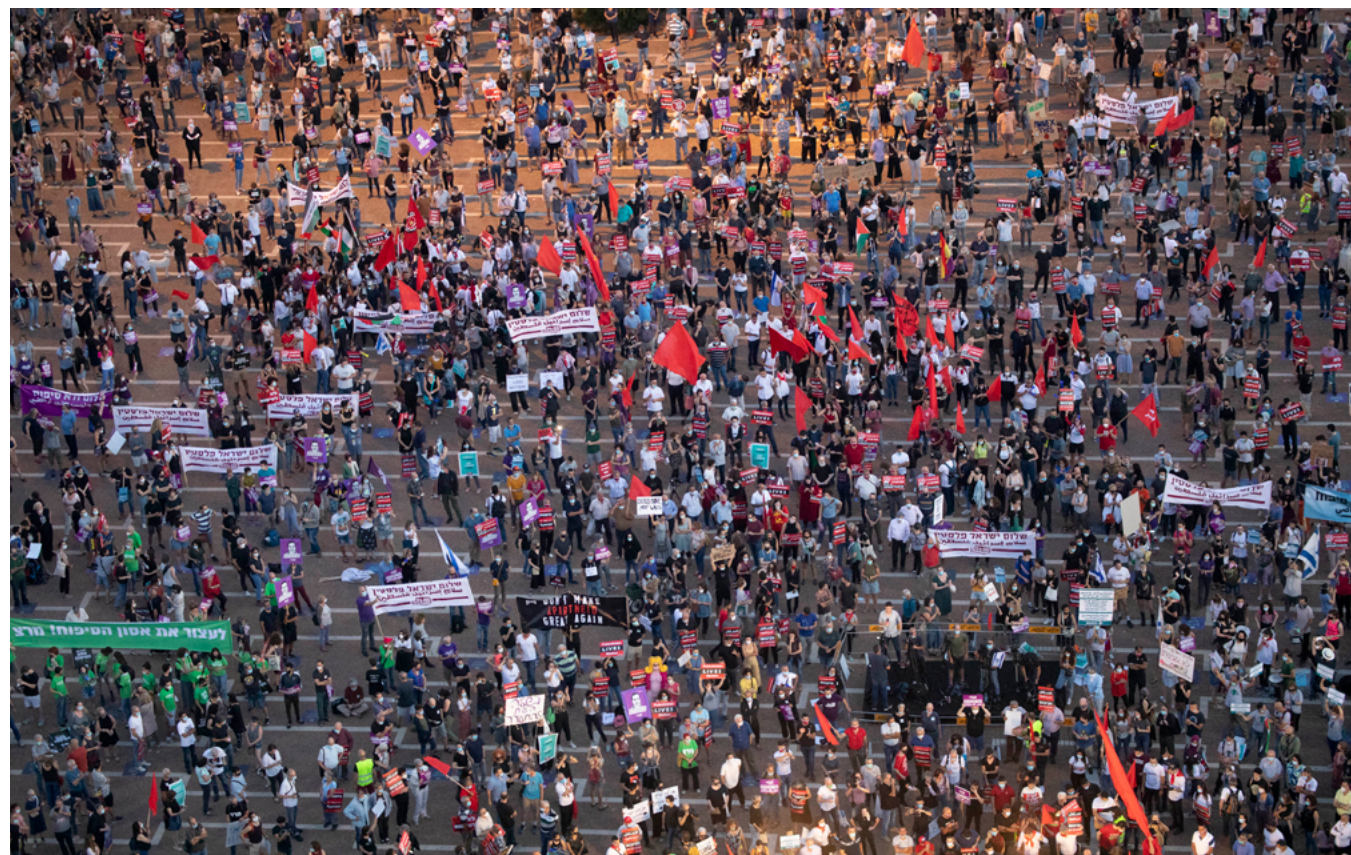
USA "BLM Cop Car: A Riot is the Language of the Unheard," George Floyd & Anti-Racist Street Art, accessed April 8, 2021.

investigations found that those most likely to suffer from police abuse were lower-income persons that identify as Black or indigenous and whose appearance is connected to an urban subculture.

As protests triggered by the murder of George Floyd grew in the United States and around the world, Dejusticia drew parallels to the recent murders of two young people by police in Colombia. One of them, Anderson Arboleda, a person of African descent, was killed by police on 20 May 2020 outside of his home. Anderson was attacked by police for allegedly violating quarantine rules when saying goodbye to his younger brother from the door of his house. Police hit him on the head twice and used tear gas on him and his

family. He died hours later in his bed from a cranio-cerebral injury. The death of Anderson Arboleda is part of a consistent pattern of arbitrary violence and impunity by law enforcement against historically marginalized populations in Colombia.

Indigenous peoples in Colombia have also disproportionately suffered during the pandemic. Before COVID 19, indigenous peoples were already facing marginalization due to a majority living in poverty and their rights to health, food, drinking water, among others being historically violated. The Wayúu people, for example, who live in the La Guajira peninsula, face serious and structural problems in accessing their fundamental rights. For years, children have been dying



Around 6000 Israelis and Palestinians protest against Netanyahu's plan to annex parts of the West Bank in July, Rabin square, Tel Aviv, June 6, 2020. ACTIVESTILLS / OREN ZIV

of malnutrition and dehydration due to a lack of food and clean water. Despite having judicial pronouncements on the matter, the government's plans to address this problem of rights violations have been insufficient.

The pandemic has created even greater difficulties for the Wayúu people, who in addition to contagion by coronavirus must worry about hunger. Mandatory isolation measures and restrictions on movement have had negative consequences for the many Wayúu people working in the tourism sector, both formally and informally, who without an income have difficulty accessing food and water. Wayúu communities have blocked important avenues in protest to request government aid, but the aid has

not been enough and protests have been repressed by the police. Likewise, the closure of schools has left children without access to the school feeding program. The scope of the impact of the government measures may go even further, however it is hard to accurately measure given that institutions do not systematically record information, leading to underreporting.

In Israel, discrimination in the exercise of enforcement powers and racial profiling is not a new phenomenon. For many years, the police have adopted a hardline policy toward protestors from minority groups — particularly Arabs, members of the Ethiopian community, people of Mizrahi appearance, and Haredim — who are automatically regarded



Demonstrators in Plaza de de Bolívar in Bogotá during the National Strike.

LIA VALERO

by the police as a threat requiring a harsh response and the use of force. This pattern has been seen, for example, during protests by members of the Ethiopian community against police violence, demonstrations by Haredim opposed to military service, and demonstrations by the Arab population. These responses create a sense of exclusion, contempt, and degradation, and has severe social consequences.

In the United Kingdom, Liberty warned that handing police broad powers to enforce restrictions on movement and gatherings during the pandemic, and urging them to use "their discretion" when applying them, would lead to communities of colour bearing the brunt of arbitrary policing. Analysis conducted



ENGLAND Artist: Tommy Fiendish (@tommyfiendish) Photographer: @vera_is_my_name_50, "Fear and Salvation," Urban Art Mapping: Covid-19 Street Art, accessed April 8, 2021.

by Liberty's investigative journalism unit, Liberty Investigates, found that nationally people of colour were over 50 per cent more likely than white people to be handed a fine for breaching the lockdown. There is no statutory right of appeal against fines. The only route available to people who wish to challenge a fine they believe was unfairly levied is to refuse to pay and risk criminal prosecution. A group of lawyers and civil society organizations (CSOs), which included Liberty, wrote to the National Police Chiefs Council (NPCC) on 20 May 2020 to call for a wholesale review of all fines that had been issued, which could help explain the ethnic disparities. That same day, the Joint Committee on Human Rights called for a similar review. Liberty also warned that the use of expansive powers by police



Residents of Altos de la Estancia, to the south of Bogotá, during a protest against the evictions from their homes.
LIA VALERO

during the coronavirus lockdown has led to the discriminatory use of tasers and stop and searches on communities of colour. In London, levels of stop and search rose to their highest in over seven years.

In the United States, anti-lockdown protests in a dozen states, some by mostly white, armed protesters have been met with peaceful police responses. These responses and most recently the largely passive police response to the violent insurrection by a white supremacist mob at the US Capitol on 6 January 2021, stood in stark contrast with the quick, violent, and militarized response to BLM protesters demonstrating nationwide after the murder of George Floyd in Minneapolis. During the numerous BLM protests held across the country, police used excessive and indiscriminate force against protesters, who experienced injuries, and sometimes death from tear gas, pepper spray, rubber bullets, and other crowd control tactics used by the police. Former Attorney-General Barr authorized the deploying of

hundreds of heavily armed riot police and unmarked federal officers in military-style uniforms who engaged in the suppression of anti-police violence protests. These police responses are taking place within a context of broader racial disparities in policing, in which Black people are arrested at far higher rates than white people, in large part because broken-windows-style policing targets minor misconduct in low-income Black and Latinx communities that would escape police attention in wealthier white communities. This is a product of racially disparate police enforcement patterns rather than race-based differences in the underlying conduct.

More information and cases regarding the excessive use of force by law enforcement against Africans and people of African descent can be found in the INCLO submission to the Office of the High Commissioner for Human Rights (OHCHR) who is preparing a report enabled by Human Rights Council Resolution 43.1.

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Analysis conducted by Liberty’s investigative journalism unit, Liberty Investigates, found that nationally people of colour were over 50 per cent more likely than white people to be handed a fine for breaching the lockdown.



MAIN TAKEAWAYS



The content and implementation of COVID-19 responses have been used by governments to further concentrate power and target dissidents.



Civil society organizations and human rights groups have been vocal about their concern regarding emergency responses that are overly broad and / or do not have clear end dates or sunset clauses.



The COVID-19 government measures have highlighted the institutionalized issues of economic inequality and racism which have been further exacerbated by law enforcement responses to protests against these measures.

ILLEGAL AND DISPROPORTIONATE USE OF FORCE BY LAW ENFORCEMENT AND MILITARY PERSONNEL

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The disproportionate use of force by law enforcement during the pandemic has also been a sign of a broader phenomenon: the militarization of domestic security.

One of the most visible forms of abuse during the pandemic has been the violent and disproportionate uses of force by law enforcement and military personnel. This is not a new issue for civil liberties and human rights organizations, but it has recently regained visibility as these detrimental policing practices have disproportionately targeted members of racial or ethnic minority groups and other marginalized communities, and in many instances have heightened rather than reduced the risks of COVID-19 transmission.⁶ The disproportionate use of force by law enforcement during the pandemic has also been a sign of a broader phenomenon: the militarization of domestic security. This was illustrated in places like Colombia and the United States, where both police and military forces were used to respond to protests, and in Kenya and South Africa where law enforcement used military armaments and training. The seriousness and exceptional nature of the COVID-19 crisis have been used to normalize security practices that could have long-term effects on civil and human rights.



MUMBAI/INDIA - MAY 11, 2020 - Migrant workers walk on the highway on their journey back home during a nationwide lockdown to fight the spread of the COVID-19 coronavirus. SHUTTERSTOCK / MANOEJ PAATEEL

INDIA

Where demonstrations have occurred to protest pandemic measures that have placed the livelihoods of millions of informal and subsistence workers at risk, police responses have been brutal. After the announcement of an extension to India's national lockdown, thousands of jobless migrant workers gathered to protest near a prominent railway station in Mumbai. They demanded to be allowed to travel to their homes but were forcibly dispersed by police with batons. As government aid proved to be insufficient, several hundreds of workers in Gujarat and Kerala protested the lack of support and the inability to return to their home towns or countries of origin. Due to a prohibition of

interstate travel during the lockdown that shut down most train or bus services, thousands of people attempted to walk to their homes or to bigger cities, with some beaten by police as they arrived at city borders. The Human Rights Law Network (HRLN) filed numerous petitions that asked authorities to take into consideration those that were most marginalized, including reducing sentences for certain incarcerated individuals, allowing migrant workers stuck at national borders to return home, and a successful petition to the Supreme Court which compelled support to the many migrant workers stranded during the lockdown and which led to the announcement of a Relief Package by the Finance Minister.

INDONESIA

During the large-scale protests that occurred from 6 to 22 October, police responded with brutality. They arrested and repressed students that joined the demonstrations against the “omnibus” job creation law, a measure that the government claimed sought to relax business, labour, and environmental laws in order to attract investment and stimulate the economy. Many protesters experienced inhumane punishment such as beatings after being arrested by the police. After the demonstrations took place, the police, in many instances, summoned and detained leaders or members of organizations who actively opposed the omnibus law.

In Jakarta, on 8 October, law enforcement repelled protesters using tear gas, even though the demonstration was being carried out peacefully. This was followed by mass arrests accompanied by beatings and the use of tear-gas against residents in the Cikini and Kwitang areas on 8 and 13 October. The police also attacked an ambulance and arrested medical volunteers. This arrest was accompanied by alleged acts of torture to force confessions from the arrested medical volunteers that their ambulance was carrying stones for protestors to throw at the police.

In Surabaya, the police confiscated several cameras and phones and also deleted the documentation of protests from several civilians and journalists. During the protest, at least eight journalists underwent intimidation and confiscation of documentation tools.



Students protested against the government's omnibus bill on job creation that was intended to boost economic growth and create jobs, which they believe will deprive workers of their rights and undermine the environment in Indonesia.
GETTY IMAGES / LGI FEBRI SUGITA

Two of them were also arrested, and one civilian experienced the confiscation while documenting the demonstration.

In Makassar, a group of unidentified people attacked a protesting crowd with stones, firecrackers, and sharp weapons. In some videos, the unknown group was seen marching towards the crowd with the police. The protesters entered the Makassar State University for safety, but the unknown people and police officers continued to chase them inside, which resulted in the campus building being damaged.

ISRAEL

Numerous testimonies and photographs which have recently been published paint an alarming picture concerning the disproportionate use of water cannons in a manner completely contrary to regulations. A particularly serious incident occurred during a demonstration on 23 July 2020. While dispersing the demonstration, police officers shoved dozens of demonstrators toward nearby Agron Street, and there, while they had no possibility of escape, water cannons repeatedly sprayed them at close range and caused several physical injuries, as well as sensations of extreme anxiety and fear. Cases have also been documented where water was sprayed directly at the heads of demonstrators from close range. There have also been cases of indiscriminate spraying striking citizens and passers-by.

During the demonstrations in Tel Aviv and near the prime minister's residence in Jerusalem in October 2020, the police employed the practice of “kettling”, whereby officers corral demonstrators by linking hands or using barriers, thereby pushing the protestors into a contained and confined area. Those imprisoned in this manner during the Balfour demonstrations included elderly people, children, and journalists covering the demonstrations. People were trampled due to the high level of congestion, they experienced anxiety attacks, and they were forced to relieve themselves behind trees and garbage cans. By law, the authority of the police is confined to restricting the freedom



Protest against Netanyahu's plan to annex parts of the West Bank in July, Rabin square, Tel Aviv, June 6, 2020. ACTIVE STILLS / KEREN MANOR

of movement of an individual when there is concrete and specific concern regarding that particular individual, and this is solely to clarify a person's identity, questioning, and the presentation of documents.

Some of the arrests during demonstrations included the use of excessive force and extreme and painful methods, such as dragging protestors along the ground or choking them. Demonstrators were subjected to violent arrest even when they had not used force or resisted arrest, or when they used passive resistance in response to police attempts to disperse the demonstration. The documentation shows that in many cases police officers use force against citizens without justification. Even in instances when the use of force against a citizen was justified, the degree of force used is often beyond that required. Another practice that is under scrutiny is the use of mounted police which leads to demonstrators getting trampled when they try to get in the way of galloping horses or do not have time to escape. In several instances, demonstrators were taken to hospital after sustaining injuries caused by the horses, including broken limbs.⁷

KENYA

In Kenya, human rights groups criticized the abusive strategies used by police when enforcing the government pandemic response that included a nation-wide curfew. The day the nation-wide curfew was announced, police caused panic as they tear-gassed ferry commuters who were trying to get home before the curfew in Mombasa. The heavy-handed approach by the police came under even more scrutiny when a 13-year-old boy was shot and killed while watching police enforce the curfew from the balcony of his home.



Protesters hold placards in front of the Kenyan Parliament during their protest against police brutality in Nairobi on June 9, 2020.
AFP VIA GETTY IMAGES / PATRICK MEINHARDT



A South African policeman points his pump rifle to disperse a crowd of shoppers in Yeoville, Johannesburg, on March 28, 2020 while trying to enforce a safety distance outside a supermarket amid concern of the spread of COVID-19 coronavirus.
AFP VIA GETTY IMAGES / MARCO LONGARI

SOUTH AFRICA

In South Africa, insufficient food distribution and allegations that government officials misappropriated food parcels led to protests. After a group of 100 residents in Tafelsig, Cape Town burned tires and blocked streets demanding better food distribution, police escalated tensions by responding to protesters with rubber bullets and tear gas. The police response to demonstrators led to other demonstrations in other parts of Cape Town and other cities.

South African security forces, both police and military, were also criticized for the use of excessive force when enforcing government

pandemic measures. Several deaths were reportedly caused by military or police enforcement but the death of Collins Khosa in Johannesburg highlighted the issue of police brutality against Black South Africans during the pandemic. Collins Khosa died after being beaten by security forces for allegedly breaking quarantine rules that prohibit the sale of alcohol. A court ruled in favour of Khosa's family, pointing out the dangers of the militarized approach to quarantine enforcement and required the Minister of Defence and police authorities to draw up a code of conduct for all the security forces.

MILITARIZED RESPONSES BY LAW ENFORCEMENT DURING THE PANDEMIC: COLOMBIA, KENYA, SOUTH AFRICA, AND THE UNITED STATES

How security forces enforced government pandemic responses and responded to demonstrations in 2020 points to a broader issue that civil liberties and human rights organizations, especially in Latin America, have been warning against: the militarization of public security. The militarization of crisis responses can be seen, on one hand, through the use of military personnel in issues of domestic security, and on another, through the use of military-grade equipment and military-style training of police forces.

In Colombia, the police are controlled not by the Interior Ministry, but by the Defense Ministry, a legacy of the country's long internal armed conflict. As a result, the training of police, the hierarchical internal chain of command, and an opaque military justice tribunal system to deal with any allegations of abuse, hinder efforts to ensure accountability and justice for human rights violations committed by police. Colombia's strict national lockdown gave police extraordinary authority in blocking economic activity and preventing citizens from leaving home, including through checkpoints. Resentment over arbitrary enforcement and alleged increases in police abuse, came to the

fore after Javier Ordóñez died due to being repeatedly tasered by police. The death led to widespread protests in different parts of Colombia on 11 September. In response, the mayor of Bogotá presented a police reform initiative to the president and the state's inspector general to ensure civilian control, which included a guarantee that civil courts will handle cases of serious abuse. The President indicated that such structural changes were not necessary and his administration announced that 2 000 military officers would join the police to keep order in the capital.

In Kenya and South Africa, there were multiple reports of abuse by police and military forces to enforce pandemic restrictions, especially in poor neighbourhoods. In South Africa, over 70 000 military troops were deployed to enforce the national lockdown. The UN received reports of security forces using rubber bullets, tear gas, water bombs, and whips. In April 2020, South Africa's National Human Rights Commission stated that the death toll from acts to enforce coronavirus lockdown measures was higher than the deaths caused by the virus across the country. Rather than rendering the government COVID-19 response more effective, the use of military and militarized responses during the pandemic have reinforced long-held mistrust in the state and security forces, especially as enforcement has been inconsistent.

In the United States, local, state, and federal law enforcement agencies have responded jointly to nationwide protests against police brutality, including with the deployment of



A demonstrator gestures while holding a placard during a demonstration against what they term as arbitrary police killings in the Mathare slum in Nairobi on June 8, 2020. AFP VIA GETTY IMAGES / TONY KARUMBA

helicopters, airplanes, and border drones, many of which are designed by the military, to systematically monitor peaceful protests. President Trump repeatedly threatened demonstrators with the use of “heavily armed soldiers, military personnel and law enforcement officers, to stop the rioting, looting and wanton destruction of property.” In June 2020, the Trump administration fulfilled the threat by sending thousands of National Guard troops — from the District of Columbia, but also from other states — to Washington D.C. A month later, unidentified law enforcement officers, many of them from the Department of Homeland Security, were deployed to Portland, Oregon. In Portland,

militarized federal agents flouted court orders protecting the rights of protesters from local law enforcement attacks, used sharpshooters to maim people, and deployed military tools and tactics — including sonic weapons and tear gas. BLM protesters in Portland have been shot in the head with kinetic impact munitions, swept away in unmarked cars, and repeatedly tear-gassed by federal agents. In both instances, the presence of heavily armed military forces, in addition to the large police presence, escalated tensions among different sides of demonstrations and resulted in the injury and unnecessary arrest of protesters, including many journalists.

PRECARIOUS CONDITIONS AND PROTESTS IN PRISONS: ARGENTINA, COLOMBIA, AND INDONESIA

During the pandemic, numerous police abuse cases have been reported in Argentina, some of them targeting protests of vulnerable groups such as indigenous communities and people deprived of liberty. Protests took place in several prisons in the Buenos Aires province demanding prevention programs to be implemented. The prison guards' violent response left one person dead (killed by live ammunition) and 40 injured in one prison, while violent clashes in another left two inmates severely injured after police used lethal weapons. Police also detained family members of detainees protesting outside of prisons and pressed charges for resisting authority and violating measures to prevent the spread of COVID-19.

The pandemic has also worsened the general situation of systematic violation of rights of persons deprived of liberty in Colombia. Inmates from prisons around the country protested the overcrowded conditions and lack of preventative health measures. After a riot broke out in the La Modelo prison in Bogotá, 23 inmates were killed in circumstances that family members say have not been clarified. Civil society organizations and the media have also reported that, although the facts have not been formally clarified, there are videos, photographs, and testimonials that show the disproportionate use of force by the prison guards. It is also clear

that there was cruel, inhuman, and degrading treatment by the guards and limited health care for injured people. Despite government officials dismissing the episode as “criminal attempts by inmates to escape”, a report by international forensic experts found that the gunshot wounds indicated that detainees had been shot at with the intention of killing. Prison guards were supported by police and military officers to squash protests in La Modelo and other large prisons around the country. The criminal investigations against those allegedly responsible have seen limited progress.

In Indonesia, overcrowding and poor hygiene conditions in prisons are ongoing, sparking protests from inmates. After one guard tested positive for COVID-19, prison inmates at Tuminting Prison in Manado protested and set buildings on fire to draw attention to over-crowded conditions and health risks. Hundreds of police and soldiers responded with live ammunition, hitting at least one inmate in the chest. The Manado police chief dismissed the demands of inmates, stating that he did not know why they were protesting.

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Protests in prisons during the pandemic have highlighted the vulnerability of incarcerated populations who already faced health risks due to overcrowding and unsanitary living conditions.



Melbourne, Victoria, Australia, June 6th, 2020: A woman is carrying a homemade placard to a Black Lives Matter street protest. SHUTTERSTOCK / ADAM CALAITZIS

MAIN TAKEAWAYS



The excessive and disproportionate use of force by police and their abuse of power during crises is not new, but it has garnered greater attention during the COVID-19 pandemic. The impact is particularly felt by already marginalized populations, such as the economically disadvantaged, migrants, ethnic and racial minorities, and prison populations.



The deployment of military personnel to enforce pandemic measures and respond to protests has highlighted the danger of militarization and its potential impact on civil liberties.



Protests in prisons during the pandemic have highlighted the vulnerability of incarcerated populations who already faced health risks due to overcrowding and unsanitary living conditions.

C. RESPONSES AND STRATEGIES FROM CIVIL SOCIETY TO PROTECT THE RIGHT TO PROTEST



Since the beginning of the COVID-19 pandemic, human rights and civil liberties groups have been integral to monitoring efforts and sounding the alarm when government pandemic responses risked undermining human rights. Monitoring efforts have been especially crucial as pandemic measures have been numerous, in some instances issued very quickly, and involved an array of directives and implementing authorities. Without this monitoring, measures with serious short- and long-term impact on civil liberties ran the risk of remaining unquestioned for an undefined period given the uncertainty of a resolution to the COVID 19 crisis. When governments have underestimated or ignored the disproportionate impact that pandemic measures have had on marginalized communities, human rights and civil liberties organizations had the existing close ties with social movements and activists on the ground to allow them to amplify these concerns, denounce violations and oversights, and to support rights-holders. Other strategies have focused on informing the public and providing practical tools to those most impacted.

INCLO member organizations, along with their many partners, undertook a vast range of responses and strategies to protect the right to protest and other rights in their home countries. The following responses include a small selection of them to illustrate the many threats to human rights that organizations have had to respond to during the pandemic, recurring strategies, and where they have had success.



INDONESIA "Untitled (Person with gas mask and hard hat)," *Urban Art Mapping: Covid-19 Street Art*, accessed March 29, 2021.

LEGAL ACTIONS

The ACLU **filed a lawsuit** against Minnesota's state and local law enforcement for targeting journalists during protests and using excessive force. The ACLU has filed similar suits on behalf of BLM activists in **Washington, DC** and **Seattle, Washington** and ACLU affiliates have filed at least three additional cases in **North Carolina, Indiana** and **Iowa**. In December, a federal judge **held the city of Seattle in contempt of court** after finding multiple violations of court orders barring the Seattle Police Department (SPD) from indiscriminately using chemical weapons and other less lethal weapons against crowds.

The ACLU filed three lawsuits against the federal forces deployed to Portland, Oregon, including a lawsuit on behalf of protesters who were abducted, beaten, and tear-gassed by federal agents in Portland, as well as a lawsuit on behalf of protest medics and a lawsuit on behalf of journalists and legal observers. In July, a federal court issued a temporary restraining order blocking federal agents in Portland from attacking or arresting journalists and legal observers. In August, a federal court extended the restraining order.

The HCLU represented two protesters who challenged fines that they were given for participating in a driving protest in Hungary and provided sample submissions for the others to use in judicial review procedures. Courts have modified the fines to warnings.

The CCLA filed a court challenge after the government of Ontario allowed COVID-19 test results to be shared with law enforcement. The government subsequently rescinded the order that allowed this access, but not before law enforcement agencies accessed the data thousands of times.

Dejusticia has **presented legal interventions in the constitutionality review of 17 decrees issued by the Colombian government** in response to the COVID-19 pandemic about the right to health, access to home public services, internet access, access to drinking water, basic income, taxes, the right to work, and prison policy. The focus of these interventions was the guarantee of social rights for marginalized populations. Of the 115 decrees that the government issued, most were declared totally or partially constitutional.

The Human Rights Law Network (HRLN) issued several petitions in the Supreme Court seeking immediate relief to the most vulnerable during various national lockdowns. In particular, it successfully filed a petition to the Supreme Court asking for support to the many migrant workers stranded during the lockdown — including facilitating their travel home and providing meals and water — which led to the announcement of a Relief Package by the Finance Minister.

The **LRC filed several application proceedings to halt a spate of illegal evictions and harassment of the residents of informal settlements** by the City of Cape Town. The LRC's interventions resulted in a significant overhaul of the lockdown regulations by the government to enhance protection for those most vulnerable to unlawful evictions. Despite new COVID-19 regulations, evictions have continued during the pandemic.



PERU Artist: Huansi (@huansii), "Asfixiado [Suffocated]," Urban Art Mapping: Covid-19 Street Art , accessed April 8, 2021.

MONITORING & ADVOCACY



ACRI successfully appealed to the Israeli Head of Police in a letter demanding protests be permitted after police forces prohibited them. Emergency regulations published after the incident allowed protests and demonstrations as an exception to the COVID-19 emergency restrictions.



Liberty alongside a coalition of civil society groups **monitored the development of the Coronavirus Act 2020** in the United Kingdom. Alongside a cross-party representation of members of Parliament, the coalition managed to secure a parliamentary vote on the extension of the legislation every six months. These ongoing monitoring and campaigning efforts laid the groundwork for the proposal of a rights-respecting alternative to the Government's Coronavirus Act, the Protect Everyone Bill drafted by Liberty in collaboration with over a dozen charities.



HCLU has advocated against unlimited powers of the Hungarian government included in the COVID-19 emergency measures and, jointly with the Hungarian Helsinki Committee, invited the Commissioner for Fundamental Rights of Hungary to launch a general inquiry into the police administration of assemblies during the first lockdown of the COVID-19 pandemic.



KHRC engaged a team of **52 monitors to document and monitor state and police excesses during the pandemic in Kenya**. The monitoring culminated in the publication of a report.



Liberty launched a new platform to expose human rights violations during COVID-19 in the United Kingdom. Its analysis determined that the UK government's pandemic response failed to follow its own pre-pandemic health protocols for prisons and that police disproportionately fine black, Asian and minority ethnic (BAME) people. This led the UK Joint Committee on Human Rights to echo Liberty's call to the National Police Chiefs Council (NPCC) to review the issuing of penalties.



The ICCL produced an in-depth analysis of the proposed emergency legislation and shared it with all members of the Irish Parliament in advance of debates in both houses. As a result, ICCL was able to **secure a sunset clause in Ireland's COVID-19 emergency measures**. ICCL has raised the issue of clarifying what protests are allowed on numerous occasions with the government, but regulations continue to exclude mention of protest as a reasonable excuse to leave home and so uncertainty as to the legality of protest under COVID-19 regulations remains.



KontraS' monitoring has shown that the police in Indonesia has sought to intimidate and threat people who criticized the government's response to the COVID-19 pandemic with criminal investigations.



Dejusticia made a request to the Constitutional Court regarding the long-term issue of conditions in prisons, which ultimately led to a formal request that states adopt immediate measures to protect thousands of people deprived of their liberty in Colombia.



The Human Rights Law Centre (HRLC) and other NGOs called for Parliamentary scrutiny of the Australian government's COVID-19 response. On 8 April 2020, the Senate resolved to establish a Select Committee on COVID-19 to inquire into the Australian Government's response to the COVID-19 pandemic. The Committee is to present its final report by 30 June 2022, but ongoing Committee hearings have continued to provide much-needed oversight and scrutiny of the Australian government's response.



Arrival of the Indigenous Minga of the South-West to Bogotá, after mobilizing over 500 km starting in the Colombian Cauca. LIA VALERO

DIRECT SUPPORT AND GUIDES



The HCLU created a **Legal Survival Kit** for Quarantine in Hungary with a one by one review on State limitations. A **detailed informational kit** was also provided.



After the criminalization of participants of a driving protest, the HCLU created a **sample guide** for individuals fined for protesting wanting to request a personal hearing with the police or to submit a written statement. The HCLU's Know-your-rights sample guide reached over one million independent visitors since March 2020 in Hungary, a country of 10 million people.



Agora created a Telegram Hotline in Russian to provide legal and psychological support.



Liberty alongside grassroots and frontline groups **co-produced and delivered over 24 000 "bust cards" at marches across the United Kingdom** and shared on social media. These cards told protesters what they could legally do under COVID-19 regulations, what to do if arrested, and where to access legal support.



CELS alongside a coalition of civil organizations issued a **Proposal for Principles on the Right to Access Information during a health crisis**.



The ACLU issued **a series of recommendations** to reduce the number of incarcerated people and prevent and mitigate the spread of COVID-19 in prison and immigration detention centres.



As part of coalition, the KHRC published the "**Distance Conscious and Human Rights-Based Covid-19 Policing Guidelines**" directed to police forces in Kenya.



The CCLA joined a coalition of public interest groups to draw attention to the **impact of public health measures for the homeless** and to **advocate for better conditions in homeless shelters in the city of Toronto** to try to ensure adequate COVID-19 health protocols. In October 2020, the Ontario Superior Court ruled that the City of Toronto failed to comply with a settlement agreement it had signed with the coalition and had not ensured safe accommodations for the homeless population.



CELS **led advocacy efforts and took legal action to set precedent regarding the rights of people deprived of liberty** in the context of the pandemic. By the beginning of 2021, there was a significant reduction in the number of women inmates with children held in both the provincial and federal penitentiary systems.⁸



CCLA **tracked the impact of COVID-19 measures on civil liberties and human rights**, issuing a report on the **first wave** and providing an update at the outset of the **second wave**. Specifically, CCLA efforts have focused on the **impact of COVID ticketing measures on marginalized communities** and on drawing attention to the plight of incarcerated populations and the **risks to their health** due to overcrowded conditions.



INDONESIA "Untitled (Person with gas mask and hard hat)," *Urban Art WWMMapping: Covid-19 Street Art*, accessed March 29, 2021.

DISSEMINATION AND PUBLIC ENGAGEMENT

Dejusticia organized a public webinars series on the impact of COVID-19 on fiscal policy, gender based violence, prison conditions, trans people, migration, air quality, food security, states of emergency among other topics. Dejusticia also published a series of documents entitled "Del miedo a la acción" ("From fear to action") with analysis and proposals of relevant issues for the guarantee of human rights in the context of the crisis generated by COVID-19.

INCLO launched a COVID-19 Portal with cases of protest that its members monitored. It also organized a series of webinars regarding the impact of COVID-19 on surveillance, prison and jails, protests and policing, and civic space.

Agora organized online training sessions on how to address fines and other criminal proceedings during the pandemic.



ENGLAND "Lionel Stanhope, "Untitled Mural (Van Eyck's Man in a Red Turban wearing a face mask)," *Urban Art Mapping: Covid-19 Street Art*, accessed April 8, 2021.

OTHER MONITORING & ANALYSIS INITIATIVES

Amnesty International created an interactive international mapping on the use of teargas.

Forensic Architecture and Bellingcat created a platform to record the evidence of police brutality in the USA, including through crowdsourcing.

The International Center for Not-For-Profit Law (ICNL) created a COVID-19 Civic Freedoms Tracker to monitor emergency government responses to the pandemic that affect civic freedoms and human rights.

Omega Research Foundation published a position paper on the increased use of chemical irritants in response to protests held during the pandemic.

D. CONCLUSION

The COVID-19 pandemic has been a universal test for human rights. By not grounding their crisis responses in a human rights-based approach, governments risk creating another pandemic, a “pandemic of human rights abuses,” one that threatens to widen inequality and exacerbate existing patterns of human rights violations. Social movements around the world have been acutely aware of this risk and have continued to protest human rights violations, despite the immense risks posed by COVID-19. Civil liberty and human rights organizations have accompanied these efforts by highlighting and offering solutions to counteract those measures that have immediate and potentially long-term impacts on human rights, including the right to protest.

The pandemic has not only brought into sharp focus some governments’ willingness to take advantage of a crisis to restrict rights, but also that crises do not affect all equally. Pervasive societal inequalities, institutionalized racism, inconsistent policing practices, and over-policing have had a compounding effect on marginalized communities, including ethnic and racial minorities, migrants, the economically disadvantaged, people with disabilities, and prison populations. These groups have been disproportionately affected both by the pandemic and government responses and are likely to continue to bear the brunt beyond the pandemic.

Despite the heightened focus on the use and misuse of emergency measures, the inconsistent responses by law enforcement to demonstrations, the exacerbating effect of structural inequality on the marginalized communities who are the most likely to bear the brunt of policing, these challenges are not new. They are challenges that have elicited the creation of UN tools, some very recently, to provide guidance and clarify standards regarding the right to protest. Standards like the General Comment No. 37 and the United Nations Guidance on Less-Lethal Weapons in Law Enforcement predate the pandemic and seek to address many of the specific issues that have erupted during it. However, INCLO’s analysis based on case examples from 14 jurisdictions shows that while these tools can provide a useful framework, they are not enough to address the root causes behind these pervasive and entrenched rights violations.

As a network of national civil liberties and human rights organizations, INCLO will continue to monitor and support these efforts to ensure that measures are taken during the pandemic to protect people and their rights, and that there is awareness and accountability when governments violated rights under the guise of pandemic responses.

E. METHODOLOGY

The findings in this issue paper are based on research conducted by INCLO and case studies provided by INCLO member organizations. The case studies focus on three broad categories of institutional responses to the COVID-19 pandemic that impact the right to protest and other fundamental rights: 1) criminalization of protests; 2) excessive and discriminatory implementation of pandemic response measures; and 3) illegal and disproportionate use of force by law enforcement officials and military personnel during the pandemic. All events included in this issue paper occurred during 2020. The second section captures the civil society responses and strategies from INCLO member organizations and others to mitigate these actions. The research was complemented by a series of virtual consultations with experts in each of the fifteen countries where INCLO has a presence.

A broader consideration of protests occurring during the COVID-19 pandemic and mapping cases in the INCLO member jurisdictions can be found on the digital mapping platform: covid19.inclo.net.

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F. LEGAL FRAMEWORK

International human rights law protects the rights to freedom of association, peaceful assembly and expression. These rights are recognized in various human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR).⁹ Together, these rights constitute the right to protest.¹⁰ To better define the right to protest, the United Nations and regional mechanisms, such as the African Commission on Human and Peoples' Rights, have developed international standards, which include 10 general principles¹¹ that apply before, during and after a protest. Recently, the United Nations Human Rights Committee has also published its General Comment No. 37 (2020) which provides further guidance on the right to protest,¹² and the United Nations Human Rights Council has acknowledged the recently published United Nations Guidance on Less-Lethal Weapons in Law Enforcement (2019).¹³

Under international human rights law, states must respect and ensure that the fundamental rights of protesters are protected, without discrimination.¹⁴ Additionally, states must facilitate and promote the right to protest¹⁵ and ensure that the exercise of the right is limited only in exceptional circumstances which comply with international law. This includes an obligation on states to allow protests to take place “within sight and sound of their target” and without payment of any form of “protest fee” to exercise the right to protest.¹⁶ **Importantly, where any limitation of a fundamental right takes place, as has been the case during the COVID-19 pandemic, it must be established that there is a legal basis for the limitation, that the limitation pursues a legitimate aim, and that the legitimate aim is necessary and proportionate, and no less restrictive means exist.**¹⁷

G. APPENDIX

RELEVANT UNITED NATIONS GUIDANCE DOCUMENTS DURING THE COVID-19 PANDEMIC

Clément Voule, UNSR; – “States responses to Covid 19 threat should not halt freedoms of assembly and association” (14 April 2020)

David Kaye, UNSR on the promotion and protection of the right to freedom of opinion and expression – Report: Disease pandemics and the freedom of opinion and expression (23 April 2020)

Inter-American Commission on Human Rights (IACHR) – Resolution No. 1/2020: Pandemic and Human Rights in the Americas. (10 April 2020)

OHCHR – COVID-19 and the Human Rights of Migrants: Guidance.

OHCHR – General Comment No. 37 on Article 21 (Right of peaceful assembly) (23 July 2020)

OHCHR – Emergency Measures and COVID-19: Guidance (makes reference to Code of Conduct for Law Enforcement Officials, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and U.N. Human Rights Guidance on the Use of Less-Lethal Weapons by Law Enforcement).

African Commission on Human and People's Rights (ACHPR) – Joint Declaration on the Right to Freedom of Peaceful Assembly and Democratic Governance (9 December 2020)

LIST OF ACRONYMS AND ABBREVIATIONS

ACHPR: African Commission on Human and Peoples' Rights

ACRI: The Association for Civil Rights in Israel

Agora: Agora International Human Rights Group

BAME: Black, Indian, minority ethnic

BIPOC: Black, Indigenous, and People of Color

BLM: Black Lives Matter

ACLU: The American Civil Liberties Union

CCLA: Canadian Civil Liberties Association

CELS: Centro de Estudios Legales y Sociales (Argentina)

EIPR: The Egyptian Initiative for Personal Rights

HCLU: The Hungarian Civil Liberties Union

HRLC: Human Rights Law Centre (Australia)

HRLN: Human Rights Law Network (India)

IACHR: Inter-American Commission on Human Rights

ICCPR: International Covenant on Civil and Political Rights

ICNL: The International Center for Not-For-Profit Law

INCLO: The International Network of Civil Liberties Organizations

KHRC: Kenyan Human Rights Commission

LRC: The Legal Resources Centre (South Africa)

MP: Member of Parliament

PHR: Physicians for Human Rights

OHCHR: Office of the High Commissioner for Human Rights

UNSR: United Nations Special Rapporteur

ENDNOTES

1. Published in collaboration with Physicians for Human Rights (PHR).
2. A recent UN HRC resolution called for the UNSR on Peaceful Assembly and Association to write a report focusing on the right to assembly during times of crisis. Our hope is that this issue paper can contribute to that process.
3. See also Michael Sainato, 'They set us up': US Police Arrested Over 10,000 Protesters, Many Non-Violent (June 8, 2020), and Anita Snow, AP Tally: Arrest at Widespread US Protests Hit 10,000 (June 4, 2020).
4. In early 2021 opposition leaders' homes were searched, and multiple figures were arrested for 'breach of sanitary rules that may lead to endangering health', a crime under article 236 of the Criminal Code. The actus reus of the alleged crime was posting on social media about the nation-wide demonstration of 23 January 2021 protesting the arbitrary detention of Alexey Navalny.
5. In Latin America, more than 93 indigenous nations have been affected by COVID-19. Read further in: <https://www.opendemocracy.net/en/democraciaabierta/la-covid-19-ya-afecta-a-93-nacionalidades-indigenas-en/>. Despite the lack of comprehensive data, Black, Latinx, and Indigenous communities in the United States have shown a strikingly higher rate of infections and deaths from COVID-19. Read further: <https://mhanational.org/bipoc-communities-and-covid-19>.
6. Read further on the health risks of the use of chemical irritants during the pandemic: <https://omegaresearchfoundation.org/publications/lowering-risk-curtailling-use-chemical-irritants-during-covid-19-pandemic>.
7. For an in-depth analysis of police violations of the right to protest and harsh enforcement of pandemic measures in Israel during 2020, read further in ACRI's report "Violent Enforcement and Violation of the Right of Protest: The Conduct of the Israel Police during Demonstrations in 2020."
8. From January 2020 to September of the same year, there was a 37% reduction in the number of incarcerated women with children in the provincial penitentiary system. From March 2020 to February 2021, there was a 73% reduction in the federal penitentiary system. (Source: Defensoria del Pueblo. Informe Submesa Madre con hijes)

9. See “Your Right to Protest” in the *CIVICUS Protest Resilience Toolkit* (2018), accessible at: <https://civicus.org/protest-resilience-toolkit/your-right-to-protest/>.
10. Id.
11. See Joint report of the UNSR on the rights to freedom of peaceful assembly and of association and the UNSR on extrajudicial, summary, or arbitrary executions on the proper management of assemblies (2016) (2016 Joint Report).
12. Accessible at: <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GCArticle21.aspx>.
13. Accessible at: https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf
14. See 2016 Joint Report above n 18 at paras 14-16.
15. Id at paras 18-27, 29-35 and 37-48.
16. Id at paras 29-35.
17. See *Mukong v. Cameroon*. 10 August. Communication No 458/1991 (UN Human Rights Committee).
18. See “States responses to Covid 19 threat should not halt freedoms of assembly and association” – UN expert on the rights to freedoms of peaceful assembly and of association, Mr. Clément Voule’, accessible at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25788&LangID=E>
19. See 2016 Joint Report above n 18 at paras 50-6.
20. Id at paras 68-71.
21. Id at paras 79-81.
22. Id at paras 89-95.

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