



ARRESTED FOR PROTEST

WEAPONIZING THE LAW TO CRACKDOWN ON
PEACEFUL PROTESTERS IN FRANCE

AMNESTY
INTERNATIONAL



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EXECUTIVE SUMMARY

On 16 March 2020, the French government adopted lockdown measures to counter the COVID-19 pandemic; these included provisions that restricted the rights to freedom of peaceful assembly and of freedom of movement. Moreover, on 23 March, the French Parliament declared a health-related state of emergency, which remained in force until 10 July.

Although on 11 May the government eased some of the measures that had been introduced in March, a ban on all public assemblies attended by more than 10 people remained in force until the Council of State (the highest administrative court in France) struck it down on 13 June.

The restrictions that the French authorities imposed on public assemblies after 11 May were neither necessary nor proportionate to the aim of protecting public health. A blanket ban on protests attended by more than 10 people was disproportionate in particular in view of the fact that larger gatherings in public transport or in venues open to the public were permitted, provided that people wore face coverings or maintained physical distance.

Amnesty International documented three cases in which 85 people were fined for participating in small protests in May and June 2020 despite protesters wearing face coverings and/or maintaining physical distance to counter the spread of COVID-19. The authorities fined many more people for participating in protests after 11 May. Some protesters were also arrested or prosecuted.

The disproportionate restrictions on public assemblies that Amnesty International documented following the government's decision to ease lockdown measures are not unprecedented. They are the continuation of a structural and long-term pattern in which law enforcement officials and prosecutorial authorities have weaponized vague laws to crackdown on peaceful protesters. In 2018 and 2019 alone, judicial authorities convicted more than 40,000 people on the basis of vague laws that have also been used to unlawfully restrict the rights to freedom of peaceful assembly and to freedom of expression.¹

YELLOW VESTS AND OTHER SOCIAL MOVEMENTS IN 2018-2020

On 17 November 2018, nearly 300,000 people took to the streets in France. They launched the so-called "gilets jaunes" (Yellow Vests movement) which has regularly staged public gatherings for nearly two years. In France all drivers are required by law to carry a high-visibility vest, which is often yellow, in their vehicles.

Between 2018 and 2020 the Yellow Vests movement, which initially opposed a rise in fuel prices, extended its initial claims and played out alongside millions demanding social and economic justice and protesting against government inaction on the climate crisis and pension reforms. In December 2019 and January 2020, for example, hundreds of thousands of people protested against pension reform. After 11 May 2020, when the French government eased some of the lockdown measures, some small protests in support of health workers and funding of public health took place. Moreover, in the aftermath of the killing of George Floyd in Minneapolis (United States) on 25 May 2020, large protests against racism and police impunity were staged across France.

AUTHORITIES' DRACONIAN RESPONSE

This report shows that law enforcement and prosecutorial authorities have in response weaponized criminal law and resorted to overly broad laws to arrest and prosecute thousands of protesters who did not commit violent acts. The protesters have been caught in the maze of the criminal justice system. A legislative arsenal

¹ See overview of criminal justice response in 2018-19, p. 8. More specifically, 40,331 people were convicted in 2018-19 for the criminal provisions included in the first chart (excluding statistics regarding complementary penalties).

has been deployed to arrest and prosecute protesters arbitrarily and to unduly restrict their right to freedom of peaceful assembly.

Participating in social movements, attending peaceful assemblies and taking collective action are important means for the public to challenge governmental policies and practices with which they disagree, but also to fight injustice and demand respect for human rights. Engaging in politics through protest and collective action has been part of France's political culture for centuries. However, participation in protest in France today carries the risk of exposure to tear gas, rubber bullets and other dangerous weapons; receiving a fine; spending a day or two in pre-charge detention; and facing criminal charges without having committed violent acts.

Between 17 November 2018 and 12 July 2019, police and prosecutors placed 11,203 people who had attended the Yellow Vest protests in pre-charge detention (*garde à vue*). Prosecutors pressed charges against 5,241 people, 3,204 of whom were subsequently convicted, including not only for acts of violence such as criminal damage but also for non-violent acts (see next section).

Protesters who engage in acts of violence are not protected by the right to freedom of peaceful assembly and consequently Amnesty International does not oppose their prosecution, provided that their right to a fair trial is respected and that the charges against them are not disproportionate. However, as stated above, French law enforcement and judicial authorities have weaponized criminal law and resorted to overly broad laws to arrest and prosecute thousands of protesters who did not commit violent acts but who nevertheless were caught in the maze of the criminal justice system. Protesters have been fined, arrested and prosecuted for peaceful conduct that should not be punished and that are covered by the rights to freedom of peaceful assembly and to freedom of expression; these include, for example, organizing a protest without complying with notification requirements or participating in a protest by carrying goggles or other protection equipment against tear-gas and rubber bullets.

CRIMINAL JUSTICE EFFORTS AROUND PROTEST

For years, judicial authorities have emphasised the need to put in place an effective criminal justice response to offences perpetrated by protesters in the context of social movements. In April 2019, Parliament passed a new law on public order criminalizing conduct that had previously not constituted an offence, such as covering one's face. Preventing violent crime and bringing to justice those suspected of resorting to violence during protests are legitimate reasons for imposing restrictions on the right to peaceful assembly. However, this report focuses not on arrests and prosecutions of suspects of violent acts but rather on the thousands of protesters who were arrested pre-emptively and prosecuted on vague laws often without any reasonable suspicion that they were involved in acts of violence.

This report examines three problematic areas where the French authorities restricted the right to freedom of peaceful assembly unnecessarily or disproportionately in 2018-2020, in contravention of international and regional human rights law and standards, such as Article 21 of the International Covenant on Civil and Political Rights (ICCPR) and Article 11 of the European Convention on Human Rights (ECHR) to which France is a party.

First, the authorities arrested and prosecuted hundreds of protesters for actions that are protected by the rights to peaceful assembly and to freedom of expression and therefore should not be criminalized. A blanket ban on covering one's face introduced in April 2019 resulted in at least 210 people being placed in pre-charge detention and 41 people convicted in 2019. When this report went to press (September 2020), the authorities had made compulsory the wearing of face coverings everywhere in Paris, including on the public thoroughfare, and in all indoor venues in Paris as well as everywhere else in France. The implementation of the law that punishes the wearing of face coverings in public assemblies in the current COVID-19 reveals deep contradictions and raises concerns regarding feasibility.

Furthermore, the authorities arrested and prosecuted protesters for contempt of law enforcement officials, in many cases merely for voicing criticism, a legitimate exercise of the right to freedom of expression. In 2019, courts convicted 20,280 people for contempt of public officials, including in the context of protests. People have also faced arrest and prosecution for organizing a peaceful public assembly because they did not submit prior notification required, which should not be a criminal offence according to international human rights law and standards.

Second, hundreds of protesters have been arrested and prosecuted for "participating in a group with a view to preparing acts of violence", a provision introduced into the Criminal Code in 2010 to address the problem of organized violence. According to official statistics, 1,192 people were convicted of this offence in 2019. The vague formulation of the provision enabled the authorities to use it against protesters both before and during demonstrations, place them in pre-charge detention, and prosecute them on flimsy grounds. For

example, protesters were charged with this offence for possession of goggles, helmets or dust masks – items that were frequently used by protesters to protect themselves from the widespread use of tear gas and other weapons by law enforcement officials – and in the absence of any other evidence to support a reasonable suspicion that they were involved in preparing an act of violence. These arrests and prosecutions were arbitrary as they were based on an overly broad law and carried out in the absence of sufficient evidence to establish criminal liability. The arbitrary implementation of the law resulted in the arrest, and sometimes the prosecution, of journalists, volunteer first aiders and human rights observers.

Third, the judicial authorities unduly restricted the right to freedom of peaceful assembly in contexts beyond demonstrations by imposing bail conditions that prohibited people from participating in protests or restricted their freedom of movement with a similar effect, pending trial. Furthermore, in 2019 the judicial authorities imposed complementary penalties in 4,122 cases that restricted people's rights to freedom of peaceful assembly and to freedom of movement for months and in some instances for years, and which were not commensurate with the gravity of the acts for which they were convicted in instances where they were convicted for non-violent acts.

CHILLING EFFECT ON PEACEFUL ASSEMBLY

Arbitrary arrests, prosecutions and fines have taken a toll on protesters and, more broadly, had a chilling effect on the right to freedom of peaceful assembly in France. Some interviewees told Amnesty International that they felt anxious in the aftermath of their pre-charge detention, particularly if they were awaiting trial. Many of those interviewed said that they now thought twice before protesting, took part less regularly in protests or avoided large public assemblies. Some decided not to protest again for fear of further arbitrary arrest or prosecution.

The consequences for respect of the right to freedom of peaceful assembly are clearly far-reaching. Amnesty International recommends the following to end violations highlighted in the report and safeguard this crucial right in France (more detailed recommendations are included at the end of this report).

MAIN RECOMMENDATIONS:

- French authorities must ensure that any measures that restrict human rights, including the rights to freedom of peaceful assembly and expression, introduced in the context of COVID-19 are strictly necessary and proportionate for the protection of public health. As a general rule, there should be no blanket bans on protests and each public assembly should be assessed on a case by case basis.
- French authorities must immediately repeal or substantially amend all criminal provisions at odds with international human rights law and standards on the right to freedom of peaceful assembly. Organizing a public assembly without complying with the notification requirements and contempt of public officials must not constitute a criminal offence. The law that prohibits the wearing of face coverings in public assemblies should be urgently reviewed as its implementation in the aftermath of COVID-19 reveals important contradictions, notably, as wearing face coverings is a necessary measure to counter COVID-19. More generally, a blanket ban on wearing face coverings in public assemblies is at odds with international human rights law and standards.
- Law enforcement and judicial authorities must stop using the provision that criminalizes participation in a group with a view to preparing acts of violence (Article 212-14-2 of the Criminal Code) to arrest and prosecute protesters arbitrarily. Parliament should amend the provision to clarify that only individuals who are actively involved in planning violent acts in a group can face criminal charges.

METHODOLOGY

This report is based on research carried out between June 2019 and August 2020. Amnesty International researchers undertook five field research visits to France: in June 2019 (three days), August 2019 (one week), September 2019 (five days), October 2019 (four days) and January 2020 (three days). Moreover, in August 2019, an Amnesty International team monitored public assemblies against the G7 Summit in Biarritz and gathered cases of protesters who were arrested and prosecuted there. Amnesty International carried out further research in July and August 2020 to update the report in view of the restrictions on public assemblies that the government had introduced after 11 May 2020 to counter the COVID-19 pandemic.

Most of the cases included in this report are related to the Yellow Vest protests because this was the largest social movement that organized public assemblies in France in 2018-2019. However, the report also includes cases of people arrested and prosecuted for participating in other large public assemblies, such as those organized by the climate movement (for example on 21 September 2019) and by trade unions to oppose reform of the pension system.

Amnesty International has relied on official statistics, provided by the Ministry of Justice, on the number of protesters who had participated in the Yellow Vests movement and who were held in pre-charge detention, prosecuted and convicted. These statistics were collected until 12 July 2019 and updated until 13 November 2019. However, they were often not disaggregated by specific criminal offence. In September 2019, the Ministry of Justice told Amnesty International that such disaggregated statistics were not available. In September 2020, the Ministry of Justice provided statistics regarding the number of people who were convicted on the basis of each of the criminal provisions in focus in this report. However, these statistics do not only include people who were convicted in the context of protests. These statistics are presented in the overview of the criminal justice response to protests in 2018-2019.

Thousands of protesters were arrested and prosecuted in 2019 and Amnesty International sought to analyse the large number of judgments of protesters prosecuted for “participating in a group with a view to preparing acts of violence”, but these judgments were not available to the general public or to researchers, as confirmed by the Ministry of Justice in interviews with Amnesty International.

Amnesty International interviewed 66 people (58 cases) whose right to freedom of peaceful assembly was unlawfully restricted as well as 14 lawyers who defended protesters who were fined, arrested or prosecuted. In July 2019 Amnesty International launched public calls for cases of protesters arrested and prosecuted for participating in groups with a view to preparing acts of violence, contempt of public officials or wearing face coverings.² In August 2020, Amnesty International launched public calls for cases of protesters who were fined or arrested and prosecuted for participating in the public assemblies that took place after 11 May, when the French government had prohibited all public assemblies attended by more than 10 people with a view to countering the COVID-19 pandemic.

Following the public calls launched in July 2019, 103 people contacted us, of whom 56 (48 cases) were interviewed twice regarding their arrest or prosecution. A first short interview was carried out by phone and a second in-depth interview was then conducted, whenever possible face-to-face or otherwise over the phone. Most of the 56 interviewees were arrested or prosecuted for multiple criminal offences. In the interest of brevity, this report references only a portion of the 48 cases examined during research. The remaining 47 individuals out of the 103 who had initially contacted us either did not respond to a request for a second interview or were arrested and prosecuted for offences outside the scope of this report.

² Amnesty International, ‘Appel à témoignage: atteintes au droit de manifester des gilets jaunes’ <https://www.amnesty.fr/liberte-d-expression/actualites/nous-souhaitons-entrer-en-contact-avec-des-personnes> (French only).

In addition, following the public calls launched in August 2020, 28 people contacted us, of whom 10 people (10 cases) were interviewed. A portion of these cases are referenced in the chapter on COVID-19 and public assemblies.

Amnesty International corroborated information provided by interviewees through examination of case-specific legal documents whenever available. Individuals who faced prosecution usually had access to their legal files and thus shared them with Amnesty International. In contrast, those individuals who were released after their pre-charge detention without charges did usually not have access to their arrest form or their hearing reports. In addition, to ensure that information given in the interviews was consistent and coherent we also consulted other sources, including media reports or videos.

Amnesty International's researchers also met the Paris Prosecutor and representatives of the Ministry of Justice, the Office of the Ombudsperson (Défenseur des Droits) and the Inspection Générale de la Police Nationale (IGPN), which is the police inspectorate tasked with investigating allegations of unnecessary or excessive use of force by police. In January 2020, Amnesty International shared the main findings included in the report with the representatives of those authorities and provided them with an opportunity to comment in writing. On 6 March 2020, the IGPN replied by sending some general comments to the report and amending the number of investigations regarding allegations of excessive use of force by police. The representatives of the other authorities did not comment on the main findings of the report.

All the interviews were conducted in French without translation. In compliance with informed consent given by interviewees and to protect their security and privacy, pseudonyms or initials have been used to refer to some of the individuals whose experiences are detailed in this report.

1. OVERVIEW OF CRIMINAL JUSTICE RESPONSE TO PROTESTS IN 2018-2019

CRIMINAL PROVISIONS USED ALSO AGAINST PROTESTERS

These statistics include the overall number of people convicted for each criminal offence. These statistics include also protesters. Disaggregated statistics regarding the convictions of protesters for each of the criminal offences in the chart are not available.

	2018	2019
Organization of a banned protest or of a protest without complying with notification requirements (431-9 CC)	6	42
Contempt of public officials (433-5 CC)	18 051	20 280
Wearing face coverings in protests (431-9-1 CC)	-	41
Participation in a group with a view to committing violent acts (222-14-2 CC)	439	1192
Participation in a public assembly that threatens public order (<i>attroupement</i>) (431-4 CC)	36	244
Complementary penalty (prohibition to participate in protests)	75	342
Complementary penalty (restriction on freedom of movement)	3337	3780

Source: Ministry of Justice (SG-SDSE SID/CASSIOPEE-Traitement DACG/PEPP)

PRE-CHARGE DETENTIONS, PROSECUTIONS AND CONVICTIONS OF PROTESTERS WHO PARTICIPATED IN THE YELLOW VESTS PROTESTS BETWEEN NOVEMBER 2018 AND JULY 2019

Statistics regarding pre-charge detentions and prosecutions disaggregated by criminal offence are not available

	Across France	In Paris
Pre-charge detentions	11,203	3,393
Prosecutions	5,241	847
Of which through fast track proceedings	2043	555
Cautions	2,530	942
Cases closed without any charge	2,260	1,327
Convictions	3,204	N/A

Source: Ministry of Justice (SG-SDSE SID/CASSIOPEE-Traitement DACG/PEPP). Statistics collected between 17 November 2018 and 12 July 2019 and updated until 13 November 2019.

2. COVID-19 AND PEACEFUL PROTESTS

On 16 March 2020, the French government introduced measures that restricted human rights, including the right to freedom of movement and the right to freedom of peaceful assembly, with a view to countering the COVID-19 pandemic.³ Moreover, on 23 March, Parliament passed a health-related state of emergency law that conferred powers on the government to adopt exceptional measures to tackle the COVID-19 pandemic. These measures included not only restrictions on the rights to freedom of movement and to freedom of peaceful assembly but also the possibility to temporarily shut down businesses.

While on 11 May the government lifted the measures that restricted freedom of movement in mainland France, the health-related state of emergency remained in force until 10 July 2020.⁴ Despite this, public assemblies attended by more than ten people were prohibited everywhere in France from 11 May⁵ until 13 June. The same restrictions did not apply to gatherings other than public assemblies. More than 10 people were indeed allowed to congregate on public transport or in venues open to the public, provided that they respected a physical distance of at least one metre or wore face coverings.⁶ The participation in public assemblies after 11 May could be punished with a €135 fine as all public assemblies were considered as banned unless they attracted less than ten participants (see chapter 4.4.2 for more information about fines for participating in a banned protest).

On 13 June 2020, the Council of State (the highest administrative court in France) decided to suspend the restrictions on public assemblies. The Council of State emphasized that those restrictions were not proportionate to protect public health. Moreover, the Council of State noted that while the same restrictions did not apply to gatherings other than public assemblies; the former remained permitted provided that they did not attract more than 5,000 people and that participants respected a physical distance of at least one metre or wore face coverings.⁷ On 14 June, following the decision of the Council of State, the Prime Minister issued a decree that established an exception of the prohibition to hold public assemblies larger than ten people. The decree conferred powers on prefects to authorize those public assemblies in which either physical distance could be respected, or the use of face coverings could be ensured. On 6 July, the Council of State suspended the authorization requirement that the government introduced on 14 June. When this report went to press (September 2020), a general ban on any event attracting more than 5000 people was set to remain in force until 30 October 2020.

Derogations from international obligations set out in international human rights treaties, including the right to freedom of peaceful assembly, are permissible in exceptional circumstances only under strict conditions. Derogations must be adopted only following the official proclamation of a state of emergency, they must be

³ Decree 2020-260 of 16 March 2020: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041728476&categorieLien=id>

⁴ Article 1 of law 2020-546 of 11 May 2020:

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041865244&categorieLien=cid>

⁵ Article 7 of decree 2020-548.

⁶ Article 1 of decree 2020-548.

⁷ <https://www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-13-juin-2020-manifestations-sur-la-voie-publique>

exceptional and temporary, they must be strictly required by the exigencies of the situation and they must be consistent with the state's other obligations under international human rights law.⁸

Authorities can also restrict human rights, such as the right to freedom of peaceful assembly, in contexts other than states of emergencies. They can do so for achieving legitimate aims set out in international law, which include protecting public health. While states can legitimately impose restrictions on the right to peaceful assembly to slow down the spread of the virus, these must be necessary and proportionate.

As a general rule, there should be no blanket bans on assemblies and each assembly should be assessed on a case by case basis to impose restrictions only to the extent they are necessary and proportionate to achieve a legitimate aim, which in this case is for the protection of public health. The impediment on people being able to protest collectively in public as a result of measures imposed to protect public health must be a last resort based on a compelling need. The authorities should always take into account other available, less restrictive measures than a general ban to achieve the legitimate aim of protecting public health.

The restrictions imposed on public assemblies in France after 11 May amount to a blanket ban on all assemblies larger than ten people. If restrictions on public assemblies may be necessary to tackle the spread of COVID-19, the restrictions that the French government imposed on public assemblies after 11 May do not appear to be necessary and proportionate, in particular in view of the authorities' decision to impose less strict restrictions on groups of people in public transport or in venues open to the public. Moreover, the decision of the government to impose an authorization requirement for public assemblies that would attract more than ten participants is at odds with international human rights law and standards on the right to freedom of people assembly. The exercise of the right to freedom of peaceful assembly should not be subject to prior authorization by authorities.⁹ States may put in place a system of prior notification with the aim of facilitating the exercise of this right and to take measures to protect public safety and maintain public order (see chapter 4.1 for more information about notification requirements in France).

Dozens, if not hundreds, of protesters were fined for participating in public assemblies between 11 May and the end of August 2020. In some instances, the authorities arrested and prosecuted protesters for criminal offences that are analysed in this report; these include for example organizing a public assembly without complying with notification requirements (see chapter 1.1) or participating in a group with a view to preparing acts of violence (see chapter 5).

FINES FOR PARTICIPATING IN BANNED PUBLIC ASSEMBLIES

Law enforcement officials fined many protesters for participating in banned public assemblies after 11 May. On that day, the government ended some of the measures that had been imposed to counter the pandemic while banning all public assemblies larger than ten people. Between 11 May and 13 June 2020, all protests larger than ten people were banned.

In three specific cases that Amnesty International has documented – and in which about 85 people received a fine – the imposition of fines for participating in a banned protest appears to constitute a disproportionate restriction of the right to freedom of peaceful assembly.

On 12 May trade unions and Yellow Vests organized a small public assembly in Millau (southern France) to express their support for the public health system and for health workers. About 100 protesters gathered at around 7.30pm on the town's main square. The protesters subsequently divided themselves in smaller groups of ten protesters each and wore face coverings. At about 8pm, they started marching.

François, one of the protesters, told Amnesty International that he had noted the presence of two police officers and a few intelligence officers (Service Central du Renseignement Territorial) in plain clothes. He explained that police did not conduct identity checks during the protest. According to François, about 30 people received a €135 fine by post in the days following the gathering, based on participation in a banned protest.¹⁰

A few days later, on 22 May, five groups composed of a few people each staged another small collective action on the main square of Millau. Each group walked around the main square, where an open-air market

⁸ For more information about international human rights law and standards applicable to states of emergency, see for example: Amnesty International, *Upturned Lives*. The disproportionate impact of France's state of emergency, EUR 21/3364/2016: <https://www.amnesty.org/download/Documents/EUR2133642016ENGLISH.pdf>

⁹ See Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (A/HRC/31/66), para. 21, Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE-ODIHR) Venice Commission Guidelines on Freedom of Peaceful Assembly, second edition, Guideline 4.1 and Human Rights Committee, General Comment No 37. Article 21: right of peaceful assembly, para. 73.

¹⁰ Phone Interview with François, 22 July 2020. François is a pseudonym chosen by Amnesty International to protect the privacy of the interviewee.

was taking place at the same time; they held banners with different claims. On 2 June, about 20 people received a fine by post for participation in a banned protest. François received a €200 fine although he told Amnesty International that he had not taken part in that collective action. François contested the fine and produced a witness statement indicating that while he had been on the square that morning he did not participate in the protest.¹¹

Several people who had been fined requested a meeting with prefectural authorities to contest the fines. François told Amnesty International that the police commissioner and the deputy Prefect explained that intelligence officers had identified them also by using CCTV images. The protesters contacted a lawyer to seek legal advice and contested the fines in writing. The lawyer told Amnesty International that the Prosecutor's Office had in some cases already confirmed the fines. He explained that all the fines were issued at the same time (8.07pm on 12 May and 11.42am on 22 May). Moreover, he pointed out that according to French law CCTV images can only be used for the detection of certain traffic offences and not offences related to public assemblies.¹² When this report went to press (September 2020), the lawyer was still waiting for the decision of the Prosecutor's Office to continue with court proceedings.

Amnesty International collected other testimonies of protesters who had received fines for participating in a banned protest without undergoing an identity check. On 13 June, the day when the Council of State quashed the ban on public assemblies, Yellow Vests in **Thonon-les-Bains** (eastern France) joined a protest against police excessive use of force and deaths in custody following the killing of George Floyd in Minneapolis (United States). A couple of hundred people gathered at about 3pm and started marching through the town. Two protesters told Amnesty International that they had received a fine for participating in a banned protest. They explained that all protesters wore face coverings until the end of the march at about 5pm and that police did not conduct identity checks on the day. About 20 Yellow Vests were fined for participating in the protest; they have all contested the fines. When this report went to press, they were awaiting a response from the Prosecutor's Office.

In another case, law enforcement officials checked the identity of protesters who subsequently received a fine for participating in a banned protest. On 23 May, a few dozen people gathered in Metz (eastern France) to protest against the government's response to the COVID-19 pandemic. About 20 members of the **Revolutionary Choir** (Chorale Révolutionnaire) joined the protesters.

Stéphanie, a member of the choir, explained to Amnesty International that the choir had been formed in July 2019: "We thought that it would be a good idea to have a peaceful tool of resistance that could also liven protests up. The choir was then joined by activists from various movements including anti-racist activists, Yellow Vests and feminists".¹³

On 23 May, the members of the choir gathered with other protesters in downtown Metz at about 2pm. Stephanie underscored that members of the choir were divided in three groups composed of less than ten people each and that they all wore face coverings until starting to sing. They were also displaying banners that bore slogans such as "Their profit, our death" and "Profit for hospitals not for the capital". She explained that about 20 police officers arrived shortly after they had gathered and told them not to display the banners. As they did not comply with that request, police seized the banners and tore them apart. Then they proceeded to check the identity of the members of the choir and told them that they would receive a fine due to their participation in a banned protest.

Stéphanie explained to Amnesty International that three weeks after the protest, 14 members of the choir received a fine for participating in a banned protest. Thirteen among them contested the fines. On 19 June, the Prosecutor's Office confirmed the fine. Stephanie and 12 other members of the choir informed the Prosecutor's Office about their intention to contest the fine before a police tribunal. When this report went to press, five people who contested the fines had been notified of the hearing before the Metz Police Tribunal, scheduled for 3 November 2020.¹⁴

ARRESTS AND PROSECUTIONS

French authorities had arrested and prosecuted hundreds of peaceful protesters before the COVID-19 pandemic. Law enforcement and judicial authorities weaponized criminal law to curb the right to freedom of

¹¹ Phone Interview with François, 22 July 2020. Amnesty International had access to the two fines that François received as well as the declaration stating that he had not participated in the collective action organized on 22 May.

¹² Phone interview with Jacques Brel, the lawyer who represent some of the people who received a fine, 5 August 2020. See article R130-11 of the Traffic Law (Code de la Route). According to Article L251-2 of the National Security Law (Code de la Sécurité Intérieure), CCTV images can be used to prevent some criminal offences including terrorism-related offences under French law but not offences related to public assemblies.

¹³ Phone interview with Stéphanie, 25 August 2020.

¹⁴ Amnesty International had access to the fine that Stéphanie received and the copy of her request for the police tribunal to decide on the contestation of her fine.

peaceful assembly. Amnesty International has documented cases in which the authorities arrested and, in some instances, prosecuted protesters only for exercising their right to participate in peaceful protests after 11 May 2020, when the French government eased some of the measures that had been adopted to counter the COVID-19 pandemic yet failed to ease restrictions on peaceful assemblies.

On 11 May, about 40 people, including some Yellow Vests, participated in a small public assembly on Place de la République in Metz (East France) to support the grassroots initiative Down the Masks (Bas les Masques), which gave voice to claims in support of health workers and public funding for the national health system.¹⁵

Natacha, an activist who participated in the protest, told Amnesty International that the protesters wore face coverings and divided themselves into small groups composed of up to 10 people each. Shortly after the protest had started, police asked protesters to disperse and explained that all public gatherings were prohibited under the health-related state of emergency.

Two days after, police called Natacha and summoned her to the police station. At the police station, police explained that Natacha had been identified as the organizer of the protest and that she would be prosecuted for organizing a banned protest. Natacha explained to Amnesty International that she had only circulated the information about the public assembly on social media, but she did not organize the protest.

Organizers who do not notify the authorities of an assembly, who organize an assembly that has been banned or who deliberately provide wrong information in the notification can be held criminally liable and sentenced to up to six months' imprisonment and fined up to €7,500.¹⁶ Forty-two people were convicted for this offence between in 2019 (see chapter 4.1 of this report). Natacha should not have been arrested or prosecuted at all; aside from the lack of evidence regarding her role as organizer of the protest, criminalising the failure to notify the authorities of a peaceful assembly or organizing a protest that has been banned is grossly disproportionate in this context. Moreover, the blanket ban that the French government imposed on public assemblies after 11 May to protect public health raised concerns regarding the necessity and proportionality of the measure, given that other gatherings other than public assemblies were allowed at this time.

Natacha told Amnesty International that she intended to participate in the public assemblies scheduled for September 2020 and that she remained optimistic that she will be acquitted. She emphasized: "So far, I continue to be positive, I am telling myself that I can't be convicted for something that I have not done".¹⁷

On 14 July, **Eleonor** was arrested in Paris and spent 24 hours in pre-charge detention for **participating in a group with a view to preparing acts of violence**. As this report documents, law enforcement and judicial authorities arrested and prosecuted hundreds of protesters for the same criminal offence in 2018 and 2019 when large protests occurred in France (see chapter 5).

Eleonor, a 25-year-old health worker from Brittany, participated in the protest organized in Paris by trade unions and the *Collectif Inter-Hôpitaux*, an organization in support of the public health system. Eleonor explained to Amnesty International that the protesters made claims regarding wages and working conditions of health carers. She particularly stressed the difficult working conditions of home health carers. She said:

"I work as a home health carer for elderly people. I work long hours and often without the necessary equipment. For example, I just suffered a back injury because I had to lift an older woman out of her bed by myself. In public hospitals, colleagues are often not properly equipped, for example many just had a face mask and gowns during the pandemic but nothing else".¹⁸

Eleonor told Amnesty International that on 14 July she had marched with two other health carers from République to Bastille, in central Paris. She explained that once the protesters had reached Bastille, law enforcement officials surrounded them and requested them to leave by metro. Eleonor and her two colleagues took the metro and got off at the Champs-Élysées, where protests had been regularly banned in the past and were also banned on that day (see 4.4.2).¹⁹ She explained that law enforcement officials proceeded to check the identity of many of the protesters who were present in the area. At about 7pm, they stopped Eleonor, who was alone at the time, in front of the clothing store Zara. Law enforcement officials checked Eleonor's backpack, which contained a gas mask and a pair of goggles. They told her that she would be fined for participating in a banned protest. They subsequently arrested her and placed her in pre-

¹⁵ Further information about the initiative Down the Masks can be found here: <https://baslesmasques.co/en/>

¹⁶ Article 431-9 of the Criminal Code.

¹⁷ Phone Interview with Natacha, 29 July, 2020.

¹⁸ Phone interview with Eleonor,

¹⁹ On 10 July, the prefect of Paris banned all Yellow Vest protests on 13 and 14 July in an area of Paris around the Champs-Élysées. The prefect justified the ban by referring to instances of violence that had occurred in the past and the fact that other public gatherings had been planned on those days.

charge detention for participating in a group with a view to preparing violent acts. She explained to Amnesty International that law enforcement officials had asked her many questions about her political activism during the hearing in pre-charge detention, including why she had a face covering that displayed a yellow vest. She was released after having spent 24 hours in pre-charge detention without any charge pressed against her.

In another case that Amnesty International documented, law enforcement officials arrested **Aurélie** on the same day, on 14 July, in the area around the Champs-Élysées. They took Aurélie to a police station without any apparent reason before releasing her after about one hour, without pressing any charges.

Aurélie, who had joined the Yellow Vests movement before the COVID-19 pandemic, told Amnesty International that on 14 July she went to the Champs-Élysée to see the official parade organized for Bastille Day. She was with two other friends and they all intended to participate in the protest that the Yellow Vests organized in the morning in front of the IGPN (Inspection Générale de la Police Nationale, 12th district), outside the area where the Prefect had banned protests on that day. They watched the parade for a while from one of the small streets at a right angle to Champs-Élysées. Then, at about 10am, Aurélie and her friends moved towards Place de l'Étoile. Aurelie told Amnesty International that shortly before reaching Place de l'Étoile, about 10 law enforcement officials stopped them and checked their identity documents. They explained that they were there to see the parade and then planned to participate in the protest of the Yellow Vests. Police allowed Aurélie and her friends to proceed further. However, after a few seconds the police commander shouted "Catch them". Police checked their IDs another time and then told them to join another group of people who were standing 100 metres away from them. Aurelie explained to Amnesty International that those people were not protesters and that, for example, two tourists were part of the group. They were all arrested and taken to different police stations. Aurélie and her two friends were taken to the police station of the 20th district. Aurélie explained to Amnesty International that police officers at the police stations told her she would not be placed in pre-charge detention but failed to explain the reasons behind her arrest. She highlighted that one of the police officers who proceeded to arrest her had told her that she would receive a fine for participating in a banned protest. However, under French law, participation in a banned protest can be punished with a fine alone and does not warrant an arrest.

Similar to many other cases that Amnesty International has documented in this report (see section 5.2), Aurélie's arrest appears thus to be arbitrary – it was neither necessary nor proportionate to detain her.²⁰ In instances where a person cannot, or is not willing to, produce an identity document, law enforcement officials can restrict their freedom of movement and their right to liberty to check his or her identity.²¹ However, this did not apply in Aurélie's case as law enforcement officials did not even attempt to check her identity before her arrest. Police released Aurélie after one hour without pressing charges. When this report went to press (September 2020), Aurélie had not yet received a fine.

²⁰ Article 9 of the International Covenant on Civil and Political Rights provides that "No one shall be subjected to arbitrary arrest or detention.". In General Comment 35 The Human Rights Committee provide that "The notion of "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law,²⁴ as well as elements of reasonableness, necessity and proportionality." (UN Human Rights Committee, CCPR/C/GC/35, para 12)

²¹ Article 78.3 of the Code of Criminal Procedure.

3. BACKGROUND: A SNAPSHOT OF THE YELLOW VESTS MOVEMENT

On 17 November 2018, nearly 300,000 people took to the streets throughout France.²² They launched the so-called “*gilets jaunes*” (Yellow Vests movement) which has staged regular protests for nearly two years. The movement was named after the hi-visibility security vests that all drivers are required by law to carry in their vehicles.

A principal grievance behind the protests was a rise in fuel prices at a time when the overall cost of living had also been increasing.²³ The Yellow Vests movement, went on to encompass wider demands for social and economic justice claiming that the government’s tax reforms were disproportionately impacting those on lower incomes in rural and peri-urban areas.

The Yellow Vests movement attracted a wide range of people from different socio-economic backgrounds and with a variety of political activity experience. Some protesters interviewed by Amnesty International had not previously participated in protests, while others had joined political mobilizations as trade unionists or had taken part in the social movement opposing labour law reform in 2016 and 2017.

Many protesters saw the Yellow Vests movement as horizontal, without hierarchy, and were often opposed to the more hierarchical structure of trade unions. Shortly after it took to the streets, the Yellow Vests movement formulated wider demands for socio-economic justice and direct democracy that went beyond the initial fuel price grievance. For example, Frédéric, a trade unionist who works as a janitor in Besançon, said: “There are staggering inequalities in France. The Yellow Vests movement is legitimate because we live in a rich country, in a country where there is wealth but where at the same time people cannot live properly because that wealth is not shared. I work but I cannot live properly.”²⁴

Some of the protesters Amnesty International interviewed for this report pointed out that the widening of the movement’s demands convinced them to support the protests. Cédric, an artist who lives in the Paris region and who had participated in the movement against reform of labour laws (see Chapter 3.1), pointed out: “The movement has grown on me, I realized that people were expressing themselves, that they were

²² Statista, ‘Nombre de participants lors des manifestations des gilets jaunes en France entre novembre 2018 et juin 2019’ <https://fr.statista.com/statistiques/952143/nombre-manifestants-gilets-jaunes-france/> (French only).

²³ For more information about the rise of living costs see: <https://www.thelocal.fr/20181101/how-living-in-france-has-got-more-expensive-in-2018> [PAYWALL]. The price of diesel fuel had, for instance, increased by €0.19 per litre in 2017 mainly due to a rise in fuel tax. Between 2017 and 2018, the tax on diesel rose by 12%. For further information on fuel price increases see <https://carbu.com/france/index.php/prixmoyens> (French only). For further information on increases in fuel tax see <https://www.ecologique-solidaire.gouv.fr/fiscalite-des-energies> (French only).

²⁴ Interview with Frédéric, 29 January 2020.

exercising their rights. I did not support them initially; I took some time because I did not particularly support the demands about the fuel price”.²⁵

Some people have perpetrated serious acts of violence in the context of the Yellow Vests protests. These have included attacks on property, in particular commercial premises, and against law enforcement officials. The Ministry of the Interior reported 1,944 cases of injuries sustained by law enforcement officials.²⁶ The authorities often stated that these acts of violence were perpetrated by the “Black Block” or “*casseurs*”, as authorities, the media and the general public in France often refer to people who perpetrate acts of violence during protests. For example, Parliament when promoting a new law to protect public order made reference to the consistent presence of the “Black Block” during Yellow Vest protests (see Chapter 3).

Law enforcement officials resorted to widespread use of weapons to police the Yellow Vests protests. In particular, the use of kinetic impact projectiles soared. According to official statistics, law enforcement officials fired at least 19,071 rubber bullets, 1428 tear-gas grenades (GLI-F4) and 5,420 sting-ball grenades during Yellow Vests protests.

In a media interview after the G7 Summit, President Emmanuel Macron, while emphasizing the need to tackle extreme violence perpetrated by the “Black Blocks”, conceded the need to reform policing strategies to limit the number of people injured during protest.²⁷ In June 2019, the then Minister of the Interior, Christophe Castaner, launched a consultation with experts that was expected to lead to reform these strategies.

In June 2020, Christophe Castaner announced some reforms in the aftermath of the widespread allegations of unlawful use of force by police in the first half of 2020, including during the period in which the French government enforced lockdown measures to counter the COVID-19 pandemic, which Amnesty International documented.²⁸ Amnesty International welcomed the announcement of the reforms, which included for instance the decision not to include chokehold in the range of techniques taught in police training. However, the organization emphasized the need of structural reforms to tackle the impunity for unlawful use of force and discrimination within law enforcement agencies. On 16 September 2020, the Ministry of Interior published a new strategy for policing public assembly which has overall failed to address the main concerns that Amnesty International has highlighted, including in this report.²⁹

²⁵ Interview with Cédric, 27 September 2019.

²⁶ The Minister of Interior reported this statistic to the press on 4 October 2019. See for example: https://www.lexpress.fr/actualite/societe/participation-blesses-cout-un-an-de-gilets-jaunes-en-chiffres_2105499.html (French only).

²⁷ Franceinfo, interview with Emmanuel Macron at 26m 30s, https://www.francetvinfo.fr/politique/emmanuel-macron/video-un-sommet-utile-regardez-l-integralite-de-l-interview-d-emmanuel-macron-sur-france-2_3591685.html (French only).

²⁸ Amnesty International, Policing the pandemic. Human rights violations in the enforcement of lockdown measures in Europe, EUR 01/2511/2020, <https://www.amnesty.org/download/Documents/EUR0125112020ENGLISH.PDF>

²⁹ <https://www.interieur.gouv.fr/Le-ministre/Actualites/Schema-national-du-maintien-de-l-ordre>, <https://www.amnesty.fr/liberte-d-expression/actualites/schema-du-maintien-de-lordre-occasion-manquee>

4. PROTESTERS HARASSED FOR ACTIONS THAT SHOULD NOT BE CRIMINALIZED

“The first time I was detained it was quite traumatic...and then the house search... I couldn’t even get back my mobile phone...the right to protest is a fundamental right, I have nothing to regret, I haven’t done anything wrong and I am not giving up.”

Frédéric, Yellow Vest from Besançon

Frédéric, a 48 years-old man, has been part of the Yellow Vests movement in Besançon since the movement’s outset in November 2018. A long-standing trade unionist, Frédéric shared information about the Yellow Vests protests in Besançon on social media. The authorities were not usually notified of these protests. Although the law requires that authorities be notified of public assemblies, many Yellow Vests protesters who spoke to Amnesty International explained that they did not want to comply with this requirement. In particular, they were opposed to an individual organizer signing the notification as they saw their movement to be horizontal in structure. Furthermore, they wanted to avoid negotiating the route with the authorities and often preferred staging spontaneous marches.

Frédéric’s participation in the Yellow Vests movement has been marked by multiple arrests, prosecutions and fines. On 27 December 2018, he spent eight hours in pre-charge detention for failing to comply with notification requirements and for participating in a public assembly that the authorities considered constituted a threat to public order (*attroupement*).³⁰ The authorities did not prosecute him on that occasion, but continued to treat Frédéric as one of the organizers of the protests. On 8 February 2019, the Prefect of Doubs sent Frédéric a letter stating that he was one of the organizers of the protests and reminding him of the legal framework around organizing protests.³¹ Frédéric told Amnesty International that the Yellow Vests

³⁰ Amnesty International had access to the summons that the police sent to Frédéric.

³¹ Amnesty International had access to the letter that the Prefect sent to Frédéric.

were a horizontal movement without leaders or organizers and that authorities had targeted him because of his previous involvement in trade union mobilizations.

On 27 February 2019, after Frédéric had participated in several protests, police summoned him to the police station again and informed him that they were investigating him for multiple crimes, namely participating in a public assembly that threatened public order, participating in a group with a view to preparing acts of violence, disrupting traffic and organizing a protest without notifying the authorities.³² On 28 February at 6.30am, police searched Frédéric's house and seized his mobile phone, his computer and his wife's laptop. They subsequently placed him in pre-charge detention for 12 hours. Police questioned him about his Facebook posts, arguing that he was one of the organizers of the protests, but again did not prosecute him.

On 13 March 2019, Frédéric, his wife and other protesters were detained during a protest against the visit to Besançon of Christophe Castaner, the Minister of the Interior, and held for 24 hours in pre-charge detention. They were subsequently prosecuted for chanting the slogan "Castaner murderer", an expression of their concerns about the hundreds of allegations of excessive use of force by police in the context of the Yellow Vest protests (see Background and box at the end of this chapter). On 29 April, they were convicted and sentenced to a suspended fine of €1,500. Frédéric appealed against the judgment. The appeal hearing was scheduled on 2 June 2020. On 7 July, the Court of Appeal confirmed Frédéric's conviction. Regrettably, the Court emphasized that the slogan was "violent" and had an "ambiguous purpose". The Court made a reference to other slogans that Yellow Vests had used against law enforcement agents without, however, convincingly making the case that the slogan invoked by Frédéric amounted to advocacy of hatred that constituted incitement to violence.³³

Law enforcement officials once again placed Frédéric in pre-charge detention on 17 December 2019 and on 9 January 2020, following his participation in two collective actions aimed to delay traffic in two areas of Besançon to contest reform of state pensions. Prosecutorial authorities elected to prosecute him for disrupting traffic, which is a criminal offence under French law.³⁴ The trial was initially scheduled on 17 February 2020 and then postponed to 15 June 2020. The court eventually acquitted Frédéric.

Frédéric was also fined five times for participating in a banned protest. On 10 June 2019, he and four others were fined €135 for participating in a banned protest during a visit to Ornans (25km from Besançon) by President Emmanuel Macron to celebrate the 200th anniversary of the birth of the painter Gustav Courbet. Frédéric told Amnesty International that he did not know that the Prefect had issued a ban on protests in the area where Emmanuel Macron was giving a speech. On 13 July 2019, Frédéric was fined twice for his participation in two "free toll actions" (*opérations péage gratuit*) on the motorway. On 30 July 2019, Frédéric was fined for participating in a vigil in front of the police station in Besançon for Steve Caniço, a young man who drowned in Nantes in the aftermath of a police operation at a music festival. On 26 July, the Prefect had imposed a ban on all protests organized by the Yellow Vests around the police station between 27 July and 19 August. On 30 May 2020, Frédéric attended a small Yellow Vest protest in Besançon, which attracted about 60 protesters. He explained that protesters wore face coverings during the protest. Police dispersed the protest and fined Frédéric and a few other protesters for participating in a banned protest. At the time, all protests larger than 10 people were banned in France (see COVID-19 and peaceful protests).

Frédéric contested all the fines in writing. On 7 July 2020, the police tribunal heard him regarding the two fines that he had received on 13 July 2019. On 15 September, a police tribunal confirmed only of the two fines. The hearing regarding the fine that Frédéric had received on 30 July took place on 15 September 2020. When this report went to press, Frédéric had not received yet the decision of the police tribunal.

Frédéric's case is emblematic of the harassment that protesters can experience due to provisions in French law that criminalize conduct protected under international human rights law and standards. Amnesty International interviewed 22 people who were detained and/or prosecuted for offences such as failing to comply with notification requirements, contempt of public officials or wearing face masks.

As this chapter illustrates, some of the conduct for which Frédéric was arrested and prosecuted, namely organizing a protest without notifying the authorities and contempt of public officials, should not be considered crimes at all. The use of criminal law to detain and prosecute protesters for such conduct constitutes arbitrary detention and undue restriction of the rights to freedom of expression and peaceful assembly.

While multiple arrests and fines have so far not had a chilling effect on Frédéric's determination to participate in the Yellow Vest movement, partly due to his long-standing activism, other protesters told

³² Amnesty International had access to the summons that the police sent to Frédéric.

³³ Amnesty International had access to the judgment.

³⁴ Article L412-1 of the traffic law.

Amnesty International that such experiences have led them to stop taking part in the Yellow Vest movement for fear of further criminalization.

4.1 NOTIFICATION REQUIREMENTS

In France, the organizers of any public assembly that is planned to take place on a thoroughfare must inform the competent authorities between three and 15 days in advance.³⁵ The notification of a public assembly must be signed by at least one organizer and include the purpose of the event, the scheduled date and time, the venue and, if relevant, the proposed route.

In municipalities where there are police stations, the representative of the state, namely the Prefect, is responsible for receiving notification of public assemblies. In Paris, that function is exercised by the Police Prefecture (*Préfecture de Police*). In all the other locations, the City Council is the competent authority.³⁶

Under French law, the police or the Prefects, whichever is the competent authority to receive notification, can issue a decree banning a public assembly if it is “likely to disrupt public order”.³⁷ Organizers who do not notify the authorities of an assembly, who organize an assembly that has been banned or who deliberately provide wrong information in the notification can be held criminally liable and sentenced to up to six months’ imprisonment and fined up to €7,500.³⁸ Forty-two people were convicted for this offence in 2019, seven times as many as in the previous year when six people were convicted.³⁹

The Yellow Vest movement emerged spontaneously and protesters have different views on and pursued distinct strategies regarding notification requirements. In Paris, for example, some protesters decided to notify the Prefect of the protests organized by the Yellow Vests. **Sophie**, a woman in her 30s who had struggled for many years against precarious labour conditions in the entertainment sector, explained to Amnesty International that she had complied with the notification requirements in Paris since January 2019: “I thought that complying with notification requirements would protect us from a crackdown by police”.⁴⁰

On the other hand, **Amélie**, a woman in her 20s who joined the Yellow Vests in Grenoble in November 2018, stressed that most of the Yellow Vests in the city opposed the notification requirements: “When you are not happy about something, you do not ask for permission to express it. We wanted to express our grievances spontaneously”.⁴¹

On 1 May 2019, Amélie participated in a demonstration organized by the trade unions in Grenoble for International Workers’ Day, about which the authorities had been notified. Yellow Vests joined that protest in the morning and then spontaneously staged another march in the afternoon. Amélie told Amnesty International that she spoke at the end of the protest organized by the trade unions, which ended in a central park (Jardin de Ville). She read a text spelling out the grievances of the Yellow Vest movement and concluded by saying: “Now we, the Yellow Vests, carry on [protesting]”. Shortly after the spontaneous protest began it was dispersed by the authorities. Several protesters were arrested, including Agnès and Valentin Ismael, who were subsequently prosecuted for participating in a public assembly that the authorities considered a threat to public order (see Section 4.4).

On 2 May, police summoned Amélie to appear at the police station the following day. On 3 May, they placed her in pre-charge detention for organizing a public assembly without complying with the notification requirements. She spent around 22 hours in pre-charge detention and was subsequently prosecuted for organizing a public assembly without notifying the authorities and participating in a banned protest.⁴² Her trial was initially scheduled for 16 September 2019 but was eventually postponed to 2 July 2020. Amélie explained to Amnesty International that she denied both charges as she had never acted as an organizer of the protest. She also emphasized that she was not aware that the protest which took place on the afternoon of 1 May had been banned.

³⁵ Articles L211.1 and L211.2 of the Law on National Security (Code de la Sécurité Intérieure).

³⁶ Article L 211.2 of the Law on National Security.

³⁷ Article L 211.4 of the Law on National Security.

³⁸ Article 431-9 of the Criminal Code.

³⁹ Statistics provided by the Ministry of Justice to Amnesty International on 13 January 2020.

⁴⁰ Interview with Sophie, 1 November 2019.

⁴¹ Interview with Amélie, 13 November 2019. Mullan is a pseudonym chosen by Amnesty International in compliance with the informed consent of the interviewee.

⁴² Articles 431.9 and 644.4 of the Criminal Code. Amnesty International had access to the court summons that included the charges against Amélie.

Although Amélie was eventually acquitted in July 2020, her arrest and prosecution took a toll on her health pending trial. She told Amnesty International: “I have almost given up protesting, I went to a march for Steve⁴³ but that’s it. I am scared that they will add something else to the charges. After the arrest, I thought that I had been through the worst but then I started thinking that I could be convicted even if I didn’t do absolutely anything and that this could appear on my criminal record. I developed chronic bowel disease which, according to doctors, was caused by stress and anxiety”.

According to international human rights law and standards, the exercise of the right to freedom of peaceful assembly should not be subject to prior authorization by authorities.⁴⁴ States may put in place a system of prior notification with the aim of facilitating the exercise of this right and to take measures to protect public safety and maintain public order. However, notification should not be obligatory for assemblies that do not require prior preparation by state authorities (for example, those where a small number of participants is expected). Moreover, state authorities should provide for the possibility of spontaneous assemblies taking place without prior notification, for example in instances where an assembly is reacting to an unexpected event.⁴⁵ Failure to notify the authorities of an assembly does not render an assembly unlawful and consequently should not be used as a basis for dispersing the assembly. Organizers who fail to give notification of an assembly should not be subject to criminal or administrative sanctions resulting in fines or imprisonment.⁴⁶

Under French law, organizers of public assemblies who fail to comply with notification requirements can face a prison sentence or a fine; this is at odds with international human rights law and standards. The implementation of this provision is particularly problematic in a context where horizontal movements without identified leaders, such as the Yellow Vests, choose to take their grievances to the streets through protest.

The French authorities arrested Frédéric and Amélie, among many others, arguing that they were the organizers of the Yellow Vest protests in Besançon and Grenoble. Aside from the inadequacy of the evidence which the police and prosecutors used to identify them as organizers – such as their sharing the information about a public assembly on social media or speaking at a protest – they should not have been arrested or prosecuted at all since failing to notify the authorities of a peaceful assembly should never be considered an offence. Their arrest and prosecution were, therefore, arbitrary as they were based on a law that did not comply with international human rights law and standards.⁴⁷

Moreover, French law de facto prevents protesters from organizing spontaneous assemblies as it does not provide for any exception to the notification requirements discussed above. The option of organizing spontaneous protests is crucial in contexts where protesters react to unforeseen events or when protests are not organized by established, hierarchical social movements or organizations such as trade unions or NGOs.

4.2 CONTEMPT OF LAW ENFORCEMENT OFFICIALS

Every year thousands of people are prosecuted in France for the criminal offence of contempt. For example, in 2019 alone, 20,280 people were convicted of this offence.⁴⁸

The crime of contempt is vaguely defined in French law and is punishable by up to one year’s imprisonment and a fine of up to €15,000 if the victim is a law enforcement official.⁴⁹ Any written or visual material or spoken utterance that affects the personal dignity or the respect owed to a public function constitutes contempt.⁵⁰

⁴³ Steve Maia Caniço disappeared on the night of 21-22 June while attending a music festival in Nantes. The festival overran its scheduled end and law enforcement officials allegedly resorted to excessive use of force to disperse those present. Several people fell in the Loire, including Steve Maia Caniço who drowned. His body was found more than a month later.

⁴⁴ See Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (A/HRC/31/66), para. 21 and Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE-ODIHR) Venice Commission Guidelines on Freedom of Peaceful Assembly, second edition, Guideline 4.1

⁴⁵ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (A/HRC/31/66), para. 23 and OSCE-ODIHR Venice Commission Guidelines on Freedom of Peaceful Assembly, second edition, Guideline 4.2.

⁴⁶ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (A/HRC/31/66), para. 23.

⁴⁷ Amnesty International, *Fair Trial Manual*, second edition, Chapter 1.3.

⁴⁸ In 2018, 18,046 people were convicted for this offence. Statistics provided by the Ministry of Justice to Amnesty International on 13 January 2020.

⁴⁹ This penalty applies in all instances where contempt is directed against public officials who can exercise coercive powers (“*personnes depositaires de l’autorité publique*”).

⁵⁰ Article 433.5 of the Criminal Code. Articles 433.6 and 433.7 deal with the crime of rebellion.

Protesters have been arrested, and sometimes prosecuted, simply for criticizing government representatives or law enforcement officials. On 1 May 2019, **Lise** and three other protesters organized a peaceful action in Narbonne to oppose the use of weapons, and in particular rubber bullets, for policing demonstrations (see Chapter 3 and box at the end of this chapter).⁵¹ During the protest, they rolled out slogans printed on cling film in front of public buildings in the city, including the subprefecture.

Lise explained to Amnesty International that police checked their identity cards on that day and, a few days later, summoned them to the police station where they were informed that they were being investigated for contempt. Specifically, the authorities considered the slogan “Yes to the lily of the valley, no to rubber bullets”⁵² constituted contempt of law enforcement officials.⁵³ On 6 June, representative of the Prosecutor’s Office decided to caution (*rappel à la loi*) rather than prosecute Lise and the other three activists, provided they apologized in writing to the police superintendent within one month. Lise decided to apologize as she had to undergo a medical procedure before the deadline.

On 13 April 2019, **F.J.**,⁵⁴ a 45-year-old man from south-eastern France who attended a Yellow Vest protest in Marseille, was arrested at 7.15pm after he intervened to prevent a police officer ill-treating another protester.

F.J. told Amnesty International that he had attended the protest with a friend who did not feel well because of the tear gas so they headed to a café in the area of the old harbour. At one point they stopped so that F.J.’s friend could rest on the pavement. F.J. told Amnesty International: “While standing, I saw a CRS [police officer] pushing a woman and then I realized that he was about to hit her with his baton. I shouted ‘You’re not going to hit her, weirdo, fucker!’ I also showed the finger to the officer.”

Four police officers tackled F.J. to the ground and kicked him in the back and in the face. Three witnesses produced statements describing his arrest.⁵⁵ F.J. told Amnesty International that the police officer he had shouted at had told him: “You’re going to pay for this, dirty lefty alcoholic!” When F.J. replied: “You don’t have the right to talk to me like that!”, the police tackled him to the ground again and one officer applied pressure on his neck to restrain him.

F.J. spent 24 hours in pre-charge detention and was subsequently prosecuted for contempt, rebellion and participating in a public assembly that threatened public order (*attroupement*). F.J. was released on bail pending trial, required to report to police once a week and banned from going to Marseille and attending Yellow Vest protests.⁵⁶ On 26 September, F.J. was convicted for the three offences, fined €900 and ordered to pay €1,000 to the police officer he had shouted at.⁵⁷

F.J. did not file a complaint for the injuries he had sustained during arrest⁵⁸ and did not appeal the judgment. He told Amnesty International: “This whole story left me with a profound sense of injustice...in court I emphasized that the police officer was about to hit this woman...that’s why I intervened...the officer was not present but the prosecutor pointed out that this was not certain and that maybe he would have not hit her after all”.

Under international human rights law, all forms of expression that fall short of advocacy of hatred that constitutes incitement to discrimination, hostility or violence should not be criminalized, even if such expressions are shocking, offensive or disturbing. The right to freedom of expression can be subject to certain restrictions, but these restrictions must be provided in law and be necessary and proportionate to ensure respect for the rights of others or the protection of national security, public order or public health or morals.⁵⁹

As defined in international human rights law, advocacy of hatred is more than just the expression of ideas or opinions that are discriminatory or that simply offend members of a particular group. It requires showing a

⁵¹ Interview with Lise, 10 July 2019. Lise is a pseudonym.

⁵² « Oui au muguet, non au LBD ».

⁵³ Amnesty International had access to the decision of the representative of the Prosecutor’s Office (Vice-Procurer).

⁵⁴ F.J. are the initials of the interviewee’s real name. He gave Amnesty International his informed consent to be identified with these initials in the context of the interview which took place on 17 October 2019.

⁵⁵ Amnesty International had access to the three witness statements.

⁵⁶ Amnesty International had access to the decision on the bail conditions.

⁵⁷ Amnesty International had access to a court document summarizing the charges on the basis of which F.J. was convicted (relevé de condamnation pénale).

⁵⁸ Amnesty International had access to a medical certificate dated 17 April 2018 in which a GP described the injuries sustained by F.J. (bruises around his lips and on his back) and prescribed a day’s sick leave.

⁵⁹ Article 19.3 of the International Covenant on Civil and Political Rights (ICCPR), Article 10 of the European Convention on Human Rights (ECHR).

clear intent to incite others to discriminate, be hostile towards, or commit violence against the group in question.⁶⁰

Under international human rights law, advocacy of hatred should be prohibited by law, although not necessarily be criminalized. Any form of expression can only be criminalized if there is the intent to incite violence or to harm others; a likelihood that others will commit such violence or harm; and a clear and direct link between the expression and that violence or harm.

The vague definition of the offence of contempt in French criminal law falls below the threshold of advocacy of hatred discussed above and has resulted in the arrest and prosecution of protesters, including for example Frédéric and Anne, for exercising their right to freedom of expression in the context of public assemblies where they gave voice to their opposition to public officials and public policies.

Although utterances, such as those made by F.J., may offend police officers, they cannot be considered to constitute advocacy of hatred or to amount to incitement to violence and he should not, therefore, have been prosecuted. The prosecution against F.J. also raises concerns regarding the accountability of law enforcement officials for alleged unlawful use of force (see the box at the end of this chapter).

4.3 BAN ON FACE COVERINGS

In France protesters who conceal their faces in public assemblies in order to avoid identification in situations that raise public order concerns can be punished with a fine of up to €1,500.⁶¹ Since 10 April 2019, concealing one's face, wholly or partly, without a legitimate aim in the context of a protest that threatens public order, or that is likely to threaten public order, has been a criminal offence that is punishable with a prison sentence of up to one year and a fine of up to €15,000.⁶² When this report went to press (September 2020), the authorities had made compulsory the wearing of face coverings everywhere in Paris, including on the public thoroughfare, and in all indoor venues in Paris as well as everywhere else in France. The implementation of the law that punishes the wearing of face coverings in public assemblies in the current COVID-19 reveals deep contradictions and raises concerns regarding feasibility.

According to official statistics, between April and October 2019, the authorities placed 210 people in pre-charge detention for concealing their faces in the context of protests,⁶³ some of whom were prosecuted for this offence. According to the Ministry of Justice, 41 people were convicted for this offence in 2019.⁶⁴

This provision adopted on 10 April 2019 was included in a bill that aimed to ensure public order in the context of public assemblies. During a parliamentary discussion, the Senate drafted a report which pointed to the systematic and increased presence of the “Black Block”, which the report described as “protesters who mix with peaceful protesters with a view to perpetrating acts of violence”.⁶⁵ In the context of the debate in the National Assembly, the Minister of the Interior stressed that the new provisions were aimed at violent protesters (*casseurs*) rather than protesters in general. He stated that a couple of hundred people systematically attended protests with a view to committing acts of violence.⁶⁶

On 4 April 2019, the Constitutional Court ruled that the ban on face coverings was constitutional. The Court argued that it complied with the principle of legality as its material scope was precisely defined: the prohibition would apply in the context of public assemblies where public disorder offences were perpetrated or were likely to be perpetrated.⁶⁷ However, the law fails to establish any clear connection between individuals who conceal their faces and public disorder, or the threat of public disorder, during a protest. In consequence, the authorities have been able to apply the law as a blanket ban on all face coverings, regardless of the intent of the individuals wearing them. Individuals who wore goggles, dust masks or helmets during protests to protect themselves from the effects of tear gas or other law enforcement equipment and who did not commit any act of violence have been arrested and prosecuted under this provision.

⁶⁰ Article 20.2 of the ICCPR; Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression.

⁶¹ Article R645.14 of the Criminal Code. The fine mentioned in this article can amount to €1,500. See <https://www.legipermis.com/infractions/contravention.html> for more information (French only).

⁶² Article 431.9.1 of the Criminal Code. Moreover, concealing the face can be an aggravating circumstance associated with several crimes including the participation in a public assembly that threatens to disrupt public order after police warnings (Article 431-4 of the Criminal Code).

⁶³ See http://www.assemblee-nationale.fr/15/budget/plf2020/a2306-tVIII.asp#P653_37834, p.23 (French only).

⁶⁴ Statistics provided by the Ministry of Justice to Amnesty International on 7 September 2020.

⁶⁵ <https://www.senat.fr/rap/18-051/18-0511.pdf> p. 8 (French only)

⁶⁶ http://www.assemblee-nationale.fr/dyn/15/rapports/cion_lois/15b1600_rapport-fond.pdf, p. 57

⁶⁷ See <https://www.conseil-constitutionnel.fr/decision/2019/2019780DC.htm>, para. 32 (French only).

Charlie, a young student, was arrested with 7 other people on 22 June in Marseille at about 2.30pm, shortly after the start of a peaceful protest which had not been notified to the authorities.⁶⁸ Charlie told Amnesty International that at the time of their arrest they were wearing a hat, sunglasses and a dust mask around their neck.⁶⁹

The authorities placed Charlie in pre-charge detention for participating in a group with a view to preparing acts of violence (see Chapter 5) and for concealing their face. Charlie was then prosecuted only for the latter offence. On 29 November 2019, the prosecutor called on the judge to acquit Charlie and three other protesters and fine another four. Charlie told Amnesty International: “On that day, the prosecutor herself argued that our file was empty! They didn’t check our phones in pre-charge detention, they didn’t have videos or specific testimonies from police officers”. On 13 December 2019, Charlie and the other protesters were informed that they had been acquitted. The Court emphasized that there was no evidence that the 8 protesters intended to conceal their face as sunglasses and hats were accessories commonly worn in summer.⁷⁰

Law enforcement officials used the ban on face coverings to arrest protesters in contexts that did not necessarily constitute a threat to public order. In Charlie’s case, their participation in a public assembly that had not been notified to authorities and wearing items that are commonly worn in summer cannot, in absence of other elements, be considered a threat to public order.

While the wearing of face coverings may present challenges to law enforcement agencies, for example by limiting their ability to identify those who engage in violence or commit other crimes, its criminalization has far-reaching consequences for the exercise of the rights to freedom of expression and peaceful assembly and can negatively impact on other human rights, including privacy, health and protection against discrimination.

Under international human rights standards, the ban on covering one’s face in the context of protests should only be lawful where a person is engaging in or shows a clear intent to imminently engage in violence. Assemblies and their participants should be assumed to be peaceful, rather than posing a threat to public order, and the authorities must demonstrate that this is not the case in specific instances.⁷¹ Covering up one’s face does not in itself equate to violent or otherwise criminal intent.

The rights to freedom of expression and peaceful assembly can be restricted under international human rights law provided that the restriction is established in law and has a legitimate purpose, including protecting public order and national security.⁷² However, any such restriction must also be necessary and proportionate to the desired aim. This means that the authorities should seek the least restrictive possible means to achieve in practice the legitimate aim and the intended legitimate aim must not be out of balance with the human rights implications of the restrictions.

A blanket prohibition on face coverings falls short of these standards because the police already have extensive powers to stop and search people under existing laws, including powers to demand proof of identity, which have been misused in some instances (see Chapter 5.2).⁷³ Moreover, blanket restrictions are intrinsically disproportionate and discriminatory as they impact on all individuals seeking to exercise their right to freedom of peaceful assembly and because they preclude consideration of the specific circumstances of each proposed assembly. For example, protesters may cover their faces for reasons other than committing violence: they may have concerns about identification, they may want to protect themselves from the negative impact of tear gas or they may wear masks of public officials to express dissent (see Francis’ case in Chapter 5.3).

Therefore, the use of face coverings by itself should not be considered as constituting violent behaviour or indicating an intention to engage in violence. Facial coverings should not be prohibited for peaceful protesters, unless ordering people to reveal their faces becomes necessary and proportionate to address an individual’s clear intent to engage imminently in violence. A blanket prohibition on face coverings should therefore not be implemented.

Moreover, the implementation of the blanket ban on face coverings can have a chilling effect on protesters like Charlie who was prosecuted on the basis of factors that did not appear to constitute a reasonable

⁶⁸ Charlie is a pseudonym chosen by the interviewee in the context of the phone interview that took place on 25 October 2019.

⁶⁹ Charlie chose to be identified with the gender neutral pronouns they/their/them.

⁷⁰ Amnesty International had access to the judgment.

⁷¹ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, (A/HRC/31/66) 2016, para. 18; and Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, (A/HRC/23/39) 2013, para. 50.

⁷² Article 19.3 of the ICCPR.

⁷³ In particular, see Articles 78-2 and 78-3 of the Code of Criminal Procedure.

suspicion that they had committed a crime. When she spoke to Amnesty International's researchers in October 2019, Charlie emphasized the anxiety they experienced while awaiting trial. They said: "Initially I thought that everything would be fine. I went back to a protest on 14 July and I felt very anxious...I had a panic attack, I was terrified. At the moment, I can't sleep properly, I have nightmares, I am anxious about the outcome of the trial".⁷⁴

4.4 PROBLEMATIC IMPLEMENTATION OF OTHER PROVISIONS

Other provisions in French domestic law also criminalize specific non-violent conduct by protesters. These include participation in a public assembly that is likely to disrupt public order (*attroupement*) or in a public assembly that has been banned.

Maintaining public order is a legitimate aim that may warrant interference with the right to peaceful assembly and where sanctions may be imposed for refusing to comply with legitimate restrictions. However, international human rights law and standards are clear that states have an obligation not merely to passively permit peaceful assemblies but rather to actively facilitate them. In other words, the authorities have a positive duty to protect peaceful assemblies and to enable people to exercise their right to demonstrate peacefully. This implies an obligation to tolerate disruption and the need for the authorities to find alternatives for people to continue with their daily activities while still allowing people to protest where they can be seen and heard by their intended audience.⁷⁵

There are circumstances where dispersing a protest is the only option to maintain public order. Nevertheless, the decision to disperse an assembly should be a last resort.⁷⁶ The mere fact that an assembly is considered unlawful under domestic legislation, for example if notification requirements were not complied with, should not lead to its dispersal. If the decision to disperse a public assembly is necessary and proportionate to maintain public order, the authorities can legitimately expect protesters to comply with an order to disperse. However, criminalizing non-compliance with a dispersal order may constitute a disproportionate restriction of the right to freedom of peaceful assembly as the following sections illustrate.

4.4.1 PARTICIPATING IN A PROTEST THAT IS LIKELY TO DISRUPT PUBLIC ORDER

Under French law, law enforcement officials can disperse a public assembly that is likely to disrupt public order (*attroupement*) after issuing two warnings.⁷⁷ Protesters who do not disperse after the warnings are criminally liable and can face a prison sentence of up to one year and a fine of up to €15,000. For protesters who cover their faces to avoid identification, the possible penalty for failing to disperse increases to up to three years' imprisonment and a fine of up to €45,000.⁷⁸ Protesters who participate in a protest that is likely to disrupt public order by carrying a weapon can be sentenced up to three years' imprisonment or five years' imprisonment if they fail to comply with a dispersal order.⁷⁹

According to official statistics, 244 protesters were convicted of participating in a public assembly that was likely to disrupt public order in 2019 alone. This represents a significant increase over the previous years, as during the whole of 2016, 54 protesters were convicted of the same offence in the context of the social movement opposing reform of labour laws.⁸⁰

⁷⁴ Interview with Charlie, 25 October 2019.

⁷⁵ See for example: *Derzhavtsev v. Belarus*, UN Human Rights Committee, (CCPR/C/115/D/2076/2011), 2015, para. 8.6; *Pugach v. Belarus*, UN Human Rights Committee, (CCPR/C/114/D/1984/2010), 2015 para. 7.7; *Evrezov v. Belarus*, UN Human Rights Committee, (CCPR/C/114/D/1988/2010), 2015, para. 7.4; *Djavit An v. Turkey* (20652/92), European Court of Human Rights Third Section, 2003, para. 57; *Oya Ataman v. Turkey*, European Court of Human Rights Second Section, 2006, para. 36; and the Second report on the situation of human rights defenders in the Americas, Inter-American Commission on Human Rights (2011), (OEA/Ser.LV/II.Doc. 66) para. 130.

⁷⁶ Joint report to the Human Rights Council, Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, para. 61.

⁷⁷ Article 431.3 of the Criminal Code

⁷⁸ Article 431.4 of the Criminal Code.

⁷⁹ Article 431-5 of the Criminal Code.

⁸⁰ According to the statistics that the Ministry of Justice provided to Amnesty International, 24 and 36 protesters were convicted for this offence in 2017 and 2018 respectively.

Since April 2019, judicial authorities have been able to prosecute protesters for this offence using fast-track proceedings.⁸¹ In March 2017, the Court of Cassation ruled that fast-track proceedings should not be used to try protesters for participating in a public assembly that threatened public order.⁸² A representative of the Ministry of Justice confirmed to Amnesty International that this restriction was the reason why judicial authorities resorted more frequently to charges of participation with a view to preparing acts of violence (see Chapter 5). He emphasized that it was desirable to use fast-track proceedings to try protesters who severely disrupted public order.⁸³

Despite clear guidance from international human rights standards that non-compliance with notification requirements is not a sufficient ground for dispersing a public assembly,⁸⁴ Amnesty International learned of several instances where law enforcement officials dispersed a public assembly simply because of the lack of notification. In many of these cases, the authorities considered such assemblies as likely to threaten public order.

According to the European Court of Human Rights, the mere fact that notification requirements were not fulfilled may not justify dispersal of an assembly.⁸⁵ As long as an assembly remains peaceful, the authorities should show restraint and tolerance in order to respect the right to freedom of peaceful assembly and not to unduly fuel tensions.⁸⁶ Law enforcement officials should only move to disperse an assembly if there are other compelling reasons, for example instances of generalized violence committed in the context of the event.⁸⁷

Amnesty International has documented several cases in which protesters who did not comply with dispersal orders, including where these orders were issued simply on the basis of lack of notification, faced criminal liability. In addition, in several instances protesters told Amnesty International that they had not heard the dispersal order and thus were not aware that they were committing a criminal offence.

For example, **Valentin Ismael** and **Agnès** were arrested with four other protesters during a spontaneous Yellow Vest march in Grenoble on 1 May 2019 that took place after a march organized by the trade unions. While the trade union march was notified to the authorities, the subsequent spontaneous march was not (see also the case of Amélie in Chapter 4.1).

Valentin Ismael, an 18-year-old student, described to Amnesty International how about a hundred police officers surrounded a few dozen protesters who had reached Place Grenette in the centre of Grenoble. He said that the protesters were peaceful, but clashes ensued following police attempts to disperse them using tear gas. Valentin Ismael told Amnesty International: “Police first sprayed tear gas against two protesters who had to be treated by street medics. I talked to police and explained that two people were not feeling well because of the tear gas but they completely ignored me”.⁸⁸

The police subsequently started charging at protesters and Valentin Ismael found himself against a wall with a few other protesters, including Agnès, a 54-year-old woman. At about 2.30pm, the police surrounded them, checked their identity papers, searched their bags and then took them to a police station where they were placed in pre-charge detention for participating in a protest that was likely to disrupt public order after a dispersal order had been issued.

Both Valentin Ismael and Agnès said that they had not heard any dispersal warning and that the protesters surrounding them at the time of their arrest were peaceful. Agnès told Amnesty International that she had watched a video of the protest the day after her arrest and she heard a police officer saying: “Last warning, disperse!”⁸⁹

⁸¹ Article 431.8.1 of the Criminal Code introduced by law 2019-290 of 10 April 2019.

⁸² Judgement 712 of 28 March 2017. The Court reiterated that participating in a public assembly that threatened public order (attroupement), was a political crime and therefore article 397.6, which excludes fast-track proceedings for this type of crimes, applied. The judgment is available at https://www.courdecassation.fr/jurisprudence_2/chambre_criminelle_578/712_28_36477.html (French only).

⁸³ Meeting with a representative of the Minister of Justice, 25 September 2019.

⁸⁴ Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, para. 23

⁸⁵ *Bukta and Others v. Hungary*, (25691/04), European Court of Human Rights Second Section, 2007, para. 36: “In the Court’s view, in special circumstances when an immediate response, in the form of a demonstration, to a political event might be justified, a decision to disband the ensuing, peaceful assembly solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly”.

⁸⁶ *Nurettin Aldemir and others v. Turkey*, (32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02) European Court of Human Rights Second Section, 2007, para. 46.

⁸⁷ See Amnesty International, *Use of Force – Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by law enforcement officials*, Chapter 7.2

⁸⁸ Phone interview with Valentin Ismael, 24 October 2019. Media reports provided a similar sequence of events of the day. See for example: <https://www.ledauphine.com/isere-sud/2019/05/01/1er-mai-pres-de-10-000-manifestants-a-grenoble> (French only).

⁸⁹ Phone interview with Agnès, 25 October 2019.

Valentin Ismael and Agnès spent 22 hours in pre-charge detention and were subsequently prosecuted for participating in a public assembly that threatened public order.⁹⁰ Their trial was initially scheduled for 16 September 2019 but was subsequently postponed to 2 July 2020. The court found that Valentin Ismael and Agnès were guilty but decided not to convict them to any penalty.

Rachid,⁹¹ a 30-year-old man who runs a small business and lives in the Lille area, was arrested on 6 April 2019 during a protest that the Yellow Vests organized in Lille. Rachid told Amnesty International that he was arrested at about 5pm on one of the main streets in the centre of Lille where the protesters were marching and where there were clashes between protesters and police. Rachid pointed out that at the time of his arrest he was wearing a dust mask to protect himself from tear gas, which police had used extensively.⁹² He said that a police officer seized him from behind and arrested him. Police searched his backpack which contained first-aid materials, a gas mask, goggles and plastic picnic cutlery that Rachid had forgotten at the bottom of the bag.

Rachid explained to Amnesty International that he had not heard any police dispersal warnings and that he had been caught among protesters who were running around without a clear understanding of what was happening after the police fired tear gas. Police placed Rachid in pre-charge detention for 24 hours and then prosecuted him for participating in a public assembly that was likely to threaten public order (*attroupement*) after an order to disperse.⁹³ The trial was scheduled for 1 August 2019 but was subsequently postponed to 22 March 2020 and then, because of the health-related state of emergency, to January 2021.

The notion of *attroupement* in French law is too vague as it includes not only public assemblies that threaten public order but also those that are likely to threaten public order. Authorities have in some instances interpreted the latter category too widely; for example, authorities have considered protests that were not notified as falling within that category and used it as a ground for dispersal.

Under international human rights law and standards, the principle of proportionality applies to restrictions to the right to freedom of peaceful assembly both before and after a protest. It thus also applies to the criminal liability of protesters after their participation in a protest; when a minor offence is suspected, minor sanctions should be imposed.⁹⁴ Participating in a public assembly that threatens public order without engaging in any violent act falls within that category. The fact that, in some instances, the French authorities considered a protest to threaten public order and thus proceeded to disperse it on the basis of problematic criteria such as lack of notification, and that dispersal orders were not always audible, raises serious concerns regarding the criminal liability of protesters who did not disperse after a police warning.

According to the European Court of Human Rights, when sanctions imposed on demonstrators are criminal in nature, they require particular justification.⁹⁵ The Court has upheld the principle that sanctions involving prison sentences for non-violent conduct should be the object of particular scrutiny.⁹⁶

The French authorities' imposition of criminal sanctions, which may involve a prison sentence, on protesters who participated in a public assembly that they considered likely to disrupt public order but who had no involvement in any violent acts constitutes a disproportionate restriction on the right to freedom of peaceful assembly. These criminal sanctions may have a further chilling effect on protesters who may avoid attending demonstration because of the serious consequences.

Rachid, who had never participated in any social movement before the Yellow Vests, explained to Amnesty International the heavy toll that his prosecution was taking on him and on his spouse. He said: "I did not attend any protest after 6 April; my wife was also very concerned that I would go again. What about if they arrest me again? They could accuse me of whatever they want and the price to pay is too high. I don't believe in the justice system anymore".⁹⁷

Valentin Ismael explained that his participation in the movement had dramatically changed after his arrest. He told Amnesty International: "I stopped going to protest after the arrest. I am waiting for the trial to go back. I thought that the movement was declining but I am realizing that new mobilizations are taking place,

⁹⁰ Amnesty International had access to the Agnès' court summons included a summary of events and the charges against her.

⁹¹ Rachid is a pseudonym chosen by the interviewee in the context of the interview with Amnesty International that took place on 30 October 2019.

⁹² The law that criminalized the wearing of face masks (see section 3.3) entered into force a few days later, on 10 April 2019. Rachid was thus not prosecuted for concealing his face. Authorities highlighted in the charges that he was participating in a public assembly that was likely to threaten public security by concealing his face, which can be an aggravating circumstance (see footnote 54).

⁹³ Amnesty International had access to Rachid's court summons which included a summary of events and the charges against him.

⁹⁴ OSCE-ODIHR Venice Commission Guidelines on Freedom of Peaceful Assembly, second edition, para. 109.

⁹⁵ *Rai and Evans v. the United Kingdom*, judgment of 11 November 2009.

⁹⁶ *Taranenko v. Russia*, judgment of 15 April 2014, para. 87.

⁹⁷ Interview with Rachid, 30 October 2019.

for example the firefighters. It's a new start I think. I am still attending few events, for example some trainings or conferences, but in a much more passive way than before".⁹⁸

Agnes continued to attend protests despite her concerns about the upcoming trial. She pointed out: "When I had a look at the law, I was in despair because I realized that I risked one year's imprisonment. When I was freed from pre-charge detention, I told myself that I wouldn't go back to protests. Then I bought a newspaper and I saw a photo of a protester who had been beaten up by a police officer during his arrest in Grenoble. I was very upset, and I thought that it was important to keep on protesting. I went back to protest but with a lot of fear. I am much more careful now".⁹⁹

4.4.2 PARTICIPATION IN A BANNED PUBLIC ASSEMBLY

Since March 2019, when the government introduced the measure by decree, protesters who participate in a public assembly that has been banned by authorities can be fined €135.¹⁰⁰ According to official statistics, between 23 March and the beginning of October 2019 the authorities issued 1,193 fines for participation in a banned protest.¹⁰¹

Prefectural authorities around the country issued hundreds of decrees repeatedly banning all Yellow Vest protests in specific areas of several cities, including in Paris (for example, in the Champs-Élysées area), Lille (city centre) and Toulouse (Place du Capitole).¹⁰² It is outside the scope of this report to assess whether those restrictions were permissible under human rights law; nevertheless, measures that systematically ban protests in specific areas for weeks or months do raise concerns about proportionality. Blanket bans on assemblies in certain areas are impermissible restrictions because they necessarily prevent the authorities from engaging in a case-by-case assessment of the restrictions, evaluating the specific circumstances or assessing proportionality. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has concluded that blanket bans are "intrinsically disproportionate and discriminatory measures as they impact on all citizens willing to exercise their right to freedom of peaceful assembly".¹⁰³

A decision to ban a specific public assembly should be a measure of last resort imposed if no other less intrusive measures could possibly achieve a legitimate aim. If a ban on public assemblies is at odds with international human rights law and standards, namely if it is unnecessary or disproportionate, protesters who choose not to comply with it should not incur any criminal or administrative sanctions. The cumulative effect of banning all protests in specific areas over an extended period and fining protesters for participating in a protest in those areas constitutes a disproportionate restriction of the right to freedom of peaceful assembly.

The Prefect of Paris has systematically banned protests on the Champs-Élysées as well as in an area around the National Assembly and the Élysée Palace (the official residence of the President) since 23 March 2019.¹⁰⁴ Restrictions on protests in some areas, for example the Champs-Élysées roundabout, had also been imposed before 23 March. On 16 March, some protesters committed serious acts of violence against properties on the Champs-Élysées.¹⁰⁵ While some restrictions on public assembly in the area may have been permissible, the authorities also fined individuals who were in the area where protests were banned but who were not participating in public assemblies. Amnesty International collected statements from five people who were fined but who were not protesting in the banned area around the Champs-Élysée.

For example, **Laurent**, a young first-aid volunteer who lives in the region of Lyon, told Amnesty International that in the morning of 25 May 2019 he and two other volunteers were walking along Boulevard Haussmann in Paris, heading to the Place de l'Étoile to join some other friends. He said that police had stopped and searched them twice and let them continue. However, when police stopped them a third time, they were asked to wait and then fined for participating in a banned protest.

On 11 June, Laurent contested the fine in writing as he argued that he was just walking on the pavement at the time when he was fined and that neither he nor the other people around him were participating in a

⁹⁸ Interview with Valentin Ismael, 24 October 2019.

⁹⁹ Interview with Agnès, 25 October 2019.

¹⁰⁰ Article R644-4 of the Criminal Code.

¹⁰¹ See http://www.assemblee-nationale.fr/15/budget/plf2020/a2306-tVIII.asp#P653_37834, p.23 (French only).

¹⁰² Prefectural authorities issued at least 300 decrees banning public assemblies in more than 531 areas. These bans are based on Article L211-4 of the Law on National Security. See, *Rapports de force*, 'Gilets Jaunes: les interdictions de manifestation, l'autre face de la répression', <https://rapportsdeforce.fr/pouvoir-et-contre-pouvoir/gilets-jaunes-les-interdictions-de-manifestation-lautre-face-de-la-repression-11274972> (French only).

¹⁰³ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/23/39), 2013, para. 63.

¹⁰⁴ See Paris Police Prefecture press releases announcing the bans at <https://www.prefecturedepolice.interieur.gouv.fr/Nous-connaître/Documentation/Salle-de-presse/Communiqués-de-presse/Manifestations> (French only).

¹⁰⁵ See, for example, <https://www.nouvelobs.com/societe/20190316.OBS1892/gilets-jaunes-un-acte-18-marque-par-un-regain-de-violence-a-paris.html> (French only).

protest.¹⁰⁶ He explained to Amnesty International that he had asked the police superintendent who fined him the reasons why police had let them carry on after the previous two identity checks without informing him that they were entering an area where protests had been banned. He said that the superintendent had at the time conceded that letting them go through did not make sense.

Fining individuals who are in areas where protests have been banned but who are not participating in any protest is arbitrary as it constitutes a measure that is not prescribed by law.

Moreover, fining protesters who participate in a public assembly in an area where all protests are banned without any warning raises concerns as protesters may incur a fine without prior knowledge of the ban. On 17 August, **Tristan** and **Corentin**, two activists involved with the Yellow Vest movement in St Brieuc (Brittany), were fined for participating in a banned protest in the commercial area of Languieux.

Corentin told Amnesty International that police showed them a letter from the Prefect stating that all protests in Languieux were banned. Corentin emphasized that they had not been aware that protests had been banned: “We checked before if the Prefect had issued a ban, but we couldn’t find any. Nor could we find anything published on the Prefect’s website after that day. I wrote a letter to the Prosecutor’s Office asking them to confirm if a ban existed, but they never replied”.¹⁰⁷

According to information available to Amnesty International, prefectural authorities did not ban any protest in Languieux on that day.¹⁰⁸ Like Frédéric, whose case was described earlier in this chapter, Tristan was prosecuted purely for peacefully exercising his rights to freedom of expression and assembly. He was convicted of two counts of contempt of public officials and of organizing a banned protest. Corentin was convicted of disrupting traffic and fined for occupying a road without authorization.

CONCLUSIONS

Hundreds of protesters who joined the Yellow Vest movement have been arrested and prosecuted by the French authorities simply for exercising their rights to freedom of expression and peaceful assembly, actions that should not be criminalized. Protesters have been held criminally liable for non-violent acts and on the basis of vague and overly broad laws punishing, for example, contempt of public officials or wearing face coverings.

Protesters faced multiple arrests and prosecutions because the authorities perceived them to have a key role in organizing the Yellow Vest protests, despite the horizontal structure of the movement and the lack of evidence. Amnesty International is concerned that these compounded arrests and prosecutions are being used as a form of harassment and intimidation to stop people exercising their human rights.

The judicial harassment discussed in this chapter contributed to creating a widespread feeling of being unfairly targeted, which in turn has had a chilling effect on the exercise of the right to freedom of expression and peaceful protest. Many people told Amnesty International that they thought twice before participating in other protests after their arrests or pending their trials. Others were not ready to take further risks and had decided not to protest any more.

INVESTIGATION AND PROSECUTION OF ALLEGED UNLAWFUL USE OF FORCE BY LAW ENFORCEMENT OFFICIALS

As state actors, law enforcement officials have a duty to respect and protect human rights; these include the right to life, the right to be free from torture and other ill-treatment as well as the rights to freedom of expression and peaceful assembly. In particular, law enforcement officials policing public assemblies must as far as possible apply non-violent means before resorting to the use of force and, whenever the lawful use of force is unavoidable, they must use it with restraint and in proportion to the seriousness of the law enforcement objective. They must also ensure that assistance and medical aid are rendered at the earliest possible moment to anyone injured or affected.

To comply with international human rights law, it is of the utmost importance that the judicial authorities put in place a mechanism to hold law enforcement officials accountable for human rights violations, including the use of unnecessary or excessive force during the policing of public assemblies. Accountability is also crucial to preserve the trust in the justice system of survivors of human rights violations perpetrated by law

¹⁰⁶ Laurent sent a letter to the Public Prosecutor’s Office, to which Amnesty International had access.

¹⁰⁷ Interview with Tristan and Corentin, 2 November 2019.

¹⁰⁸ No decree banning protests in Languieux on 17 August was published on the website of the Prefecture of Côtes d’Armor. See <http://www.cotes-darmor.gouv.fr/Publications/RECUEIL-DES-ACTES-AMINISTRATIFS/AOUT-2019> (French only).

enforcement officials. Allegations of unnecessary or excessive use of force by law enforcement officials must be investigated in an effective, prompt, impartial and independent manner.¹⁰⁹

According to the Ministry of the Interior, 2,945 protesters sustained injuries in the context of the Yellow Vest protests between 17 November 2018 and October 2019. Other unofficial sources point to hundreds of protesters who were injured.¹¹⁰

For years, the judicial authorities have reiterated the need to put in place an effective response in the criminal justice system to offences perpetrated by protesters in the context of social movements.¹¹¹ However, the authorities have consistently failed to tackle the existing barriers to holding law enforcement officials accountable for using excessive or unnecessary force in such contexts.

As a consequence, the criminal justice system response to offences allegedly perpetrated by protesters, resulting in the arrest and prosecution of protesters without the reasonable suspicion that they were involved in a violent crime, stands in stark contrast to the results of the investigations and prosecutions for alleged excessive use of force by law enforcement officials. On one hand, the authorities prosecuted protesters simply for conduct that is protected under international human rights law and/or on the basis of flimsy evidence. On the other hand, impunity has prevailed for unlawful acts committed by law enforcement officials.

According to the Ministry of Justice, as of 12 July 2019, 3,204 people had been convicted of criminal offences perpetrated in the context of the Yellow Vest protests. Four-hundred and three people were sentenced to prison terms that were not suspended nor commutable (*peines d'emprisonnement avec mandat de dépôt*). Almost 39% of protesters¹¹² were tried using fast-track proceedings. All the lawyers whom Amnesty International spoke to raised concerns regarding the fact that fast-track proceedings did not provide defendants with adequate time to prepare their defence as they were required to appear before the courts immediately after their pre-charge detention.¹¹³ While defendants can refuse to be tried through fast-track proceedings, some of the protesters who talked to Amnesty International opted for these proceedings for a number of reasons, including fear of being remanded in custody pending trial.

In many cases documented by the organization, the authorities prosecuted and, in some instances, convicted protesters solely on the basis of witness statements provided by law enforcement officials. The right to be presumed innocent unless and until proven guilty means that the burden of proof rests with the prosecution. A court may not convict unless guilt has been proved beyond reasonable doubt. If there is reasonable doubt, the accused must be acquitted.¹¹⁴ Witness statements provided by law enforcement officials should be corroborated by further evidence to prove guilt beyond reasonable doubt.

Amnesty International identified several problems that are hampering the investigation and prosecution of law enforcement officials and contributing to persistent impunity for human rights violations against protesters. Criminal offences such as contempt (see Chapter 4) are sometimes used to arrest and charge precisely those protesters alleging that law enforcement officials used excessive force against them or who protested or attempted to intervene when they witnessed excessive use of force against others.¹¹⁵

Moreover, international human rights bodies have repeatedly raised concerns about the lack of an independent mechanism to investigate allegations of ill-treatment and excessive use of force by law enforcement officials in France. In June 2016, the UN Committee against Torture raised concerns about, among other things, the barriers faced by victims of police abuses seeking to file a complaint, the very light administrative sanctions imposed on police and gendarmerie officers who use excessive force and the very small number of convictions. The Committee called on France to ensure that any allegation of excessive use of force is promptly investigated in an impartial, independent and transparent manner within a reasonable timeframe.¹¹⁶ Similar concerns have repeatedly been highlighted at the national level by the Defender of Rights (Ombudsperson) and by many civil society organizations, including Amnesty International.¹¹⁷

¹⁰⁹ See Amnesty International, Use of Force – Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by law enforcement officials, Chapter 3.2.4.

¹¹⁰ See for example the statistics collected by the journalist David Dufresne, <https://www.mediapart.fr/studio/panoramique/allo-place-beauvau-cest-pour-un-bilan>.

¹¹¹ See for example the Ministry of Justice's Circular issued on 26 September 2016, http://circulaires.legifrance.gouv.fr/pdf/2016/09/cir_41346.pdf (French only).

¹¹² According to Ministry of Justice figures, 2,043 of the 5,241 protesters who were prosecuted were tried through fast-track proceedings.

¹¹³ Articles 395 and 397 of the Code of Criminal Procedure.

¹¹⁴ Amnesty International, Fair Trial Manual, Chapters 15.1 and 15.2

¹¹⁵ Amnesty International, Public outrage: Police officers above the law in France (EUR 21/003/2009), p.6.

¹¹⁶ Committee against Torture, Concluding observations on the seventh periodic report of France (CAT/C/FRA/CO/7) paras 16 and 17.

¹¹⁷ See, for example, Amnesty International, Public outrage: Police officers above the law in France and ACAT, L'ordre et la force : enquête sur l'usage de la force par les représentants de la loi en France, 2016, https://www.acatfrance.fr/public/rapport_violences_policières_acat.pdf (French only).

Prosecutors are responsible for supervising the preliminary investigation of allegations of unnecessary and excessive use of force by law enforcement officials, as well as for deciding whether to press charges and send the case for trial or to close the investigation. As highlighted by the European Court of Human Rights, public prosecutors in France are not sufficiently impartial and independent from the Executive, in particular the Minister of Justice, to be considered judicial authorities under Article 5 of the European Convention of Human Rights.¹¹⁸ Prosecutors often ask the relevant police inspectorate or another police service to conduct an internal investigation and submit their findings for use in the judicial investigation.

The internal inspectorate of the two main law enforcement agencies in France carries out investigations into allegations of excessive use of force under the supervision of the public prosecutor. The inspectorate for the National Gendarmerie is the Inspection Générale de la Gendarmerie Nationale (IGGN) and that for the National Police is the Inspection Générale de la Police Nationale (IGPN). Both bodies carry out administrative investigations (which can lead to disciplinary sanctions) and criminal investigations. Other police services can conduct investigations into minor or less serious allegations of police misconduct.¹¹⁹ However, the inspectorates come under the Ministry of the Interior and do not have to report to an external oversight mechanism to ensure the impartiality of investigations.

The Ombudsperson can also conduct inquiries regarding allegations of excessive use of force and ill-treatment by law enforcement officials. This is an independent institution, but has limited powers; it can present observations before courts and call on the authorities to adopt disciplinary sanctions against individual law enforcement officers.¹²⁰ In a meeting with Amnesty International in December 2019, representatives of the Ombudsperson's Office told Amnesty International that they received 147 complaints from protesters about alleged human rights violations, including unlawful use of force by police officers, in the context of the Yellow Vest protests. They explained to Amnesty International that in instances where a judicial investigation is ongoing, the Ombudsperson can investigate a case only with the agreement of the public prosecutor.¹²¹

If a case is particularly serious or complex, prosecutors can refer it to an investigating judge who will then conduct the investigation. While prosecutors can open an investigation *ex-officio* where a victim has not filed a complaint, investigating judges can conduct an investigation only following a request from prosecutors or a civil suit from the victim.¹²² According to the current legal framework, the avenues for an independent investigation into allegations of excessive use of force by law enforcement officials, which in practice can be fully assured only by an investigating judge, are very limited.

On 07 September 2020, the IGPN informed Amnesty International that it had investigated 403 cases of alleged police misconduct during the protests of the Yellow Vests and other protests that took place in 2019-2020. These included cases of excessive use of force. Of these, the IGPN had closed 304 investigations and had passed them on to the judicial authorities. The IGPN representatives told Amnesty International that information about the judicial follow up on their investigations was not available.¹²³ In few cases law enforcement officials were prosecuted and convicted for the unlawful use of force while policing public assemblies. On 19 December 2019, in one of the first convictions for the unlawful use of force in the context of the Yellow Vests protests, a police officer who had thrown a stone at a protester, was given a two-month suspended sentence and remained on active service.¹²⁴ In another case, a police officer fired a rubber bullet in the face of a protester who participated in a public assembly to oppose the G7 in Biarritz. The protesters suffered very serious injuries, including multiple jaw fractures. On 25 June 2020, following the acknowledgment of his responsibility, a court convicted the police officer and sentenced him to pay a fine of €1,350.¹²⁵

¹¹⁸ *Moulin v. France*, judgment of 23 November 2010, <https://hudoc.echr.coe.int/eng#%7B%22dmdocnumber%22:%5B%22877357%22%2C%22itemid%22:%5B%22001-101876%22%5D%7D> For more information, see <https://www.vie-publique.fr/parole-dexpert/38545-la-question-du-juge-dinstruction-et-du-statut-des-procureurs> (French only).

¹¹⁹ See Chapter IV.2 of the Circular issued by the Ministry of Justice on 20 September 2016.

¹²⁰ See in particular articles 29 and 33 of Law 2011-333, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id#JORFARTI000023781243> (French only).

¹²¹ Meeting with the representatives of the Ombudsperson, 18 December 2019.

¹²² Article 85 of the Code of Criminal Procedure.

¹²³ Meeting with two representatives of the IGPN, 10 October 2019 and email correspondence following the meeting.

¹²⁴ https://www.lemonde.fr/societe/article/2019/12/19/gilets-jaunes-le-premier-policier-juge-a-paris-pour-violences-condamne-a-deux-mois-avec-sursis_6023476_3224.html (only available in French).

¹²⁵ <https://www.francebleu.fr/infos/faits-divers-justice/bayonne-affaire-lola-le-policier-auteur-du-tir-du-lbd-condamne-a-1350-euros-1593165388>

5. PRE-EMPTIVE ARRESTS FOR PARTICIPATING IN A GROUP WITH A VIEW TO PREPARING ACTS OF VIOLENCE

“They arrested us for participating in a group with a view to...they prosecuted us for absolutely nothing...it’s as though a person can be fined when purchasing a Ferrari because it’s assumed they will go over the speed limit.”

Gilles, Yellow Vest from Toulouse

Julien and Gilles are in their early 40s and live in Toulouse. On 17 November 2018, the two men joined other protesters to start the Yellow Vest mobilization in the city by peacefully blocking roundabouts. Julien told Amnesty International: “We were fed up with the system and there were many reasons to protest. First, the increase of the fuel tax...as we both needed to drive to go to work”.¹²⁶

Julien and Gilles took part in all the demonstrations and most of the Yellow Vest assemblies in Toulouse until 17 February 2019. On that day, they drove to the city centre with another friend, parked their car near the central station and then walked towards the Jean Jaurès metro stop, the starting point of the weekly Saturday protests.

Police stopped and searched them at 2.15pm as they were walking towards the assembly point for the protest. Julien explained to Amnesty International that a police van suddenly stopped and proceeded to checking their identities: “We were not protesting nor were we wearing anything that could identify us as

¹²⁶ Interview with Julien and Gilles, 30 August 2019.

Yellow Vests”. Searching the men’s pockets, police found distress flares, a ski mask and a dust mask. They were arrested and placed in pre-trial detention for 24 hours.

Julien told Amnesty International: “It’s shocking, I thought they would just seize the objects that we were carrying...they treated us like criminals; they handcuffed us and took us away in a police car”. Gilles said that police asked them, while they were in pre-charge detention, if they intended to facilitate acts of violence by using smoking devices to prevent police from carrying out arrests. Gilles explained that they had seen distress flares used on many other protests and that they just wanted to use them to make their discontent visible.

Julien, Gilles and their friend were subsequently prosecuted for participating in a group with a view to preparing acts of violence and for carrying smoking flares (fumigènes) without a legitimate purpose.¹²⁷ A judge decided to release them on bail, but banned them from Toulouse (they live in the suburbs) pending trial, which was scheduled for 21 March 2019. On 18 April, the court declared the procedure null and void, in particular because police did not indicate the reasons justifying the arrest of the three men.¹²⁸ The Prosecutor’s Office appealed against the decision. The appeal hearing took place on 11 September 2019, and on 4 December Julien, Gilles and their friend were acquitted.

The prosecution had a significant impact on Julien and Gilles’ participation in the Yellow Vest movement. They both attended only a couple of other protests after the verdict. Gilles told Amnesty International that police had arrested him again in June following an identity check. He spent several hours in pre-charge detention while police checked whether the bail conditions, which came to an end on the day of the verdict, still applied. He told Amnesty International: “I think twice before attending a protest, I wonder what can happen next considering that nowadays we can end up in prison for doing nothing!”

This chapter examines the application of the provision in French criminal law that punishes participation in a group with a view to preparing acts of violence. More specifically, it discusses the context in which Parliament passed this provision in 2010 and the impact on the right to freedom of peaceful assembly. The chapter also analyses how law enforcement officials have used this provision to arrest protesters arbitrarily ahead of their participation in public assemblies and how the judicial authorities have prosecuted people on grounds that often did not amount to reasonable suspicion of criminal activity. Finally, it highlights the sweeping application of the provision to arrest not only protesters but also journalists, first-aid volunteers and human rights observers.

5.1 VAGUE LEGAL DEFINITION OF THE OFFENCE

Since 2010, under French criminal law, consciously participating in a group, including on a temporary basis, with a view to preparing acts of violence targeting people or property is punishable by up to one year’s imprisonment and a fine of up to €15,000.¹²⁹

This new criminal offence was proposed by a group of members of the National Assembly who argued that it would address what they saw as a gap in French criminal law regarding tackling organized violence. They argued that the existing offence of criminal conspiracy¹³⁰ was often not adequate for prosecuting organized violence because it only dealt with the planning of crimes punishable by a minimum prison sentence of five years.¹³¹

The then government supported the introduction of this new criminal offence. During the parliamentary debate, the then Minister of Justice pointed out that it would tackle comprehensively the phenomenon of “gangs”, including both where “gang members” knew each other and where people who did not know each other gathered in a particular place with the common objective of committing acts of violence. The Minister specifically included in the latter category the so-called “Black Block”, namely groups of individuals who resorted to violence in the context of public assemblies.

Many parliamentarians raised concerns about the negative impact that this new criminal offence would have on the right to freedom of peaceful assembly. Some of them proposed amendments which would explicitly

¹²⁷ Articles 212.14.2 of the Criminal Code and L2353-10 of the Defense Code. Amnesty International had access to the judge’s decision to release Julien and Gilles on bail, which included the charges against them.

¹²⁸ Amnesty International had access to the judgment.

¹²⁹ Article 212-14-2 of the Criminal Code.

¹³⁰ *Association de malfaiteurs*, Article 450.1 of the Criminal Code.

¹³¹ *Proposition de loi renforçant la lutte contre les violences de groupes et la protection des personnes chargées d’une mission de service public*, *exposé des motifs*, <http://www.assemblee-nationale.fr/13/propositions/pion1641.asp> (French only).

exclude public assemblies from the scope of the provision, but these were rejected. In February 2010, 60 members of the Senate and 60 members of the National Assembly asked the Constitutional Court to assess whether the proposal was in compliance with the Constitution.¹³² Parliamentarians raised concerns about the need for legal clarity as well as the impact on the principle of the presumption of innocence and the rights to freedom of expression, association and peaceful assembly.

The government submitted their observations to the Constitutional Court stressing that the provision specified the material elements of the new offence in a sufficiently clear manner and the need for the new provision because of a gap in the criminal law regarding the preparation of less serious criminal acts.¹³³

The Constitutional Court concluded that the new criminal offence was consistent with the Constitution. It emphasized the preventive objective of the provision and the need for it; in particular, the Court pointed out that its material scope was different from the offence of criminal conspiracy, which punished the preparation of more serious acts. The provision likewise did not overlap with the existence of aggravating circumstances associated with specific crimes if perpetrated in a group as, the Court argued, the latter applied only to crimes that had already been committed.¹³⁴ The Court also pointed out that participation in a group had to be consciously directed towards the commission of a violent act.

On 2 March 2010, the new provision entered into force. In a circular issued on 16 March 2010, the Ministry of Justice emphasized that the material elements of the offence included either knowledge of a group's intention to prepare acts of violence or participation in the preparation of those acts. In practice, the Ministry pointed out that the communication of a person's intention to commit a violent act in a group, for example by text message or online, could constitute evidence of his or her criminal liability.¹³⁵

In another circular, issued on 20 September 2016, the Ministry of Justice pointed out that the willingness of a group to commit violent acts was a ground for the authorities to arrest and prosecute individuals who were part of that group.¹³⁶ This ambiguous formulation raises concerns regarding the principle of individual criminal liability; in particular, the criminal liability of an individual could not be inferred from collective conduct, as the Constitutional Court had emphasized in its decision on the compliance of this provision with the Constitution.

Since 2010, the authorities have used the provision in multiple contexts including public assemblies. According to media reports, they resorted to the provision a few weeks after it had entered into force when they arrested 110 protesters in the context of a public assembly in Paris against the prison system, none of whom were prosecuted.¹³⁷

In 2016, when tens of thousands of people protested against proposed reform to labour laws, 236 people were convicted of participating in a group with a view to preparing acts of violence. In 2019, the authorities convicted 1192 people for that offence, almost three times as many than in 2018, when 439 individuals were convicted for the same offence, and nearly six times as many as during the whole of 2017, when 201 protesters were convicted of this offence.¹³⁸

The vague formulation of this provision has enabled the authorities to arrest protesters and to place them in pre-charge detention arbitrarily. In many cases, law enforcement and judicial authorities did not possess sufficient evidence supporting a reasonable suspicion of the individual contribution to acts of violence committed or planned by a group.

¹³² Requests submitted by the deputies and the senators to the Constitutional Court are available at <https://www.conseil-constitutionnel.fr/les-decisions/decision-n-2010-604-dc-du-25-fevrier-2010-saisine-par-60-deputes>, <https://www.conseil-constitutionnel.fr/les-decisions/decision-n-2010-604-dc-du-25-fevrier-2010-saisine-par-60-senateurs> (French only).

¹³³ The government's observations can be accessed here: <https://www.conseil-constitutionnel.fr/les-decisions/decision-n-2010-604-dc-du-25-fevrier-2010-observations-du-gouvernement> (French only).

¹³⁴ Perpetrating a crime in an organized group (*bande organisée*), article 132-71 of the Criminal Code, constitutes an aggravating circumstance for several crimes.

¹³⁵ Ministry of Justice, official bulletin, 16 March 2010, http://www.textes.justice.gouv.fr/art_pix/JUSD1007468C.pdf (French only).

¹³⁶ Ministry of Justice, official bulletin, 20 September 2016, p.10, http://circulaires.legifrance.gouv.fr/pdf/2016/09/cir_41346.pdf (French only).

¹³⁷ *Le Monde*, 'Cent dix personnes interpellés pour un tir de fusée dans une manifestation', https://www.lemonde.fr/societe/article/2010/03/28/110-arrestation-lors-d-une-manifestation-anticarceraire_1325507_3224.html and *L'Obs*, 'Loi contre les bandes : cent dix manifestants arrêtés... pour rien', <https://www.nouvelobs.com/rue89/rue89-nos-vies-connectees/20100404.RUE5831/loi-contre-les-bandes-cent-dix-manifestants-arretes-pour-rien.html> (French only).

¹³⁸ Statistics provided to Amnesty International by the Ministry of Justice on 2 August 2019.

5.2 ARBITRARY ARREST AND PRE-CHARGE DETENTION

According to official statistics, 11,203 people had been held in pre-charge detention (*garde à vue*) for criminal offences allegedly perpetrated in the context of the Yellow Vest protests throughout the country between 17 November 2018 and 12 July 2019; 3,393 of those detained were in Paris.¹³⁹

Under French criminal law, a person can be subject to pre-charge detention if there are plausible reasons to suspect that they committed or attempted to commit a criminal offence.¹⁴⁰ If there are plausible reasons to suspect that an individual has participated in a group with a view to preparing acts of violence, he or she can be placed in pre-charge detention for 48 hours.¹⁴¹ During a meeting with Amnesty International, a representative of the Minister of Justice stressed that a plausible suspicion could be gauged by the objects carried by the protesters, their communications with other protesters or other behaviours such as continuing to engage with other individuals who were committing acts of violence during protests.¹⁴²

In their observations on the report of the Council of Europe's Commissioner for Human Rights following a visit to France, the government highlighted that people carrying objects such as yellow vests, goggles, an aerosol spray or objects that could be used as projectiles were usually not placed in pre-charge detention unless other elements pointed to their participation in a group with a view to preparing acts of violence. These other elements included, for example, communications with other protesters to meet in the context of a protest, carrying objects that could be used to commit acts of violence against law enforcement officials or criminal damage, inciting to violence or sharing information on social media regarding the organization of a banned protest.¹⁴³

Law enforcement officials have arrested protesters and placed them in pre-charge detention often in the aftermath of identity checks and searches. Law enforcement officials have powers to check the identity of individuals if, for example, there is a reasonable suspicion pointing to their involvement in committing or preparing a criminal offence. Moreover, they can control the identity of everyone to prevent threats to public order. Prosecutors can also authorize identity checks to prevent or punish specific offences.¹⁴⁴ In instances where a person cannot, or is not willing to, produce an identity document, law enforcement officials can restrict their freedom of movement and their right to liberty to check their identity.¹⁴⁵

Amnesty International collected the statements of 17 people who were arrested and placed in pre-charge detention ahead of or during public assemblies on suspicion of participating in a group with a view to preparing acts of violence. They included protesters but also journalists, human rights observers and street medics who provide first aid to injured protesters (see Section 5.4). In all the cases analysed by the organization, judicial authorities decided either not to prosecute them or opted for alternative measures to prosecution such as a caution (*rappel à la loi*).¹⁴⁶

In some cases documented by Amnesty International, authorities restricted the rights to freedom of movement and to liberty of protesters and human rights observers who could produce identity documents or without even attempting to proceed to an identity check. For example in August 2019, authorities unduly restricted the rights to freedom of movement and to liberty of Amnesty International's observers during the planned protests against the G7 Summit in Biarritz.¹⁴⁷ In other cases, law enforcement officials took protesters to a police station to check their identity without checking if they could produce identity documents when stopped. On 10 December 2019, the Defender of Rights found that law enforcement officials had arbitrarily restricted the rights of 43 protesters who were taken to a police station on 2 January 2019 for an identity check even if they possessed an identity document.¹⁴⁸

¹³⁹ The Ministry of Justice communicated these statistics to Amnesty International upon request. Statistics disaggregated by specific criminal offence were not available.

¹⁴⁰ Article 62.2 of the Criminal Code of Procedure. In addition, pre-charge detention should be the only means to achieve one of the objectives set out in this article.

¹⁴¹ Article 63 of the Criminal Code of Procedure.

¹⁴² Meeting with a representative of the Ministry of Justice, 24 September 2019.

¹⁴³ Réponse de la France au Mémoire de la Commissaire aux droits de l'homme du Conseil de l'Europe faisant suite à sa visite en France du 21 janvier 2019, <https://rm.coe.int/reponse-de-la-france-au-memorandum-de-la-commissaire-dunja-mijatovic/1680933168>, pp.3-4 (French only).

¹⁴⁴ Article 78.2 of the Code of Criminal Procedure.

¹⁴⁵ Article 78.3 of the Code of Criminal Procedure.

¹⁴⁶ Article 41.1 of the Code of Criminal Procedure.

¹⁴⁷ See press-release, France: G7 Summit clouded by crackdown on protests, 26 August 2020,

<https://www.amnesty.org/en/latest/news/2019/08/france-g7-summit-clouded-by-crackdown-on-protesters/>

¹⁴⁸ Decision 2019-246 of 10 December 2019.

Amnesty International collected credible testimonies¹⁴⁹ that protesters were arrested ahead of demonstrations in the absence of any tangible factor pointing to a reasonable suspicion that they were involved in the preparation of acts of violence. Contrary to the statements of the French government, it appears that these individuals were arrested and placed in pre-charge detention solely on the basis of the objects that they were carrying, such as goggles or dust masks.

On 21 September 2019 different protests were organized in Paris, including a climate march and a protest opposing the reform of state pensions. The organizers of these multiple public assemblies called on all protesters to gather at 9.00am in Madeleine. Police authorities had banned all Yellow Vest protests in different areas of Paris, including the Champs-Élysées (but not Madeleine), from 5.00pm on Friday, 20 September to 12.00am Saturday, 21 September.¹⁵⁰

Rémy, a 26-year-old railway worker, had decided to join these protests as a first-aid volunteer, but he was arrested by the Gendarmerie at 8.50 as he was walking with a friend from Place de l'Opéra to Madeleine, in the 8th district of Paris.

Rémy, who had already taken part in previous protests, including the railway workers' strike in 2018 and protests opposing reform of labour laws in 2016, told Amnesty International that he had decided to mobilize with the Yellow Vests from the outset. He explained: "I had some financial difficulties at the time and I have to drive 70km each day to go to work...the price for a full tank increased from €60 to €66 euros and I felt affected by the grievances of the movement".¹⁵¹ In February, Rémy also joined a group of street medics in the Paris region (Seine-et-Marne).

He told Amnesty International that police stopped and searched him and his friend four times in 15 minutes as they were heading to the assembly point. He was carrying a backpack with first-aid materials, including saline solution, a dust mask to protect himself from tear gas, goggles and a helmet. When they were stopped for a fifth time, Rémy's friend was allowed to proceed to Madeleine without his identity being checked, while law enforcement officials asked Rémy to put all the objects that he was carrying in a bin bag. They subsequently arrested and placed him in pre-charge detention in the Bercy police station because of the first-aid materials that he was carrying. Police informed him that he was in pre-charge detention for participating in a group with a view to preparing acts of violence. Rémy was bewildered. He emphasized: "They had let us through the other four checks and my friend was not arrested after all...so what kind of group was I part of?"

Rémy remained in pre-charge detention until 18:00 and was then released without charge. He told Amnesty International of the bitterness he felt about this detention during that day: "I felt I had been treated like livestock, some police officers were mocking the Yellow Vests...I really regretted not having been at the protest, it was an important day after the summer break. They don't explain to you why they are preventing you from protesting...they just kept repeating 'these are the orders' or 'it's like that'".

The police arrested at least 163 people on 21 September.¹⁵² As some violent acts were perpetrated on that day, the authorities put in place several measures for the protection of public order, including stop and search operations in some areas where protesters had planned to gather or to march. However, the simple fact of carrying first-aid materials was not grounds for reasonable suspicion that Rémy was preparing acts of violence. Moreover, no factual elements suggested that Rémy was part of, or intended to join, a group that was preparing acts of violence.

On 14 July 2019, **Sophie**, a woman in her 30s and a contract worker in the entertainment industry who was part of the Yellow Vest movement in Paris from the beginning, was arrested and placed in pre-charge detention for inflating yellow balloons during the Bastille Day military parade on the Champs-Élysées.

Sophie told Amnesty International that she reached the area of the parade at about 7.30am with seven other Yellow Vests.¹⁵³ After a police identity check followed by a search, they positioned themselves in the front row along the Champs-Élysées. They inflated yellow balloons and whistled at President Macron when he passed their march. Police removed them from the area of the parade. Sophie explained that they moved to another sector of the Champs-Élysées, in front of the Gaumont cinema, where other Yellow Vests were standing. Shortly afterwards, they started inflating more balloons and chanting slogans. Police burst the

¹⁴⁹ People who were placed in pre-charge detention without being prosecuted did not have access to the reports regarding their pre-charge detention. Amnesty International established the internal reliability of the information that they provided by interviewing them twice and by checking available media reports and any other documents available to the interviewees.

¹⁵⁰ See the press release of the Paris Prefecture de Police, <https://www.prefecturedepolice.interieur.gouv.fr/Nous-connaître/Documentation/Salle-de-presse/Communiqués-de-presse/Manifestations>. (French only).

¹⁵¹ Interview with Rémy, 27 September 2019.

¹⁵² Twitter account of the Paris Police Prefecture: <https://twitter.com/prefpolice/status/1175441619786620928>

¹⁵³ Interview with Sophie, 1 November 2019.

yellow balloons and at about 10.45am, when Sophie challenged what the police were doing, she was arrested and taken to the 5th district police station. Police informed her that she was being placed in pre-charge detention for participating in a group with a view to preparing acts of violence. Sophie spent more than eight hours in pre-charge detention even though there was nothing to suggest that there was a reasonable suspicion she was preparing acts of violence. She was released at about 7.30pm the same day without charge.

Thierry, a PhD student in his mid-20s, was arrested on 1 May 2019 in Paris while attending the May Day protest organized by trade unions to commemorate International Workers' Day, which was also attended by the Yellow Vests. Protesters gathered around Montparnasse Station at 1pm. Thierry told Amnesty International that police had straight away resorted to tear gas against the march, which was the reason he was wearing a dust mask over his mouth and an eye protection mask.

Law enforcement officials (*Gendarmes mobiles*) arrested him at 3.30pm and told him that concealing his face constituted a criminal offence. Thierry explained to Amnesty International that law enforcement officials asked him repeatedly if he was carrying a weapon (*arme par destination*). The officer who searched his bag told his superior: "Shit, he doesn't have anything". Thierry said that he heard the superior stating: "It doesn't matter, you put him next to the others [who had been arrested] and add him to the stats." Thierry explained that most of the protesters who had been arrested were wearing a dust mask and goggles or eye protection masks because of the tear gas. He stressed that at the time of the arrest nobody was engaging in violent acts.¹⁵⁴

At the police station, the police told him that they had placed him in pre-charge detention for covering his face and for participating in a group with a view to preparing acts of violence. Thierry told Amnesty International that police had pointed to his dust mask and eye protection mask as well as to some flyers prepared by activists to inform protesters of their rights in case of arrest that they had found in his bag to justify his detention. Thierry spent almost 24 hours in pre-charge detention. On 6 May, a representative of the Prosecutor's Office cautioned him, but no charges were brought against him.¹⁵⁵

Thierry explained to Amnesty International: "If I can't protect myself from tear gas then I cannot protest any more. It's humiliating to be in the middle of tear gas without any protection". He also emphasized that his arrest had an impact on his participation in further protests: "I attended a few other protests, but I am very cautious, I fear the police. I hesitate. I'd like to protest but I have some concerns, people around me, my girlfriend for example, were quite shocked. I also have concerns for my professional career, especially because I'd like to work in the public sector after the PhD and I cannot have a criminal record...I know that other people who were arrested on a similarly groundless basis got convicted afterwards, it seems pretty random".

Sophie, a young medical student, and a friend were detained at around 10am on 14 September 2019 as they parked their car in central Nantes (western France). Police searched the car and found banners, umbrellas, some cans of paint and a couple of fireworks. Sophie and her friend were held in pre-charge detention for 48 hours, during which time Sophie was shown photographs of herself and six other people and asked whether she knew them.

During the summer, a demonstration had been called for 14 September in Nantes. The protest was attended by Yellow Vests, climate activists and people protesting against police excessive use of force, especially in the wake of the death of Steve Maia Caniço.

Sophie's lawyer has confirmed to Amnesty International that the Nantes Prosecutor's Office had opened a preliminary investigation in August 2019 into Sophie and six others for alleged involvement in criminal conspiracy (*association de malfaiteurs*) during the 14 September protest in Nantes. As part of this investigation, the Maison du Peuple, a well-known squat, was put under police surveillance.¹⁵⁶

At about 1pm on 14 September, police detained three other young people – **Estelle**, **Lisa**, and **Fred** – who were also planning to attend the protest. They were arrested as they loaded a handmade model of a giant lobster onto a truck outside La Maison du Peuple. They told Amnesty International that the lobster was intended to refer to François de Rugy who had resigned as Environment Minister in July 2019 following the publication of allegations that he had used public monies to fund a lavish lifestyle.¹⁵⁷ Police placed the three activists in pre-charge detention for 48 hours and during questioning showed them photos of seven people,

¹⁵⁴ Thierry had written a detailed testimony for the *Ligue de Droits de l'Homme* which he then shared with Amnesty International. Amnesty International spoke to him over the phone on 15 July 2019 and then interviewed him in person on 26 September 2019.

¹⁵⁵ Amnesty International had access to the caution.

¹⁵⁶ Meeting with Pierre Hurriet, Sophie's lawyer, 29 January 2020.

¹⁵⁷ Interview with Estelle, Lisa and Fred, 29 January 2020.

including themselves and Sophie. The three activists were part of the same preliminary investigation opened by the Prosecutor's Office against Sophie.

On Monday, 16 September, the Prosecutor filed a request with an examining judge to launch a more in-depth investigation. He requested that the judge investigate the five activists for alleged criminal conspiracy; the judge rejected this request.¹⁵⁸ The Prosecutor also requested that Sophie and her friend be investigated for allegedly participating in a group with a view to preparing acts of violence; this request was accepted by the judge and an investigation was opened.

The Prosecutor also requested that the judge prohibit the activists from participating in protests, ban them from Nantes and Rennes, require them to report to a police station every other week and ban them from communicating with each other.¹⁵⁹ The examining judge partially acceded to this request in the case of Sophie and her friend and imposed a ban on their participation in protests in Nantes. Sophie and her friend were also required to report once a month to a police station and banned from communicating with each other or with Estelle, Lisa and Fred during the investigation.¹⁶⁰ In interviews with Amnesty International, Sophie's lawyer said that there was no evidence in the legal files that pointed to a reasonable suspicion that Sophie was planning acts of violence.

At the time this report went to press (September 2020), the investigation was still ongoing. While the authorities returned the lobster and the umbrellas to the activists, the restrictions imposed on Sophie and her friend remained in force.

Sophie told Amnesty International: "I have my activist life in Nantes and I cannot protest there anymore. They [French authorities] want to hamper the organization of demos, they don't want people to be able to do it. We are not criminals, it is ridiculous...all this for some umbrellas and a few cans of paint?! I had to explain to my parents why I was in [pre-charge] detention. They called me for a personality inquiry, and when I refused to answer some intrusive questions, they contacted my parents. My workplace was also informed about my detention. People now have to take risks to demonstrate, they fear the criminal justice system. And not everyone is ready to take such risks. Putting people under ban on meeting and interacting with each other is a serious thing, because they know young people meet, talk, organize."¹⁶¹

Law enforcement officials had previously arrested Lisa and other activists on 12 April 2019 as they were painting banners during an outdoor workshop in Nantes. Lisa spent 24 hours in pre-charge detention for participating in a group with a view to preparing acts of violence. She was subsequently released without charge. She told Amnesty International: "The pre-charge detention is not pleasant. but I got back to demonstrations right away. However, I know that at some point I will have to limit my participation as the risks are very high. Authorities are often imposing bail conditions that restrict rights and people are intimidated. Suspecting us for criminal conspiracy for the Red Lobster, some paint and umbrellas was absurd as there was an issue with proportionality. Criminal conspiracy is something else!"¹⁶²

According to international human rights law and standards, individuals can be deprived of their liberty only in specific circumstances, namely if an arrest or detention is carried out for reasons established in law and is not arbitrary.¹⁶³ The permissible grounds for arrest include the need to bring someone before a competent authority where there is reasonable suspicion of them having committed an offence. The European Court of Human Rights has ruled that reasonable suspicion justifying arrest exists when there are "facts or information which would satisfy an objective observer that the person concerned may have committed the offence".¹⁶⁴

An arrest or detention is arbitrary when it is based on a domestic law that is vague, overly broad or incompatible with international human rights law and standards.¹⁶⁵ A corollary to the prohibition of arbitrary arrest or detention is the principle of legality, which imposes on states an obligation to define criminal offences precisely within the law. This principle requires that an individual be able to know from the wording of a provision what acts would carry criminal liability.¹⁶⁶

¹⁵⁸ Association de malfaiteurs, article 450.1 of the Criminal Code.

¹⁵⁹ Article 138 of the Code of Criminal Procedure.

¹⁶⁰ The judge considered Estelle, Lisa and Fred as "witnesses" (*témoins assistés*) in the investigation.

¹⁶¹ Interview with Sophie, 29 January 2020.

¹⁶² Interview with Estelle, Lisa and Fred, 29 January 2020.

¹⁶³ Article 9.1 of the ICCPR and Article 5.1 of the ECHR

¹⁶⁴ European Court of Human Rights, *Fox, Campbell and Hartley v. United Kingdom* (12244/86, 12245/86, 12383/86), (1990) §32 and *Murray v. United Kingdom* (14310/88) Grand Chamber, (1994) §§50-63.

¹⁶⁵ UN Working Group on Arbitrary detention, Factsheet 26, sections IV-A and B.

¹⁶⁶ See Amnesty International, *Fair-trial manual*, Chapter 18.1.1.

The testimonies collected by Amnesty International raise concerns as to whether the provision that punishes individuals for participating in a group with a view to preparing acts of violence¹⁶⁷ has been implemented in a way that complies with the prohibition of arbitrary arrest or detention and with the right to personal liberty. The vague formulation of the provision has resulted in its overly broad implementation to arrest and place in pre-charge detention protesters who were not part of any group at the time of the arrest and against whom there were no elements amounting to a reasonable suspicion of their involvement in committing an act of violence.

While the authorities should take reasonable steps to prevent criminal offences perpetrated in the contexts of protests, the European Court of Human Rights has emphasized that states should not protect individuals from criminal acts by measures that are in breach of the rights protected by the European Convention, including the right to freedom of peaceful assembly.¹⁶⁸ It follows that states should ensure that any preventive action that may interfere with the right to freedom of peaceful assembly is based on objective evidence that without such action an individual will commit a concrete and specific offence of significance.

Amnesty International is concerned that the arrests of many protesters – including Rémy, Thierry and others whose cases it has researched – were neither based on reasonable suspicion that they had committed a criminal offence nor on objective elements pointing to the fact that they would have committed a criminal offence had they not been arrested. None of the elements mentioned by the government in response to the Council of Europe’s Commissioner for Human Rights appeared to be present in the cases of arrest and pre-charge detention documented by Amnesty International.

Moreover, a confidential note issued by the Paris Prosecutor’s Office, to which Amnesty International had access, stated that the pre-charge detention of individuals in instances where there was not sufficient evidence supporting a plausible suspicion of their involvement in a criminal offence or where there was no public interest to prosecute them should be ended on Saturday evening or Sunday morning to avoid them returning to protests.¹⁶⁹ In meetings with Amnesty International, the Paris Prosecutor stated that one of the objectives of pre-charge detention was to put in place measures to stop the perpetration of a criminal offence.¹⁷⁰ However, in Amnesty International’s view, that objective of pre-charge detention is void if there is no evidence establishing a reasonable suspicion of the involvement of an individual who is in pre-charge detention for a crime. Thus, the note raises serious concerns on the use of arrest and pre-charge detention as tools to arbitrarily restrict the right to freedom of peaceful assembly.

As some protesters did perpetrate violent acts in the context of public assemblies organized by the Yellow Vests, the authorities were pursuing a legitimate aim while attempting to prevent those offences. However, on the basis of the information available to Amnesty International, the French authorities failed to provide elements justifying arrest and the pre-charge detention in the cases examined during research for this report. While carrying out these arrests, the authorities violated the rights to liberty and freedom of peaceful assembly.

5.3 PROSECUTIONS FOR PARTICIPATING IN A GROUP WITH A VIEW TO PREPARING ACTS OF VIOLENCE

At the national level, public prosecutors decided to close without pressing charges at least 20% of the cases of individuals placed in pre-charge detention for criminal offences allegedly committed in the context of the Yellow Vest protests.¹⁷¹ Moreover, prosecutors opted for measures other than prosecution (for instance, a caution) in about 22,6% of cases. In Paris, the Prosecutor’s Office closed at least 39% of the cases of

¹⁶⁷ Article 212-14-2 of the Criminal Code.

¹⁶⁸ Schwabe and M.G. v. Germany (2011), para. 85.

¹⁶⁹ Note “Permanence Gilets Jaunes”, p.4:

Sauf irrégularités manifestes de la procédure ou erreur sur le mis en cause, les levées de gardes à vue motif 21 ou 56 doivent être privilégiées le samedi soir ou dimanche matin, afin d’éviter que les intéressés grossissent à nouveau les rangs des fauteurs de troubles.

¹⁷⁰ Meeting with the Paris Prosecutor, Rémy Heitz, 30 January 2020. The prosecutor referred to Article 62.2-6 of the Code of Criminal Procedure.

¹⁷¹ The Ministry of Justice provided these statistics to Amnesty International.

protesters who were placed in pre-charge detention and made use of measures other than prosecution in about 27,8% of the cases of pre-charge detention.¹⁷²

A representative of the Ministry of Justice told Amnesty International that disaggregated statistics for the number of individuals who were held in pre-charge detention and prosecuted for participating in a group with a view to preparing acts of violence were not available.¹⁷³

The Ministry of Justice collects and publishes data on overall prosecution rates for all criminal offences. In 2018, prosecutors decided to close and not to press charges in 12.3% of the total number of cases that they dealt with where they could have decided to prosecute.¹⁷⁴ The closure rate for criminal offences allegedly committed in the context of the Yellow Vest protests was higher than the overall figure. In particular, the closure rate for the criminal offences allegedly perpetrated in the context of the Yellow Vests protests in Paris was more than three times higher. The same holds true if prosecution statistics related to previous years are used as a benchmark.¹⁷⁵

There may be many reasons for the decision not to prosecute individuals placed in pre-charge detention, including lack of sufficient evidence to press charges. A representative of the Ministry of Justice told Amnesty International that prosecutors were not given instructions regarding the necessary evidence to prosecute protesters for the offence of participating in a group with a view to preparing acts of violence. He highlighted that materials carried by protesters, such as goggles, could be part of the evidence, but that it should include other elements too, such as phone communications to arrange a meeting to prepare a violent act.¹⁷⁶

According to the information available to Amnesty International, in the case of Julien and Gilles discussed earlier in this chapter, public prosecutors did not have any evidence other than the objects that they were carrying to suggest that they intended to prepare an act of violence. The same applies to the other 13 cases documented during the research for this report of individuals who were prosecuted for participating in a group with a view to preparing acts of violence. The possession of protection materials such as goggles, dust masks or helmets do not indicate, in absence of further evidence, that an individual can be reasonably suspected of having committed or being involved in the preparation of a crime.

On 1 May 2019, **Francis**,¹⁷⁷ a young man living in Brittany, travelled to Paris to attend the demonstration organized by trade unions for May Day. He aimed to join the “Benalla bloc”,¹⁷⁸ which was organized by the NGO Attac. Francis, who was unemployed at the time, explained to Amnesty International that he had participated in some Yellow Vest protests and saw May Day as a crucial date to mobilize.

Police stopped Francis on the Boulevard Montparnasse around midday, before the protest, which was scheduled to start at 1pm. They checked his identity papers and searched his backpack. They found a mask of Alexandre Benalla; a helmet with the word “photo” painted on the side; a camera; and a pair of goggles. Police told Francis, who was on his own at the time, that they were going to arrest him for participating in a group with a view to preparing acts of violence. Francis was subsequently placed in pre-charge detention, where he refused to give a sample of his DNA and the security code to unblock his phone, a criminal offence under French law.¹⁷⁹

The public prosecutor decided to prosecute Francis for participating in a group with a view to preparing acts of violence and for refusing to reveal the security code to unblock his phone. According to the information available to Amnesty International, the prosecutor had no grounds to support a reasonable suspicion that Francis intended to commit, or was preparing, violent acts.¹⁸⁰ The prosecution relied entirely on the objects Francis was carrying at the time of arrest to pursue charges of preparing acts of violence.

¹⁷² At least 2,260 cases throughout France and 1,327 cases in Paris were closed without pressing charges following pre-charge detention. These statistics only include the number of cases in which prosecutorial authorities decided not to press charges until 13 November 2019. In some instances, the authorities had not taken a decision yet regarding whether pressing charges by 13 November 2019, when the statistics regarding pre-charge detentions and prosecutions of Yellow Vests protesters were updated the last time.

¹⁷³ Interview with the Ministry of Justice, 24 September 2019.

¹⁷⁴ Ministry of Justice, *Les chiffres-clés de la Justice 2019*, http://www.justice.gouv.fr/art_pix/CC%202019_V8.pdf, p.14 (French only).

¹⁷⁵ Ministry of Justice, *Les chiffres-clés de la Justice 2018*, http://www.justice.gouv.fr/art_pix/justice-chiffres-cles-2018.pdf, p.17 (French only).

¹⁷⁶ Meeting with a representative of the Ministry of Justice, 24 September 2019.

¹⁷⁷ Francis is a pseudonym chosen by the interviewee in accordance with his informed consent given to Amnesty International in the context of the interview that took place on 1 November 2019.

¹⁷⁸ The name of the bloc referred to Alexandre Benalla, the security officer and deputy chief of staff of President Macron, who was filmed beating up protesters while wearing police insignia in the 2018 May Day demonstration.

¹⁷⁹ Articles 706-56 of the Code of Criminal Procedure and 434-15-2 of the Criminal Code.

¹⁸⁰ Amnesty International had access to several legal documents relating to the cases including the arrest form, several reports of the pre-charge detention and a photo of the objects that Francis was carrying at the time of his arrest.

5.4 ARRESTS AND PROSECUTIONS OF JOURNALISTS AND VOLUNTEERS

The vague formulation in law of the offence of participating in a group with a view to preparing acts of violence and its overly broad application in situations where there was no basis for reasonable suspicion of involvement in the preparation of a violent act has resulted in the arrest of people who were not protesters but who participated in public assemblies as third parties. Amnesty International examined eight cases of journalists, human rights observers and first-aid volunteers who were arrested and, in some cases, prosecuted on the basis of flimsy evidence or no evidence at all indicating a reasonable suspicion of involvement in the preparation of a crime.

Brice, a video journalist in his 20s who works for a mainstream newspaper,¹⁸⁷ decided to cover the Yellow Vest protests as an independent reporter. He told Amnesty International that he had requested a press card, but he had still not received it.¹⁸⁸ He emphasized that he always carried his employment contract and his journalism student card when he filmed the Yellow Vest protest as law enforcement officials often ask journalists to produce their press cards during protests.

On 20 April 2019, Brice documented the Yellow Vest protest in Paris. He was with a friend in Place de la République, the endpoint of the march that had started a few hours earlier in Bercy, when he was arrested at 4.30pm. He described the arrest:

“We were in Place de la République, I was filming the police cordons. There were clashes around the square but not where we were walking. Gaspard Glanz [another journalist] had been arrested 15 minutes earlier. We decided to leave and suddenly my friend shouted ‘Brice, watch out!’ Several police caught me from behind and forced me to the ground. They insulted me and asked if I had thrown projectiles against them. I told them that I was a journalist and that I had my student card. They had a look and then commented: ‘He’s a fucking yougo! Are you a yougo? [a derogatory reference to people from the former Yugoslavia, police officers referred to Brice’s family name].”

Police took Brice to the 18th district police station where they placed him in pre-charge detention for participating in a group with a view to preparing acts of violence, covering his face and using violence against public officials. Brice explained to Amnesty International that he had conceded in interviews that he had been wearing a dust mask around his neck at the time of the arrest. Brice said that the arrest form indicated that a law enforcement official (gendarme), who had not been identified, testified that Brice had thrown a projectile at police. There was nothing to indicate that Brice might have been involved in the preparation of other acts of violence.

On 21 April, the authorities extended Brice’s pre-charge detention for 24 hours. On the morning of 23 April, the prosecutor informed Brice that he would be prosecuted only for using violence against public officials. He was subsequently brought before a court that night at 2am. As he refused to be judged through fast-track proceedings, he was released on bail on condition that he reported to a police station twice a month while awaiting trial, which was scheduled for 21 May 2019.

Brice explained to Amnesty International that, in court, he emphasized that he had participated in the protest as a journalist, which triggered comments by both the judge and the prosecutor about the fact that he did not possess a press card at the time of the arrest. Brice was acquitted.¹⁸⁹

The pre-charge detention took a heavy toll on Brice. He told Amnesty International: “I had severe sleeping disorders and panic attacks when I was released. I stayed with a friend of mine as my flatmates were not at home and I was in a dreadful state. I also find it absurd that the prosecutor asked for a [sentence of] three months, considering that I am a journalist and that there was no evidence against me. I have my press card and I feel a bit safer now when I go to protests but still not very safe”.

¹⁸⁷ The name of the media outlet for which Brice works has been withheld in accordance with the informed consent given to Amnesty International in the context of the interview on 28 September 2019.

¹⁸⁸ The conditions for obtaining a press card can be found at <http://www.ccijp.net/article-10-conditions-d-attribution-de-la-carte-professionnelle.html> (French only).

¹⁸⁹ The judgment, to which Amnesty International had access, mentioned only summarily that Brice had been acquitted without providing much analysis of the evidence available to the court. The judgment also indicated that the extension of the pre-charge detention was void as the document that certified the extension did not indicate Brice’s choice regarding his legal representation.

On 9 January 2020, police arrested **Jean Segura**, an independent photojournalist, who was covering the protest against the reform of the pension system. The authorities placed him in pre-charge detention for 23 hours for violence against public officials and subsequently released him without pressing charges.

Jean told Amnesty International that at about 4pm police charged protesters in rue St Lazare (9th district) following the launch of a firecracker which landed on the coat of an elderly protester. Jean noticed that a journalist who had suffered injuries an hour earlier was standing close to police. Jean approached them and shouted to police that the man was a journalist. After two police officers punched him and hit him with their baton, another officer in plainclothes grabbed him in a chokehold and then arrested him. The same officer stamped on Jean's phone and camera during the arrest.

On 27 January, a doctor prescribed Jean a 4-day sick leave for the injuries that he had suffered during the arrest. Jean told Amnesty International that he had filed a complaint to the Prosecutor's Office for the arbitrary use of force that he had suffered and the destruction of his camera and his phone. He told Amnesty International: "I was really scared during the arrest because I couldn't breathe anymore and I thought I would die. The injuries that I suffered were nothing compared to the impact that the arrest had on my mental health. I have developed anxiety and suffered insomnia since that day".¹⁹⁰

Amnesty International has previously documented the barriers that journalists face when exercising their right to freedom of expression during public assemblies. In 2017, Amnesty found that journalists, photographers and other media workers covering demonstrations were subjected to arbitrary use of force by police, in particular in the context of social movements opposing reform of the labour laws.¹⁹¹ In the context of the Yellow Vest social movement, dozens of journalists sustained injuries, allegedly at the hands of law enforcement officials. The journalists' trade union, the Syndicat National des Journalistes (SNJ) has expressed concerns regarding several journalists who were injured on 20 April 2019 and also arrested on the same day as Brice.¹⁹² Amnesty International documented other recent cases of journalists who were arrested and prosecuted for contempt, rebellion or participating in a group with a view to preparing acts of violence and whose professional status was questioned by the authorities because they did not have press cards.¹⁹³

A data collection mechanism put in place by the journalist David Dufresne indicated that 126 journalists had been injured since November 2018 during the Yellow Vest protests as well as other protesters including those against the pension reforms.¹⁹⁴

Under international human rights law and standards, the right to seek, receive and impart information is a key corollary of the right to freedom of expression and is not dependent upon the possession of a press card or any other official document.¹⁹⁵ Journalists and media workers play a crucial role in informing the public about matters of public interest, which include public assemblies and social movements that challenge government policies.

Restrictions that the authorities impose on journalists and media workers must be subject to strict scrutiny. In particular, journalists and media workers should be able to report on all types of public assemblies, including those that are not notified to authorities. Dispersal orders directed at participants in principle should not apply to journalists or media workers as they are third-party actors in public assemblies and should therefore be allowed to report on law enforcement operations after a dispersal order is issued, unless they constitute an obstruction or their safety is endangered.

The authorities should ensure that all journalists and media workers can exercise their right to freedom of expression. Respect for and protection of journalists should therefore not be limited to those formally recognized as journalists, but should cover community media workers and citizen journalists and others who may be using new media as a means of reaching their audiences.

The right to seek, receive and impart information also covers independent human rights monitors seeking to observe public assemblies. Monitors provide a vital source of independent information about the conduct of both participants and law enforcement officials. The information that monitors collect may also be crucial for

¹⁹⁰ Interview with Jean, 30 January 2020.

¹⁹¹ See Amnesty International, 'A Right not a threat: disproportionate restrictions on demonstrations under the state of emergency in France', 31 May 2017, (EUR 21/6104/2017) <https://www.amnesty.org/en/documents/eur21/6104/2017/en/>

¹⁹² SNJ, 'La République à un doigt du déshonneur', <http://www.snj.fr/article/la-r%C3%A9publique-%C3%A0-un-doigt-du-d%C3%A9shonneur-471646489> (French only).

¹⁹³ These include for example the journalist Taha Bouhafs. See Amnesty International, 'Poursuites contre le journaliste Taha Bouhafs : nos inquiétudes', <https://www.amnesty.fr/liberte-d-expression/actualites/poursuites-contre-le-journaliste-taha-bouhafs-nos> and 'Procès de Taha Bouhafs : l'intimidation à l'égard des journalistes français continue', <https://www.amnesty.fr/liberte-d-expression/actualites/audience-du-journaliste-taha-bouhafs> (French only).

¹⁹⁴ For more information, see <https://alloplacebeauvau.mediapart.fr/presse> (French only).

¹⁹⁵ Article 19 of the ICCPR and 10 of the ECHR. See also para. 44 of General Comment No. 34 on Article 19: freedoms of expression and of opinion, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

holding law enforcement officials accountable for human rights violations. Moreover, according to human rights standards, anyone can document law enforcement operations, including by filming them.¹⁹⁶

Amnesty International reported on the barriers faced by its monitors in the context of the protests during the G7 Summit in Biarritz in August 2019. In particular, police confinement prevented Amnesty International monitors from carrying out their human rights activities.¹⁹⁷ In some instances, the authorities arrested human rights monitors and accused them of participating in a group with a view to preparing acts of violence without any elements pointing to a reasonable suspicion of their involvement in a criminal offence.

Camille, a human rights observer and member of the Human Rights League (Ligue des Droits de l'Homme, LDH), was arrested three times between April and September 2019 in the context of her activities as an observer. On 24 August 2019, Camille, Natti and Eléonore, two other human rights observers who were monitoring the policing of the protests against the G7 for the LDH, were arrested in Bayonne.

Camille described how police (members of the BRAV-M)¹⁹⁸ surrounded them at about 5pm on quai Augustin Chao where no public assemblies were taking place. Camille produced a letter from the LDH stating that they were conducting a human rights observation mission. Police searched their bags and found protection equipment, including ski masks, gas masks and helmets. The previous day, Camille had explained to Amnesty International observers who were present in Biarritz that this equipment was crucial for observing public assemblies where clashes erupted between law enforcement officials and protesters.

Police arrested Camille and two other observers, and placed them in pre-charge detention for participating in a group with a view of preparing acts of violence. Camille said publicly that they had been subjected to around 10 other searches on the day and allowed to continue their work. They spent 24 hours in pre-charge detention and were then cautioned (*rappel à la loi*) that they would face prosecution should they commit another criminal offence in the following three years.¹⁹⁹

Camille had already been prosecuted for disrupting traffic.²⁰⁰ On 9 April 2019, while monitoring a public assembly of Yellow Vests in Montpellier, she followed some protesters who blocked the motorway. She was clearly identifiable as an observer as she was wearing a vest bearing the insignia of the LDH. On 29 April, she was placed in pre-charge detention for nine hours in the context of a preliminary investigation carried out by the Prosecutor's Office. On 1 October, she was acquitted after a Montpellier court found that she did not disrupt traffic as she was there as an observer.²⁰¹

Moreover, on 21 September 2019, Camille observed a protest by the Yellow Vests in Montpellier. Police arrested her at about 4.15pm while she was observing the police search of some protesters who had been confined in Place de la Préfecture de l'Hérault. At the time of the arrest, she was wearing a pair of goggles and a gas mask around her neck. Camille said that she had worn them earlier during the day to protect herself from tear gas. She explained that while she was observing the search, a police superintendent approached her and asked her to give him her equipment. She refused to comply with the request and explained that she was an observer. The superintendent told her that she would be arrested and attempted to seize her equipment. When Camille put her hands on the equipment that she was wearing, the superintendent asked her why she was hitting him. Bewildered, Camille shouted: "I am an observer for the Human Rights League and I refuse to hand in my equipment". She was then arrested and placed in pre-charge detention for 23 hours. She was subsequently prosecuted for rebellion against public officials, covering her face, refusing to undergo a DNA test, to give her fingerprints and to be photographed. The trial was scheduled for 12 December 2019. On 16 January 2020, Camille was acquitted.

Street medics and other volunteers providing first aid in the context of the Yellow Vest protests have played a crucial role, given that thousands of protesters have been injured in clashes with the security forces (see Background). However, they too have been detained by law enforcement officials during the protests.

Amnesty International collected several statements from street medics who were arrested and placed in pre-charge detention because they were carrying first-aid equipment and equipment to protect themselves from tear gas.

¹⁹⁶ See Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, para. 71.

¹⁹⁷ Amnesty International, 'France: G7 Summit clouded by crackdown on protesters' <https://www.amnesty.org/en/latest/news/2019/08/france-g7-summit-clouded-by-crackdown-on-protesters/>

¹⁹⁸ The "Brigade de répression de l'action violente motorisée" are mobile police units created in March 2019 by the Police Prefect of Paris.

¹⁹⁹ Amnesty International had access to the document notifying the caution.

²⁰⁰ Article L412.1 of the Highway Code (Code de la Route).

²⁰¹ Amnesty International had access to the judgment.

Jerome, a 23-year-old man who works in the IT sector and lives in the Paris region, was arrested on 8 December 2018 during a Yellow Vest protest in Paris that he attended as a street medic.²⁰²

Jerome told Amnesty International that he was arrested at about 11.45am near Porte Maillot, where some peaceful protesters had blocked the ring road and where police had formed a cordon to prevent other protesters from joining them. Jerome was identifiable as a first-aid worker and was wearing a helmet bearing the symbol of the red-cross. He was carrying some protection equipment, more specifically a ski mask and a gas mask, as well as first-aid equipment.

At some point, when police charged protesters to disperse them, Jerome was also arrested together with 10 protesters. He shouted that he was a street medic. He was placed in pre-charge detention for participating in a group with a view to preparing acts of violence. The authorities subsequently released him at about 9pm without charge. Jerome described to Amnesty International the negative impact that the arrest had on him: “They arrested me just because I was in front of a police cordon, they had no reason whatsoever. It took me a couple of months to go back to protests again. I really struggled to understand the rationale for my detention. I couldn’t believe that this had happened and I felt that my life as street medic was completely disassociated with my everyday life where I did not face that kind of threat”.

CONCLUSIONS

The authorities arrested and prosecuted protesters without evidence establishing any reasonable suspicion of their involvement in the preparation of a violent crime. They resorted to the criminal provision of participation in a group with a view to preparing acts of violence to carry out arbitrary arrests of protesters ahead of public assemblies, which prevented them from exercising their right to freedom of peaceful assembly. Its lack of legal clarity has enabled authorities to implement the provision in a way that unduly restricted human rights. The law must be specific as to which conduct is criminalized. Only the specific contribution of an individual to the planning or the perpetration of acts of violence in cooperation with others should be criminalized.

Protesters carrying equipment to protect themselves from tear gas or rubber bullets (see the box at the end of Chapter 4) such as dust masks, goggles or helmets, which do not pose any threat whatsoever, were arrested and, in some cases, prosecuted. These arrests were arbitrary as they were based on an overly broad law which violated the rights to liberty and to freedom of peaceful assembly. Journalists, street medics and human rights monitors were also arrested and prosecuted.

The use of a vague criminal provision to punish preparatory acts ahead of protests resulted in a disproportionate restriction of the rights to freedom of peaceful assembly and to liberty.

²⁰² Jerome is a pseudonym chosen by Amnesty International to comply with the informed consent given by the interviewee on 25 September 2019.

6. OTHER RESTRICTIONS IMPOSED ON PROTESTERS

“I gave up going to protests, I cannot take any further risk. I would have liked to pursue my commitment as a street medic but I took a step back after what happened. I own a business and I was lucky enough that my brother could take over when I was in pre-charge detention. I am scared, I was treated like a criminal even though I did nothing at all. I told police at the time of the arrest that we had helped their colleagues that same day. I don’t trust the justice system any longer.”

Elodie, a street medic in Pau

Elodie, a 29-year-old street medic and a trained nurse from Pau (south-west France), was banned from the city of Toulouse for six months. On 1 May 2019, the authorities arrested her for participating in a public assembly that threatened public order after a dispersal warning (*attroupelement*) and placed her in pre-charge detention for 24 hours.

Elodie attended the May Day protest in Toulouse with three other street medics from Pau. She explained to Amnesty International that the protest continued after the official dispersal time that the organizers had indicated in the notification to the authorities. Police checked the identity and searched the bags of Elodie and the three other volunteers at about 6pm in the Jeanne d’Arc Square area. Elodie told Amnesty International that they were clearly identifiable as street medics as they were wearing helmets bearing a red cross and colourful armbands and carrying first aid materials. Elodie was wearing a gas mask around her neck when police checked her identity. Police arrested the four of them and placed them in pre-charge detention.

Elodie told Amnesty International that the police asked them why they had not dispersed. She said: “We are absolutely neutral and we provide first-aid care to everyone, including protesters, passers-by and also police officers, if needed. Most clashes occur at the end of protests, after the dispersal orders, and that is why we

usually stay until the very end. On that day, we had just arrived in the proximity of Jeanne d’Arc, we were somewhere else before, so we had obviously not heard the dispersal warnings”.²⁰³

The public prosecutor offered a settlement (*composition pénale*) to Elodie and the three other volunteers. Elodie explained to Amnesty International that they had decided to accept it: “We want it to be over, we didn’t want to take any risk and we didn’t want to wait for a long time before the trial”. On 11 June 2019, the prosecutor imposed a six month ban on Elodie and the three other volunteers from entering Toulouse.²⁰⁴

As discussed in previous chapters, the judicial authorities have unnecessarily restricted the right to freedom of peaceful assembly by prosecuting protesters for conduct that is protected under international human rights law and standards. Moreover, they have disproportionately restricted the right to freedom of peaceful assembly by prosecuting protesters on the basis of overly broad provisions, in particular the provision on participating in a group with a view to preparing acts of violence. This chapter examines further restrictions on the right to freedom of peaceful assembly, including bans on protesting or from specific cities or areas, imposed on protesters either as bail conditions or as a complementary penalty.

6.1 BAIL CONDITIONS RESTRICTING FREEDOM OF MOVEMENT AND PEACEFUL ASSEMBLY

Under French law, judges can impose bail conditions on suspects pending their trials. These conditions can include the restriction of freedom of movement, which can include either an obligation to remain in a specific geographical area or the prohibition from entering a specific area.²⁰⁵ Since April 2019, when Parliament passed a new law aimed at maintaining public order (see Chapter 4.3), judges can explicitly impose a ban on participating in public assemblies as a bail condition.

Amnesty International collected statements from 10 people who have been subjected to bail conditions while awaiting trial. Many of these conditions included restrictions on freedom of movement, particularly through imposing the prohibition to be in large geographical areas, often entire cities, valid either for entire periods or time or only at weekends, when the protests organized by the Yellow Vests usually happen. For example, Julien and Gilles were banned from Toulouse pending their trial after they were accused of participating in a group with a view to preparing acts of violence (see Chapter 5).

Sylvain, a 35-year-old craftsman who lives in the Paris region, was released on bail on 11 March 2019 after 48 hours in pre-charge detention. On 15 October, he was tried and acquitted of charges of participating in a group with a view to preparing acts of violence, violence and contempt of public officials. However, the bail conditions imposed on him pending the trial banned him from Paris on Saturdays and Sundays which in practice prevented him from participating in other Yellow Vest protests for seven months.²⁰⁶

Sylvain had participated in a Yellow Vest protest in Paris on 9 March 2019. He told Amnesty International that police had confined him together with about 200 other protesters for more than three hours in the proximity of Place de l’Etoile. He said he had intervened when a police officer tried to hit a protester with his baton. As soon as he grabbed the baton, several police officers hit him and pushed him to the ground. The police arrested him a couple of hours later, when protesters were eventually allowed to leave.

Sylvain explained to Amnesty International that participating in the Yellow Vest movement was very important for him: “I struggle every month to make ends meet and I had finally the hope that people were waking up and that we could have changed something. I have not been able to participate in protests any longer, I couldn’t go after March anyway because of the bail conditions and on top of it I have to work on Saturdays as well now to make ends meet”.²⁰⁷ In Sylvain’s case, the restrictions on freedom of movement that authorities had imposed on him amounted in practice to a nearly total ban on attending the protests organized by the Yellow Vests, as most of the protests in the Paris region took place in the city of Paris.

On 3 May 2019, in another case that a lawyer shared with Amnesty International, a judge imposed a ban from Paris pending trial on a woman who was prosecuted for contempt of public officials (see Chapter 4.2).

²⁰³ Interview with Elodie, 28 August 2019. Amnesty International had access to the document where the public prosecutor banned her from Toulouse.

²⁰⁴ Amnesty International had access to the settlement agreement. Under article 41-2 of the Code of Criminal Procedure, public prosecutors can restrict freedom of movement for up to six months when proposing a settlement.

²⁰⁵ Article 138 of the Code of Criminal Procedure.

²⁰⁶ Amnesty International had access to the decision regarding Sylvain’s bail conditions.

²⁰⁷ Interview with Sylvain, 26 September 2019.

In the bail decision,²⁰⁸ the judge conceded that the defendant denied having uttered the sentence “Kill yourself, kill yourself” to police in the context of the May Day protest that she had attended in Paris. However, the judge emphasized that the defendant, when prompted by the judge during the hearing, had refused to share her opinions regarding those utterances. The judge thus justified the bail conditions by highlighting the risks of a reiteration of the criminal offence of contempt.

Alternative measures to detention, such as bail conditions, can be imposed by courts to ensure an accused’s appearance for trial.²⁰⁹ These measures must be prescribed by law and should be necessary and proportionate. French law establishes that bail conditions can be imposed by judges for “security reasons” or if necessary for the success of the investigation.²¹⁰ Imposing bail conditions that in practice prevent suspects from participating in protests pending trial does not appear to be necessary nor proportionate to ensure that they appear for trial. On the one hand, the authorities have at their disposal other bail conditions that are less intrusive and can be imposed by judges to achieve that purpose, including reporting regularly to a police station. The imposition of bail conditions that amount to a blanket ban on attending protests also results in an undue restriction of the right to freedom of peaceful assembly.

6.2 RESTRICTIONS ON FREEDOM OF PEACEFUL ASSEMBLY AS A COMPLEMENTARY PENALTY

Since April 2019, judges can impose a general prohibition on participating in public assemblies for up to three years as a complementary penalty on people convicted of the following criminal offences: participating in a group with a view to preparing acts of violence, wearing face masks, committing violent acts or criminal damage, organizing a public assembly without complying with notification requirements or pursuing the organization of a banned protest and carrying a weapon in a public assembly.²¹¹ Courts applied this complementary penalty in 342 cases in 2019, including in cases where protesters were convicted.²¹²

Judges can impose a restriction on freedom of movement (*interdiction der séjour*) for up to five years as a complementary penalty for the following criminal offences: organizing a public assembly without complying with the notification requirements, organizing a banned public assembly, carrying a weapon in the context of a public assembly and wearing face coverings.²¹³ In 2019, courts applied this complementary penalty in 3,780 cases, including in cases where protesters were convicted.²¹⁴

Amnesty International interviewed four protesters who were sentenced to a complementary penalty. In one case the public prosecutor imposed a restriction on freedom of movement as part of a caution (*rappel à la loi*).²¹⁵

On 6 December 2019, **Odile Maurin**, a 56-year-old woman living with a disability, was convicted and given a two-month suspended sentence for violence against two law enforcement officials. She also had to pay more than €2000 for damages. Moreover, the Toulouse court banned her from participating in public assemblies in the whole district of Haute-Garonne (which includes Toulouse) for one year as a complementary penalty.

On 30 March 2019, Odile participated in a protest organized by the Yellow Vests in Toulouse. She told Amnesty International that police formed a cordon, fired tear gas grenades and resorted to a water canon to prevent peaceful protesters from marching on Boulevard d’Arcole. Odile decided to remain in front of the water canon with her wheelchair to disrupt the police operation as she considered it completely unnecessary. According to Odile, two police officers grabbed the wheelchair’s remote control twice in order to remove her. First, the wheelchair bumped into the pavement and, as a result, Odile almost fell to the ground. The wheelchair then hit a police car and another police officer who was standing there. Odile’s foot got squashed between the police car and the wheelchair and she sustained multiple foot fractures.²¹⁶ Odile filed a complaint for police excessive use of force with the Toulouse Prosecutor’s Office. On 12 December

²⁰⁸ Amnesty International had access to an anonymized version of the bail decision in this case.

²⁰⁹ Amnesty International, *Fair Trial Manual*, Chapter 5.4.1 ‘Alternatives to detention pending trial’.

²¹⁰ Article 137 of the Code of Criminal Procedure.

²¹¹ Article 131-32-1 of the Criminal Code. For a summary of the instances where judges can impose a complementary penalty, see the Circular issued by the Ministry of Justice on 22 April 2019, http://circulaires.legifrance.gouv.fr/pdf/2019/05/cir_44652.pdf (French only).

²¹² The Ministry of Justice communicated these statistics to Amnesty International on 13 January 2020. The statistics relating to complementary penalties applied only in cases where protesters were convicted were not available.

²¹³ Articles 131-31 and 431-11 of the Criminal Code.

²¹⁴ See footnote 205.

²¹⁵ Article 41.1-7 of the Code of Criminal Procedure.

²¹⁶ Amnesty International saw the two medical certificates issued by hospital in Toulouse which gave Odile between five and 10 days’ sick leave in the aftermath of the injuries she sustained.

2019, the latter closed the case for lack of evidence.²¹⁷ Odile's lawyer filed a civil claim to obtain compensation (*partie civile*). Following the request, an investigative judge heard Odile in June 2020 and informed her that the IGPN (the body tasked with investigating allegations of unlawful use of force by police, see box at the end of chapter 4) had conducted an investigation into her allegation. However, Odile told Amnesty International that the IGPN had never contacted her regarding the investigation. When this report went to press (September 2020), Odile was waiting to receive a copy of the investigation into her complaint that the IGPN had carried out.

Odile was prosecuted for contempt, disruption of emergency services and violence against public officials using a weapon. The Prosecutor's Office argued that the water canon constituted an emergency service and that Odile's wheelchair had been used as a weapon that had injured two police officers. She was subsequently convicted only of violence against public officials as the other charges fell on procedural grounds. According to Odile, the judge refused to watch a video where it clearly appeared that the police officers who were using the remote control of her wheelchair had made another police officer fall and had caused the injuries.

Odile is a human rights defender working for the rights of people living with disabilities. She founded a small organization in 2001 and she has organized and participated in many protests ever since. She told Amnesty International: "I am really shattered by this judgement against which I couldn't defend myself and this prohibition on participating in protests and; if I don't comply with it I risk a prison sentence and this is something I wouldn't be able to cope with because of my health problems. I have appealed against the decision...meanwhile I am thinking about other ways to pursue my engagement to protect human rights".²¹⁸

In at least one case researched by Amnesty International, public prosecutors cautioned protesters by imposing conditions that in practice constituted a punishment without conviction as they restricted the right to freedom of peaceful assembly.

Cédric, an artist living in the Paris region, attended many Yellow Vest protests between the end of December 2018 and 22 June 2019, when he was arrested after participating in the blockade of the ring road at Porte de Champerret. He told Amnesty International that at 5.30pm a few dozen protesters, including himself, blocked the ring road for a few minutes: "This was a non-violent action of civil disobedience; the idea was to briefly disrupt the traffic".

Police arrested Cédric and 30 other protesters and placed them in pre-charge detention for 24 hours. On 24 June, a prosecutor's representative cautioned Cédric for disrupting traffic and imposed a restriction on his freedom of movement that prevented him from going to Paris for three months.

Cédric explained that he did not expect such a restriction: "Vincennes doesn't exist without Paris, I am an artist and for my projects I often have to go to Paris, to buy materials, to visit galleries and cultural centres. This restriction was disproportionate and prevented me from protesting. I didn't want to take the risks and so I avoided going to big protests in Paris such as the climate march on 21 September".²¹⁹

The imposition of complementary penalties under French criminal law raises several human rights concerns. In general, punishments for acts that should not be criminalized violate international human rights law and standards.²²⁰ This applies to complementary penalties imposed for offences such as wearing face masks and organizing a public assembly without complying with notification requirements.

The principle of legality also applies to penalties. This means that penalties, including complementary penalties, should be defined precisely in law and should be accessible to everyone. Under French criminal law, the criteria according to which judges can impose specific complementary penalties on protesters who are convicted of participating in a group with a view to preparing acts of violence or other criminal offences are unclear. The option of public prosecutors cautioning individuals by imposing restrictions on their freedom of movement is not explicitly established by law and therefore amounts to arbitrary punishment. Moreover, penalties should always be commensurate with the gravity of the offence. A blanket restriction on the right to freedom of peaceful assembly or a restriction on freedom of movement with a similar effect, would appear to be at odds with this principle, in particular when imposed as a complementary penalty on individuals who have not committed any act of violence.

²¹⁷ Amnesty International saw the letter sent by Odile's lawyer to the Prosecutor's Office on 24 April 2019 as well as the letter where the Prosecutor informed her about his decision to close the case.

²¹⁸ Interview with Odile, 30 August 2019.

²¹⁹ Interview with Cédric 27 September 2019.

²²⁰ See Amnesty International, *Fair Trial Manual*, Chapter 25.2.

CONCLUSIONS

The judicial authorities imposed bail conditions such as a ban on attending protests, or a restriction of freedom of movement with similar effects, that were not necessary to ensure the defendants' appearance in court. These bail conditions amounted to an undue restriction of the right to freedom of peaceful assembly. Moreover, the possibility for prosecutors to impose a restriction on freedom of movement in the context of a caution is problematic as judges do not exercise any oversight on the measure and the individuals who are targeted cannot appeal against it.

Moreover, judges imposed complementary penalties that disproportionately restricted the right to freedom of peaceful assembly, in particular in instances where protesters were convicted of contempt of public officials or other non-violent crimes for which the imposition of a complementary penalty entailing a ban on attending protests was not commensurate.

CONCLUSIONS AND RECOMMENDATIONS

This report illustrates the negative impact of several provisions in French criminal law on the right to freedom of peaceful assembly. Law enforcement officials and public prosecutors have used such legislation to harass protesters by arbitrarily detaining and prosecuting them for conduct that is protected by international human rights law and standards; such conduct has included, for example, failing to comply with notification requirements when organizing public assemblies, contempt of public officials or wearing face coverings.

Moreover, law enforcement and judicial authorities have used overly broad provisions ostensibly designed to prevent violent acts to unduly restrict the right to freedom of peaceful assembly. Acts of violence were perpetrated during the protests that took place in 2018 and 2019 and the prevention of violence is a legitimate aim pursued by the authorities. However, the use of overly-broad provisions, in particular those that criminalize participating in a group with a view to committing acts of violence, has resulted in the arbitrary pre-charge detention and prosecution of peaceful protesters. In dozens of cases examined by Amnesty International, the authorities did not possess sufficient evidence to establish a reasonable suspicion of the intention to commit an act of violence. Efforts to prevent violence went too far, resulting in peaceful protesters being caught in the maze of the criminal justice system and violating their rights to freedom of peaceful assembly and, in many cases, their right to liberty.

The authorities weaponized criminal laws with the declared intention of tackling violence; in doing so, they displayed the legislative arsenal at their disposal that can be used at any time to unduly restrict the right to freedom of peaceful assembly.

In view of the above, Amnesty International urges the French Parliament to review the legislation on the right to freedom of peaceful assembly to bring it into line with international law and standards. More specifically, Amnesty International addresses the following recommendations to the French authorities.

ON CRIMINAL PROVISIONS THAT UNDULY RESTRICT THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY:

- Parliament should review and repeal all laws that impose a punishment solely for the exercise of the right to peaceful assembly, including those relating to the imposition of criminal liability for non-compliance with notification requirements (article 431-9 of the Criminal Code), contempt of public officials (article 433-5 of the Criminal Code) and participation in a public assembly that is likely to disrupt public order (*attroupement*, article 431-3 of the Criminal Code).
- Parliament should ensure that contempt of public officials is treated as a purely civil matter and not as a criminal offence. Law enforcement officials should be able to initiate civil proceedings in instances where they deem that their dignity has been offended or besmirched.
- Parliament should ensure that individuals participating in protests who do not commit any act of violence are not subjected to criminal prosecution. In particular, participating in a public assembly that is likely to disrupt public order without committing any violent act should not be a criminal offence.
- Parliament should pass a law that narrows the material scope of the prohibition on wearing face coverings (article 431.9.1 of the Criminal Code). In particular, only individuals who engage in actual

acts of violence, or from whom violent acts are demonstrably imminent, should be criminally liable if they cover their faces to avoid identification and law enforcement.

- The Minister of the Interior should issue clear guidelines to law enforcement officials on the implementation of the provision that foresees fines for protesters who participate in banned assemblies to ensure that no one is fined solely for exercising their right to freedom of peaceful assembly. More specifically, these guidelines should also clarify that individuals who are in areas where protests were banned should not be fined unless they participate in an actual protest and refuse to disperse after having received a warning.
- Parliament should amend the provision that criminalizes participation in a group with a view to committing acts of violence (article 212-14-2 of the Criminal Code) to ensure legal clarity. In particular, it should clarify the specific conduct that constitutes a criminal offence under this provision. The law should be clarified so that only those actively involved in planning acts of violence in a group, rather than merely those participating in a group that plans violent acts, can be held criminally liable. The current formulation is too vague regarding the level of an individual's involvement in planning violent group acts that establishes criminal liability
- The Minister of the Interior and the Minister of Justice should develop and provide clear written instructions to law enforcement officials and prosecutors as to how the provision that punishes participation in a group with a view to preparing acts of violence (article 212-14-2 of the Criminal Code) should be interpreted and used. In particular, protesters who simply carry objects such as helmets, goggles and dust masks should not be arrested and prosecuted unless there are other clear elements pointing to a reasonable suspicion that they have been involved in the preparation of a violent crime.
- Parliament should amend criminal provisions that allow judges to impose bail conditions that in practice prevent individuals from attending public demonstrations pending trial. The authorities have at their disposal other bail conditions that are less intrusive and can be imposed by judges to achieve that same purpose, including reporting to a police station. Parliament should also repeal the provision that allows prosecutors to impose restrictions on freedom of movement in the context of a caution (article 41.1-7 of the Code of Criminal Procedure).
- Parliament should also repeal criminal provisions that allow judges to impose a complementary penalty that in practice constitutes a blanket ban on the exercise of the right to freedom of peaceful assembly for individuals who have been convicted of non-violent offences in the context of protests; this is a disproportionate restriction and breaches international standards.

ON THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY MORE GENERALLY:

- The government must ensure that any measures to counter the COVID-19 pandemic are necessary and proportionate and do not impose undue restrictions on the rights to freedom of peaceful assembly. While the authorities can legitimately impose restrictions on the right to peaceful assembly to protect public health, these must be necessary and proportionate to the aim that they seek. As a general rule, there should be no blanket bans on assemblies; each assembly should be assessed on a case by case basis and restrictions should be imposed only to the extent they are necessary and proportionate to achieve a legitimate end. The impediment on people being able to protest collectively in public as a result of measures imposed to protect public health must be a last resort based on a compelling need.
- In view of arbitrary pre-charge detention documented in this report, the Ministry of Justice should issue clear instructions to prosecutors emphasizing the need to exercise careful oversight of pre-charge detentions. The Ministry of Interior should issue clear instructions to law enforcement officials emphasising that subjecting an individual to pre-charge detention is permissible only in circumstances where there is a reasonable suspicion of their involvement in a criminal offence and detention is both necessary and proportionate. Individuals who are placed in pre-charge detention should be informed promptly of the reasons for their detention. The length of pre-charge detention should be limited to what is strictly necessary. Under no circumstance should a person be placed in pre-charge detention for the purpose of preventing the exercise of their right to freedom of peaceful assembly.
- In the context of identity checks, law enforcement officials must put an end to the abuse of article 78-3 of the Criminal Code of Procedure to restrict protesters' rights to liberty and freedom of movement. According to this article, only individuals who are unable or unwilling to produce identity documents when required to do so may be subject to restriction of their rights to liberty and/or

freedom of movement. Police must stop infringing demonstrators' right to freedom of peaceful assembly, including by using identity check powers in such a way as to result in unlawful deprivation of liberty or restriction of movement.

- Parliament should amend the Law on National Security to explicitly state that the authorities are only allowed to use their powers to ban a public assembly to protect public order if the measure is both demonstrably necessary and proportionate for that aim (article 211-4) and that spontaneous assemblies, in particular where an assembly is a reaction to an unexpected event, are exempt from notification requirements (article L211.2).
- Parliament should also amend article 431.3 of the Criminal Code to clarify that a public assembly that has not been notified to the authorities does not automatically represent a threat to public order and should therefore not be treated per se as unlawful and subject to dispersal.
- In dispersing assemblies that have been prohibited but are non-violent, law enforcement officials must avoid the use of force, unless that proves not to be practicable; any use of force must be restricted to the minimum level necessary and proportionate to the legitimate aim of maintaining public order.
- Prefects should not ban public assemblies except as a measure of last resort, when it is both strictly necessary and proportionate to maintain public order or another legitimate aim expressly recognized in international human rights law. Any such measure should be taken only after a thorough proportionality assessment and where no less intrusive measure could achieve the same aim. Blanket bans, such as banning public assemblies in a specific city or town or in large areas for an extended period of time, do not comply with international law and standards on the right to freedom of peaceful assembly.

ON THE RIGHT TO FREEDOM OF EXPRESSION:

- Law enforcement officials must respect and protect the right to freedom of expression in the context of public assemblies, which also includes ensuring that journalists, video-makers, human rights monitors and any other individuals are able to document them, including after dispersal. Instances where law enforcement agents use force should not be a reason for impeding individuals from documenting the situation.

ON INVESTIGATING ALLEGATIONS OF EXCESSIVE OR ARBITRARY USE OF FORCE BY LAW ENFORCEMENT OFFICIALS:

- Parliament should create an independent investigatory body to examine complaints against law enforcement officials. This may be a new body or a specialized department within the office of the Defender of Rights. This body should be mandated, and have adequate resources, to investigate all allegations of serious human rights violations by law enforcement officials, including deaths in custody; discrimination; killings; and torture and other cruel, inhuman or degrading treatment, including serious injuries sustained by protesters as a result of police use of force and weapons. Moreover, it must have the power to supervise or direct the investigations of the IGPN and the IGGN (the bodies tasked to investigate allegations of human rights violations perpetrated by the police and the Gendarmerie) where necessary; and to replace the investigative functions of the IGPN and the IGGN in cases of serious human rights violations.
- The police authorities should ensure that law enforcement officials visibly display their personal identification number in all circumstances, including when policing public assemblies, as required by French law.

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ARRESTED FOR PROTEST

WEAPONIZING THE LAW TO CRACKDOWN ON PEACEFUL PROTESTERS IN FRANCE

Since 2018 large protests took place in France with millions of people demanding social and economic justice. On 17 November 2018, nearly 300,000 people took to the streets in France launched the so-called “*gilets jaunes*” (Yellow Vests movement) which staged since then regular public gatherings. In December 2019 and January 2020, hundreds of thousands of people protested against pension reforms.

This report details how law enforcement and prosecutorial authorities have in response weaponized criminal law and resorted to vague laws to crackdown on peaceful protesters. While many protesters committed acts of violence for which they were prosecuted, hundred other peaceful protesters have been caught in the maze of the criminal justice system and faced fines, arrests and prosecutions without having committed violent acts. The French authorities have deployed a legislative arsenal to arrest and prosecute protesters arbitrarily and to unduly restrict their rights to freedom of peaceful assembly, freedom of expression, freedom of movement and liberty and security. In May and June 2020, the French authorities disproportionately restricted the right to freedom of peaceful assembly to counter the COVID-19 pandemics.

Such human rights violations have taken a toll on protesters and, more broadly, had a chilling effect on the right to freedom of peaceful assembly in France. Amnesty International calls on the French authorities to safeguard people’s human rights and to urgently amend the laws and policies that have been used to unduly restrict the rights of peaceful protesters.