

**NATIONAL
LAWYERS
GUILD**
MASS CHAPTER

41 West Street, Suite 700
Boston, MA 02111
Tel. 617-227-7335
NLGMass-Director@igc.org
www.nlgmass.org

April 7, 2021

TO: Members of the Somerville City Council
RE: Chemical Crowd Control Agents And Kinetic Impact Projectiles Ordinance

Dear Councilors,

On behalf of the Massachusetts Chapter of the National Lawyers Guild, I am writing to ask you to support and pass the Chemical Crowd Control Agents And Kinetic Impact Projectiles Ordinance, sponsored by Councilors Ben Ewen-Campen and Lance L. Davis, that is currently before you. This is an important and historic piece of legislation that, if passed, will place the City of Somerville at the forefront of the movement to de-militarize America's urban police forces, de-escalate the often unnecessary use of force by police, and begin to address the inequities and injustices that have been visited for far too long upon communities of color by armed police. Similar ordinances are currently pending before the city councils in Boston and Cambridge and both are expected to pass within the next few weeks. Legislation banning or placing severe restrictions on the use of tear gas or other chemical crowd control weapons has already been adopted in Philadelphia, New Orleans, Washington, D.C., and the state of Oregon; numerous other U.S. cities are currently considering similar laws.

In 2016, the Boston-based organization, Physicians for Human Rights (PHR), in conjunction with The International Network of Civil Liberties Organizations (INCLO), a coalition of 10 independent human rights organizations working to promote fundamental rights and freedoms in countries around the world, published a 102 page report entitled *Lethal In Disguise -- The Health Consequences Of Crowd-Control Weapons*, which included eyewitness testimony, documented scientific facts, and a systematic review of published literature released between 1990 and 2015, concerning the use of both kinetic impact projectiles (KIPs) and tear gas/chemical irritants as crowd control weapons.

That substantive international study found that that KIPs cause serious injury, disability, and death.

"The data demonstrates that severe injuries are more likely when KIPs are fired at close range; some types of KIPs have the same ability to penetrate the skin as conventional live ammunition and can be just as lethal. When launched or fired from afar, these weapons are inaccurate and strike vulnerable body parts, as well as cause unintended injuries to bystanders.

"... to the ends that human rights shall be regarded as more sacred than property interests."

- Preamble to the Constitution of the National Lawyers Guild, 1937

Therefore, there are significant doubts that these weapons can be used in a manner that is simultaneously safe and effective.”

With regard to tear gas and other chemical irritants, the PHR report found the following:

“The general perception is that these weapons have mostly short-term effects that include irritation of the eyes, dermal pain, respiratory distress, and the psychological effects of disorientation and agitation. A systematic review of medical literature documenting the health effects of chemical irritants identified people who ... suffered permanent disabilities. Out of 9,261 documented injuries, 8.7 percent were severe and required professional medical management [and] 17 percent were substantial.... While chemical irritants are often thought of as causing minimal transient harm, the findings identify concerning levels of morbidity and even instances of death caused by these weapons.”

The PHR report goes on to note that “chemical irritants are an indiscriminate weapon by design; because of their indiscriminate nature ... limiting the exposure to individuals or small groups is difficult, and the risk of affecting bystanders and individuals other than the intended targets is high. In addition, the diagnosis and treatment of chemical irritant exposure is complicated because of the combination of different chemicals and the lack of transparency about the agents used.” In addition the report documented “that exposure to chemical irritants may result in significant psychological symptoms and long-term disability.”

Over the past 50 years, we have had protests in the streets of our state’s cities involving climate change, Black Lives Matter, immigrant rights, Justice for Janitors, Occupy Boston, eviction blockades, anti-war, women’s rights, LGBTQ rights, and many more. These protests have sometimes disrupted business as usual, as they are often noisy and boisterous, and have caused traffic jams and other inconveniences, as concerned citizens exercised their constitutional rights to stand-up against injustice, inequality, racism, and discrimination. Yet, despite the issues that these demonstrations often caused, until recently, police and other law enforcement agencies in Massachusetts rarely, if ever, used tear gas, pepper spray, rubber bullets, flash-bang grenades or other indiscriminate and dangerous crowd control weapons to disperse people who were exercising their protected First Amendment rights.

However, with the police murders of George Floyd, Breonna Taylor, Philando Castille and so many more, and the recent increased activism of the Black Lives Matter movement, police forces in Massachusetts have begun to use these dangerous weapons to try to stop citizens from voicing their concerns in our streets and sometimes in retaliation for criticism of discriminatory policing practices. The National Lawyers Guild has collected eyewitness reports from people and from our own trained Legal Observers of the indiscriminate and unnecessary use of tear gas, pepper spray, rubber bullets, flash-bang grenades and other such weaponry to try and disperse non-violent groups of demonstrators

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during several of the Black Lives Matter protests that have occurred over the past year. Indeed, our own neutral Legal Observers have been the targets of these weapons at times.

NLG Legal Observers have documented innocent bystanders and passers-by being hit by tear gas and pepper spray as police cannot limit who such weapons target or affect. People have been injured, scarred, frightened, and often prevented from exercising their rights as they have done in the past because of the unnecessary use of, or the threat of the use of these dangerous weapons. In particular, tear gas as a crowd control weapon is so dangerous and indiscriminate in its effect that it was banned for use in warfare almost 100 years ago by the Geneva Protocol of 1925. Yet Massachusetts police forces are permitted to use that weapon on our own citizens exercising their constitutionally protected rights.

The 2016 PHR report concluded that kinetic impact projectiles are never appropriate weapons to be used for crowd control, as they “cannot be used effectively and safely against crowds. At close ranges, levels of lethality and patterns of injury of some KIPs become similar to live ammunition.... It is virtually impossible to deploy these safely and effectively against crowds.” As to tear gas and other chemical crowd control weapons, the PHR report concluded as follows: “Chemical irritants, when deployed using canisters or grenades, are indiscriminate by nature.... firing multiple canisters in the same spot or repeatedly, could potentially cause serious injury or even death.... Firing grenades or canisters containing chemical irritants into closed spaces or open space where there is no safe egress should be prohibited, as this significantly increases the risk of serious, unnecessary injury and death... [and] [f]iring gas canisters or grenades directly into a crowd or towards individuals must be prohibited.”

In Massachusetts, we have extensive regulations which severely restrict the use of chemical weapons like tear gas and pepper spray on prisoners in our state prisons. Under these regulations, prisoners are more protected from the use of these harmful weapons than are our citizens exercising their constitutional rights out in our public streets and parks. The ordinance being considered by you bans the use of tear gas, a weapon that is already banned from use by armies in warfare, and places reasonable restrictions on when and how other dangerous and indiscriminate crowd control weapons can be used by police against crowds of people. It serves to protect the rights of our residents to engage in peaceful protests, and provides consequences for police officers who violate those rights by using these weapons unnecessarily.

In further support of the crucial need to pass the Chemical Crowd Control Agents And Kinetic Impact Projectiles Ordinance, I am including herewith two letters. The first is a letter recently sent to federal, state, and municipal legislators from the medical experts of Physicians for Human Rights, addressing the need to curtail the use of crowd-control weapons by law enforcement due to the physical dangers posed by the increasing use of such weapons. The second is a letter from the chief executives of four independent international human rights organizations with offices and programs focused on the United States -- Human Rights Watch, Amnesty International-USA, Physicians for Human

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Rights, and Human Rights First – which focuses on the intersection of public safety and the protection of human rights with regard to laws and policies related to protests.

I hope that you will carefully consider passing the Chemical Crowd Control Agents And Kinetic Impact Projectiles Ordinance which Councilors Ewen-Campen and Davis have sponsored, so that the City of Somerville will provide the same protection to ordinary citizens from the unnecessary and indiscriminate use of these weapons as is provided to prisoners in Massachusetts and soldiers at war.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey M. Feuer". The signature is written in a cursive style with a large, stylized initial 'J'.

Jeffrey M. Feuer

On Behalf of the Massachusetts Chapter of
the National Lawyers Guild

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Through evidence,
change is possible.

Physicians for
Human Rights

434 Massachusetts Avenue
Suite 503
Boston, MA
02118

+1.617.301.4200
phr.org

Dear Federal, State, and Municipal Legislators,

We are writing as leaders and medical experts of Physicians for Human Rights (PHR), a national organization that brings the expertise of science and medicine to the protection and promotion of human rights. We are addressing your legislature as it deliberates on measures to curtail the use of crowd-control weapons by law enforcement.

For more than three decades, PHR has investigated and documented the health effects and harms caused by crowd-control weapons (CCWs). These include pepper spray, tear gas, rubber bullets and other kinetic impact projectiles, as well as stun grenades or flash-bangs. PHR has studied or conducted investigations of injuries and deaths caused by the use of these crowd-control weapons against demonstrators in [Bahrain](#), Hong Kong, India, Palestine, [South Korea](#), Sudan, and [Turkey](#). We have reviewed cases upon cases of serious injuries, disability, and death attributed to CCWs. Our work provides an in-depth and comprehensive overview of the health consequences of CCWs and examines their use in a variety of protest contexts.

Health Effects of Crowd-Control Weapons

A. Chemical Irritants such as Tear Gas and Pepper Spray

Chemical irritants (CIs) can cause injuries to many different body systems, depending on the exposure manner and times, concentrations, the ability of the exposed person to leave the area, and prior medical conditions or vulnerabilities.

- **Eyes:** Irritation of the conjunctiva and cornea produces blurry vision, tearing, uncontrollable eyelid spasms, redness, and pain. Spasms can cause the lids to close tightly and produce temporary blindness. Direct impact may lead to corneal burns, abrasions, lacerations, and blindness.
- **Respiratory System:** CIs cause inflammation of the airways and pain. Coughing, difficulty breathing, and excess production of sputum are common. Individuals with preexisting lung disease, such as asthma or chronic obstructive pulmonary disease, may be more sensitive to these agents, even at low concentrations. Exposure may precipitate attacks of respiratory distress, resulting in hypoxia, respiratory arrest, and death. Exposure also increases susceptibility to acute respiratory infections, which is likely to include COVID-19.
- **Skin:** CIs cause a burning sensation to the skin as well as redness, itching, or allergic reactions. Erythema (redness of the skin) usually begins several minutes after



contact and can last for minutes or days after the injury. Blistering and burns may also occur.

- **Psychological:** The physical symptoms of CIs often result in disorientation and agitation, which can lead to a state of fear, anxiety, and panic. In some instances of prolonged and repeated exposure to CIs in protest settings, symptoms of post-traumatic stress disorder have been documented.
- **Cardiovascular:** CIs can cause increases in heart rate and blood pressure. Preexisting heart conditions, in combination with those physiological responses and the low oxygen from the impact on the lungs, may result in heart attack and possibly death.
- **Internal surfaces of the nose, throat, and gastrointestinal system:** Irritation of the nose produces a burning sensation, inflammation, runny nose, and sneezing. In the mouth and gastrointestinal tract, exposure to CIs can cause pain, excessive salivation, nausea, and vomiting.
- **Physical Trauma:** Direct impact by the canisters and grenades carrying chemical irritants can cause significant blunt trauma and death. Injuries to the head and neck are most common, causing loss of vision, bruises, abrasions, and lacerations. When canisters and grenades are fired at close range, bone fractures and serious internal injuries are possible.

Chemical irritants are an indiscriminate weapon by design, especially when delivered by firing a grenade or a canister, so it is difficult, if not impossible, to limit the exposure to individuals or small groups without affecting peaceful demonstrators and bystanders.

The chemical agent known as CS, the most commonly used form of tear gas, and its successors can linger on surfaces and in neighborhoods, causing symptoms hours and even days after their first use.

In light of all the evidence of harm as well as the potential risk of increasing susceptibility to respiratory infections in the setting of the current COVID-19 pandemic, the American Thoracic Society, an organization representing lung disease and critical care specialists, issued [a call](#) on June 11 for a moratorium on the use of tear gas, pepper spray, and other chemical agents against demonstrators during the COVID-19 pandemic.

B. Rubber Bullets and Other Kinetic Impact Projectiles

Kinetic impact projectiles (KIPs) such as rubber bullets can cause blunt or penetrative trauma. Penetrative injuries are those that pierce the skin or soft tissue. Blunt injuries are those that cause internal damage without breaking the skin barrier. All projectiles can cause these injuries but projectiles with metal cores (rubber coated metal bullets) or composite metal fragments can cause significantly worse injuries.



- **Eyes:** Direct trauma to the eye from KIPs nearly always causes total blindness in that eye, due to rupture of the globe (eyeball) as well as trauma to nearby structures. KIPs can also penetrate through the eye socket and enter the brain, causing brain injury.
- **Cardiorespiratory System:** When aimed at the chest, KIPs can bruise the lungs or heart, and cause serious, possibly fatal, injuries such as bleeding, deflation of the lungs, and heart attacks.
- **Musculoskeletal System:** Injuries to the muscles and bones may cause sprains, bruises, and fractures. Deeper injuries can cause permanent damage to the neurovascular structures, leading to tissue death and necessitating amputations.
- **Brain:** Blunt trauma to the brain can cause concussions and bruising inside the brain (contusions) as well as internal bleeding and skull fractures.
- **Head and Neck:** The delicate structures of the face and neck are particularly vulnerable to traumatic injury. The bones of the face and skull, the spinal cord, and the blood vessels in the neck are all close to the skin surface. Trauma to that area can cause bleeding, irreversible damage, and death.
- **Abdomen:** Blunt injuries can cause internal bleeding and damage in the solid organs such as the liver, kidneys, and spleen. Penetrative injuries can also cause bleeding, perforations, and infections.
- **Skin and Soft Tissue:** KIPs can cause bruising and contusions of the skin and soft tissue, as well as superficial and deep lacerations, some of which may cause muscle or nerve damage as well as bleeding.

When KIPs are fired at close range, the risk for more severe injury is increased; the speed at which KIPs travel can be comparable to live ammunition and, at close range, can penetrate the body, causing injuries, disabilities, and death, especially when they strike the head or face. When launched or fired from afar, these weapons are inaccurate and can strike vulnerable body parts, as well as cause unintended injuries to peaceful demonstrators and bystanders. Therefore, there are significant doubts that these weapons can be used in a manner that is simultaneously safe and effective.

The American Academy of Ophthalmology, the leading U.S. medical organization representing eye doctors, condemned the use of rubber bullets, and, in a [statement](#) issued on June 3, called on law enforcement officials to “immediately end the use of rubber bullets and similar projectiles to control or disperse crowds of protesters.”

C. Long-range Acoustic Devices and Sound Cannons

There is little medical literature on the effects of acoustic weapons on people. There are cases reported between 1990 and 2015 of hearing loss and prolonged ear pain or



ringing, but adequate scientific research is not yet available to develop consensus on specific health effects. However, it is clear from reports about actual use that the weapons can be indiscriminate, causing harm or pain to peaceful protesters, bystanders, and even law enforcement officers themselves.

Anecdotal media accounts document individuals exposed to long-range acoustic devices (LRADs) who sustained permanent hearing loss, tinnitus (ringing of the ears), ear pain, and disorientation when the LRAD was [activated](#) without warning in an apparent attempt to disperse protesters. Journalists exposed to the LRAD [reported](#) symptoms including migraines and ringing of the ears that lasted for a week.

D. Disorientation Weapons such as Flash-bangs and Stun Grenades

Case reports, news media, and even police reports have identified the risks associated with weapons meant to cause disorientation. Many of the reported injuries involve severe burns resulting from the weapons being fired at close range, in enclosed spaces, or in dense crowds.

- **Primary blast injury (when the blast wave hits the body):** The pressure from the shock waves can cause internal injuries, especially to delicate membranes like the eardrum.
- **Secondary blast injury:** Debris from the explosion and fragmentation of objects can penetrate the body and cause organ damage and bleeding.
- **Tertiary blast injury:** The displacement of air can push people into solid objects, causing blunt and penetrating trauma.
- **Quaternary blast injury:** Other parts of the explosion can cause additional injuries such as burns, respiratory injuries, crush injuries, and psychological trauma. In addition, crush injuries may result from the panic and chaos caused by large moving crowds that have suddenly become disoriented.

A *ProPublica* [report](#) in 2015 documented more than 50 cases of death and serious injury from law enforcement use of stun grenades since 2000 in the United States alone.

Legality of Use

International human rights law and the United States Constitution protect the freedoms of expression and assembly. These include the right to speak and hold public or private meetings, marches, processions, demonstrations, and sit-ins.

The state has a duty to protect those exercising their right to peaceful assembly from any type of violence, including violence from law enforcement agents and counter-protesters. As long as the purpose of the assembly is peaceful, incidental violence does not discharge the state from this obligation to protect.



International legal principles require law enforcement agencies to adopt rules and regulations for the use of force within the following parameters:

- The use of force must be minimized, targeted, proportional, and directed at de-escalating violence.
- The use of crowd-control weapons must be carefully controlled.
- The deployment of crowd-control weapons must occur in a manner that minimizes the risk of endangering uninvolved persons.
- Restraint must be shown in all use of force by law enforcement agents, with a view to minimizing injury and loss of life, in accordance with the principles of necessity, proportionality, and legality of the use of force modality used.

In addition, the state has an obligation to ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment, and further, that those providing health care services to wounded persons are protected.

International human rights laws stipulate that the use of force must adhere to the principles of necessity, proportionality, and legality. These principles have also been violated if the use of crowd-control weapons is not adequately regulated, or if the weapons are misused or used indiscriminately.

PHR presents these findings on the potential significant dangers of the use of crowd-control weapons – including, in many cases, a real risk of permanent disability or death – as you consider new regulations and restrictions on the use of such weapons. It is our sincere hope that your legislature will significantly increase regulation of the use of crowd-control weapons, in keeping with internationally recognized principles for the use of force by law enforcement agencies. In particular, force must be minimized, targeted, proportional, and directed at de-escalating violence. It is past time to rein in the use of such dangerous and easily abused weapons.

Sincerely,

Donna McKay
Executive Director,
Physicians for Human Rights

Michele Heisler, MD, MPA
Medical Director,
Physicians for Human Rights
Professor of Internal Medicine
and Public Health,
University of Michigan



Ranit Mishori, MD, MHS, FAAFP
Senior Medical Advisor,
Physicians for Human Rights
Professor of Family Medicine,
Georgetown University
School of Medicine

Rohini Haar, MD, MPH
Medical Expert, Physicians for
Human Rights
Lecturer, Department of
Epidemiology and Biostatistics,
School of Public Health, University
of California at Berkeley
Attending Physician, Kaiser Medical
Center, Oakland, CA

Howard Hu, MD, MPH, ScD
Advisory Council Member,
Physicians for Human Rights
Affiliate Professor,
University of Washington School of
Public Health

Vincent Iacopino, MD, PhD
Advisory Council Member,
Physicians for Human Rights
Adjunct Professor of Medicine,
University of Minnesota Medical School
Senior Research Fellow,
Human Rights Center, University of
California at Berkeley

Additional Resources: [Health impacts of chemical irritants used for crowd control: a systematic review of the injuries and deaths caused by tear gas and pepper spray](#); [Death, Injury and Disability From Kinetic Impact Projectiles in Crowd-Control Settings: A Systematic Review](#); [No Safe Space: Health Consequences of Tear Gas Exposure Among Palestine Refugees](#); [PHR & INCLO Crowd-Control Weapons Factsheets](#).



October 20, 2020

Dear Mayor and City Council Members,

We write in our capacity as chief executives of four independent international human rights organizations with offices and programs focused on the United States. As your jurisdictions ready themselves for the November 3rd general election and protests that may ensue, we write to urge you, in the interest of public safety and the protection of human rights, to review your respective jurisdictions' laws and policies related to protests—including policing, crowd control, and use-of-force regulations—to ensure they comply with obligations of local governments under international human rights law.

Human Rights Watch, Amnesty International-USA, Physicians for Human Rights, and Human Rights First are among the world's leading independent organizations dedicated to defending and advancing human rights. We carry out human rights advocacy and research on human rights violations in over 90 countries around the world, including in the United States.

As Mayors and City Council Members, you have obligations under international law to respect, protect, and fulfill the exercise of the human right to freedom of peaceful assembly and to ensure that law enforcement agencies under your authority do not subject protesters to unnecessary or excessive use of force or arbitrary arrests. Adhering to your human rights obligations keeps communities safe and protects the rule of law while upholding individual rights.

We enclose a full analysis of the applicable international human rights law, as well as recent reports from our respective organizations. Our most urgent recommendation is that you ensure that your applicable regulations and accountability mechanisms, and the training and instructions you provide to law enforcement, adhere at minimum to the following three standards:

- **Enable Peaceful Assembly:** Emphasize authorities' obligation, under international law, to protect the right to freedom of peaceful assembly, both by adopting measures to enable peaceful assemblies and by protecting demonstrators from violence directed at them by counter-protests or individuals, including with specific training on engaging marginalized or at-risk populations;
- **Avoid Unnecessary or Disproportionate Restrictions on Peaceful Assembly:** Presume that all assemblies will be non-violent, even in cases where there may be isolated incidents of violence, or where small groups of external actors—such as counter-protesters—may engage in violence. Restrict such assemblies only when the restrictions are necessary and proportionate and use the least intrusive measures necessary to achieve a legitimate goal, such as protecting the rights of others or maintaining public order.
- **Minimize Arrests and Use of Force in Responding to Peaceful Protests:** Law enforcement should avoid the use of force to disperse peaceful protests, regardless of whether they deem the protests unlawful. If necessary, police should issue summonses on the street instead of bringing people to jail. Because of the heightened risk of contracting COVID-19 for detainees and jail staff, authorities should refrain from custodial arrests for misdemeanors and low-level felony offenses that do not involve the infliction or threat of infliction of serious bodily injury or a

known likelihood of physical harm. Even in the event of violence, force should only be used as a last resort, if necessary and proportionate to address a genuine threat, and if other measures to address that threat have proved ineffective or have no likelihood of achieving the intended result. Any use of force should be preceded by clear warnings. The police should not intervene aggressively and disperse a demonstration simply in response to the actions of a small number of participants. Assemblies are often diverse gatherings and participants do not lose their individual rights simply because a small number of people are behaving violently. Law enforcement officials should also receive specific training on engaging marginalized or at-risk populations

In the last several months, our organizations have documented how authorities have responded to overwhelmingly peaceful protests against systemic racism and police violence in the United States and advocated for changes in laws, regulations and policies . In many places across the country, we documented interference with the right to peacefully assemble, unlawful use of force by security forces, and mass arbitrary arrests. These abuses were in part enabled by lax regulation of police action and use of force by law enforcement.

In 125 separate incidents, in 40 states and the District of Columbia, between May 26 and June 5, 2020, Amnesty International documented police using excessive force against protesters, including beating protesters, misusing tear gas and pepper spray, and inappropriately, and at times indiscriminately, firing “less lethal” projectiles against protesters.

Similarly, between May 26 and July 27, 2020, Physicians for Human Rights documented 115 cases where security forces fired kinetic impact projectiles, such as rubber bullets and bean bags, as well as tear gas canisters, directly at protesters’ heads and necks, resulting in serious injuries. Physicians for Human Rights also documented how the disproportionate and excessive use of force and obstruction of medical care by the Portland Police Bureau (PPB) and federal agents caused severe injuries among protestors and volunteer medics in July 2020.

In New York City, Human Rights Watch documented how police planned the assault and mass arbitrary arrests of peaceful protesters in the Mott Haven neighborhood of the South Bronx on June 4. Protesters and legal observers were “kettled” (surrounded) with no avenue to escape shortly before the imposition of curfew and were victims of excessive force through the use of batons, pepper spray, and other violence prior to being held in crowded conditions with no protection from COVID-19. Physicians for Human Rights reached the same conclusions in a case study of the Mott Haven protest, focusing on police interference with access to immediate medical care, arrests of volunteer medics, and failure to take adequate COVID-19 protections.

In dozens of other instances documented by Human Rights Watch, Amnesty International-USA and Physicians for Human Rights, law enforcement conducted arbitrary arrests by kettling, grabbing, and detaining otherwise peaceful protesters.

Our organizations found that law enforcement officers occasionally used vehicles as weapons, slamming car doors into protesters, and in one instance hovering helicopters dangerously low above crowds, using rotor wash to disperse protesters, snapping tree branches, and sending debris flying.

Our organizations documented how media, legal observers, and medics not participating in protests were specifically targeted with violence and suffered injuries by use of crowd control weapons by law

enforcement. The US Press Freedom Tracker documented over 700 incidents in the United States involving journalists during protests between May 26 and August 18, the majority committed by police.

Mobilizing US military leaders and veterans, Human Rights First also worked to shed light on excessive uses of force by law-enforcement, including the use of military tactics and weapons against protesters exercising their rights.

The abuses documented throughout the summer constitute violations of the United States' obligations under international human rights law. Mayors and city councils play a crucial role in setting the tone of conduct for the law enforcement agencies under their jurisdictions and providing oversight. You have a chance to prevent a repetition of last summer's abusive response to protests in the future.

With two weeks remaining ahead of the election, we urge you to ensure that guidelines and regulations under your jurisdiction on crowd control and the use of force conform to international standards. These should be clearly communicated to law enforcement prior to protests, with the message that officials will pursue disciplinary measures for any violations and encourage criminal prosecutions against law enforcement officials as warranted.

We also encourage you to order temporary special measures to protect peaceful assemblies and voters from intimidation and violent disruptions by third-party actors, including by preventing armed individuals or groups from threatening protesters and voters during and following the elections, or through other necessary and proportionate measures.

We enclose a summary of the key obligations and guiding principles under international human rights law regarding the freedom of peaceful assembly and the use of force by law enforcement authorities. In your response to this letter, we would appreciate receiving information on your awareness of these international human rights obligations and your efforts to ensure that your cities' regulations, law enforcement training, and accountability mechanisms conform and comply with them.

We look forward to working with you to protect these rights in the United States, and we look forward to receiving your response. Should you have any questions, please do not hesitate to reach out to Madeline de Figueiredo, Crisis and Conflict Associate at Human Rights Watch, at defigum@hrw.org.

Sincerely,



Kenneth Roth
Executive Director
Human Rights Watch



Bob Goodfellow
Interim Executive Director
Amnesty International USA



Donna McKay
Executive Director
Physicians for Human Rights



Michael Breen
President and Chief Executive Officer
Human Rights First

Legal Standards and Recommendations on the Policing of Assemblies

The Right to Freedom of Peaceful Assembly

Both the United States Constitution and the International Covenant on Civil and Political Rights (ICCPR), to which the United States is a party, provide for the right to freedom of peaceful assembly.¹ Under international law, authorities are obligated to facilitate the exercise of this right, including by promoting “an enabling environment... and put[ting] in place a legal and institutional framework within which the right can be exercised effectively.”² Authorities also have an obligation to protect participants in peaceful demonstrations from possible violence directed at them by counter-protests or individuals.³

The burden to establish that a restriction on the right to freedom of peaceful assembly is warranted rests with the government.⁴ Such restrictions are only permissible when they are necessary and proportionate “in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”⁵ Restrictions need to be provided for in law, may not impair the essence of the right, must be the least intrusive means to achieve the goal, and may not be discriminatory. Temporary disruptions, including to traffic, are not sufficient grounds to prevent or disperse an assembly.

Under international human rights law, authorities should presume assemblies to be peaceful.⁶ Violence by authorities or outside actors, or isolated violence by some participants in a protest, should not lead to an otherwise peaceful assembly being declared unlawful.⁷

In the context of protests, where a restriction on assembly is necessary, authorities should first use the “least intrusive measures” available in response. They should limit arrests and detention as far as possible; arbitrary arrests themselves violate international human rights standards.⁸

Assemblies may only be dispersed in “exceptional cases” such as where “the assembly as such is no longer peaceful, or if there is clear evidence of an imminent threat of serious violence that cannot be reasonably addressed by more proportionate measures.”⁹ In that event, law enforcement authorities should first give protesters ample opportunity to disperse, with clear instructions and open pathways.

If the police then face resistance, they could issue summonses on the street instead of bringing people to jail. Because of the heightened risk of COVID-19 for detainees and jail staff, authorities should refrain from custodial arrests for misdemeanors and low-level felony offenses that do not involve the infliction or threat of infliction of serious bodily injury or a known likelihood of physical harm.

¹ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> (accessed October 19, 2020). The US ratified the ICCPR in 1992. The ICCPR applies to federal, state, and local governments. ICCPR, art. 50.

² UN Human Rights Committee, General Comment 37, Right of Peaceful Assembly, CCPR/C/GC/37, para. 24, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRICAqhKb7yhsrdB0H1I5979OVGGb%2bWPAXj3%2bho0P51AAHSqSubYW2%2fRxcFiagfuwxyucuvi40wJfdPLI9%2fcedeDWBX%2fij2tgqDXgdjqx8wTKKbloySyDPtsMO> (accessed October 19, 2020). The United Nations Human Rights Committee is the institution charged with issuing authoritative interpretations of the ICCPR.

³ *Ibid.*, para. 24.

⁴ *Ibid.*, para. 36.

⁵ ICCPR, art. 21. See also UN Human Rights Committee, General Comment 37, Right of Peaceful Assembly, CCPR/C/GC/37, paras. 36 et seq.

⁶ *Ibid.*, para. 17.

⁷ *Ibid.*, paras. 17-18.

⁸ ICCPR, art. 9.

⁹ UN HRC, General Comment 37, para. 85.

When used indiscriminately or punitively, the policing tactic of “kettling,” or the containments of protests by law enforcement officials who encircle and close in on the protesters, violates the right to freedom of peaceful assembly, and may also violate other rights such as freedom from arbitrary detention and freedom of movement. Kettling should be limited to people linked directly to violence and the duration of the containment should be limited to the minimum necessary.¹⁰

Use of Force

Use of force is understood as using physical means to influence behavior or damage property, including by the use of “less-lethal” weapons such as batons, electroshock weapons, handheld and launched chemical irritants, water cannons, kinetic impact projectiles, and lethal weapons.

Under the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Personnel, law enforcement officials should make use of non-violent means before resorting to force and avoid the use of force to disperse non-violent protests, regardless of whether the authorities deem the protests illegal.¹¹ Whenever the lawful use of force is unavoidable, law enforcement officials should exercise restraint and act proportionately, taking into account both the seriousness of the threat and the legitimate objective to be achieved.¹²

In the context of crowd-control, law enforcement officials should plan for and prioritize the use and deployment of non-violent means of control and protection before resorting to force. Heavy displays of less-lethal and lethal equipment by law enforcement officials may escalate tensions during peaceful assemblies and lead to violence. Law enforcement officials should therefore “delay direct contact or engagement with members of the public if that would make the need to use force, or the potential for violent outcomes, less likely, and if the delay causes no danger to the individual posing the threat or to others.”¹³

Less-Lethal Force

International norms on the use of “less-lethal” crowd-control weapons specify these should only be used as a means of last resort to disperse unlawful assemblies that are violent or pose a significant risk to the safety others, where necessary and in proportion to the threat.

Tear gas projectiles should be fired at a high angle and from a distance, and not directly at individuals or in closed spaces, where the lack of adequate ventilation increases the risk of asphyxiation.¹⁴ Skip-firing projectiles off the ground carries an unacceptable risk of indiscriminate injury.¹⁵ Pepper spray and other handheld chemical irritants should not be used in cases of passive resistance.¹⁶

In dispersing violent assemblies, firearms firing less-lethal rounds may only be used when other less-harmful means have proven ineffective, and should only be used to the minimum extent necessary. Based on United Nations guidance on the use of “less-lethal weapons, kinetic impact projectiles like rubber bullets should “generally only be used in direct fire with the aim of striking the lower abdomen or legs of a violent individual and only with a view to addressing an imminent threat of injury to either a

¹⁰ Ibid., para. 84

¹¹ United Nations, Basic Principles on the Use of Force and Firearms by Law Enforcement, September 1990, arts. 4-5, <https://www.un.org/ruleoflaw/files/BASICP~3.PDF> (accessed October 19, 2020).

¹² Ibid.

¹³ United Nations, Guidance on Less-Lethal Weapons in Law Enforcement, para. 2.6, https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf (accessed October 19, 2020).

¹⁴ Ibid., paras. 7.3.2, 7.3.6, 7.3.7.

¹⁵ Ibid., para. 7.5.4

¹⁶ Ibid., para. 7.2.7

law enforcement official or a member of the public.”¹⁷ Law enforcement should not use less-lethal projectiles that are inaccurate: “To meet international standards, impact projectiles should be capable of striking an individual to within a 10-centimetre diameter of the targeted point when fired from the designated range.”¹⁸

The guidance also states: “Multiple projectiles fired at the same time are inaccurate and, in general, their use cannot comply with the principles of necessity and proportionality.”¹⁹

Water cannons “should only be used in situations of serious public disorder where there is a significant likelihood of loss of life, serious injury, or widespread destruction of property” and should not be used at short range due to the risk of causing blindness or other injuries.²⁰

Lethal Force

Law enforcement officers may only make lethal use of firearms when strictly unavoidable in order to protect life.²¹ Live ammunition should not be used in crowd-control contexts unless required to protect life or prevent serious injury. Current standards on the use of lethal force by law enforcement authorities in most US jurisdictions are absent or far too permissive.

In 2015, Amnesty International USA analyzed state statutes on the use of deadly force by law enforcement and found that legislation in all states and Washington, DC, failed to comply with international law and standards on the use of lethal force by law enforcement officers. A subsequent investigation conducted in 2020 found a disturbing lack of progress.

All policing guidelines should clearly reflect international standards, and they should be clearly communicated to law enforcement officials prior to any demonstration. The chains of command of all security forces should ensure that independent and transparent criminal investigations can be and are being launched against law enforcement officials alleged to have used unlawful force.

Preventing the loss of life during protests is a crucial part of the international obligations the United States helped shape throughout the world and to which it needs to adhere. City officials have a responsibility, under both domestic and international law, to ensure that police officers under their jurisdiction and control are trained and operate in accordance with the highest possible regard to their obligation to protect life.

¹⁷ Ibid., para. 7.5.2

¹⁸ Ibid., para. 7.5.4

¹⁹ Ibid., para. 7.5.6

²⁰ Ibid., paras. 7.7.2 and 7.7.3

²¹ United Nations, Basic Principles on the Use of Force and Firearms by Law Enforcement, September 1990, art. 9, <https://www.un.org/ruleoflaw/files/BASICP~3.PDF> (accessed October 19, 2020).