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Physicians for Human Rights Preliminary Findings: Portland, Oregon

In Advance of August 4 Senate Judiciary Subcommittee on the Constitution Hearing entitled “The Right of the People Peaceably to Assemble: Protecting Speech by Stopping Anarchist Violence”

August 4, 2020

Physicians for Human Rights (PHR) is a global non-governmental organization with headquarters in New York that brings the expertise of science and medicine to the protection and promotion of human rights.

For more than three decades, PHR has [investigated and documented](#) the health effects and harms caused by so-called “non-lethal” or “less than lethal” crowd-control weapons (CCWs). PHR has conducted investigations of injuries and deaths caused by these types of weapons around the world since the 1980s and has reviewed cases upon cases of serious injuries, disability, and death attributed to CCWs. We have also documented and advocated against excessive use of force by police and other security agents on almost every continent over the decades. We have seen how deployment of such force poses a grave threat to fundamental human rights that are foundational in the United States: the rights to freedom of expression and assembly.

Here in the United States this summer, people across this country have seized these rights in a profound call for an end to the systemic racism, including in policing practices, that plagues every aspect of our society. In Portland, Oregon, large numbers of protestors called for transformation in racial discrimination, in policing, and in public services by protesting for weeks following the police killing of George Floyd in May 2020.

From July 24 to July 31, PHR deployed a team of expert medical and human rights researchers to Portland to assess the reported excessive use of force through the widespread use of chemical irritants and kinetic impact projectiles, including tear gas and rubber bullets, against demonstrators. The team included PHR’s medical director, Dr. Michele Heisler, PHR Senior Program Officer Kathryn Hampton, and the organization’s executive director, Donna McKay. The team worked in close collaboration with faculty of the Oregon Health Sciences University (OHSU) and interviewed and/or medically examined 32 people. They also observed the nightly demonstrations taking place in front of the Mark O. Hatfield Federal Courthouse in downtown Portland.

While PHR’s complete data and analysis from this investigation are still being developed, PHR takes this opportunity to present a summary of preliminary findings with recommendations to address the threats to life, health, humane treatment, and freedom of expression, association, and assembly created by the recent deployment of federal forces in Portland, and currently underway or contemplated in other locations across the country.



Initial Findings of PHR's Portland Investigation

PHR interviewed injured protestors and several medics, wearing clear medical insignia, who were injured while rendering aid. The team documented injuries that had resulted from tear gas canisters, flash-bang canisters, rubber bullets, and other crowd-control weapons. The volume of tear gas used against hundreds of Portland residents over the July 24-26 weekend was so concerning that demonstration organizers were urging people not to demonstrate on Sunday, Monday, and Tuesday. At medical tents set up to treat those injured by these weapons, remnants of the massive deployment of tear gas remained in the immediate surroundings, causing irritation to eyes and lungs and unknown potential for longer-term harm, even days after use.

PHR specifically focused on the attacks on volunteer medics who were providing medical care and other essential services, such as mask and water distribution, to protestors and who provided immediate emergency medical care to injured demonstrators. Dozens of volunteer medics had mobilized in the context of the failure of county ambulances to arrive at the scene of the protests, except for deployments two or more blocks from the scene of the demonstrations. PHR's first-hand observations of the situation in the several Portland blocks where nightly demonstrations took place was that the gatherings were overwhelmingly peaceful. The majority of demonstrators were peacefully chanting or standing silently, some with signs. We witnessed some small groups or individuals attempting to dismantle the fence surrounding the federal building, directing laser lights toward the building, and intermittently throwing a firecracker or plastic bottle toward the federal building.

PHR has previously reported on the numerous dangers and health impacts of crowd-control weapons. Chemical irritants like teargas and pepper spray are inherently indiscriminate, and risk exposing bystanders and people other than the intended targets, including vulnerable people. PHR research has identified troubling levels of morbidity and even instances of death caused by these weapons. Likewise, kinetic impact projectiles such as rubber bullets can pose grave health risks. When these projectiles are fired at close range, the risk for more severe injury is increased. When launched or fired from afar, these weapons are inaccurate and can strike vulnerable body parts, as well as cause unintended injuries to bystanders. Chemical irritants are particularly dangerous in the context of the COVID-19 pandemic, as they induce people to cough, choke, and rub their eyes, and, in the case of excessive use, may also induce vomiting.

Large gatherings like the protests seen across the United States in recent days also have the potential to increase transmission of coronavirus. However, the right to peacefully protest should not be infringed by COVID-19 concerns. While the COVID-19 pandemic continues to cause death and illness, structural racism and police brutality in the United States is also a public health crisis.

Preliminary Conclusions

The state has a duty to protect those exercising their right to peacefully assemble from any type of violence, including violence from law enforcement agents and any individuals who engage in acts of violence. However, any action taken involving the use of force to protect against violence



must be lawful and proportionate, and any failure to follow these principles must be the subject of an independent, impartial, and effective investigation.

Attacks on health workers, medics, and others providing emergency aid also have broader impacts on the rights of protestors and their constitutionally protected free speech. Interviews conducted by PHR illustrated the chilling effect that attacks on medics have on exercising the rights to free speech and assembly. Protestors in Portland reported that they felt deterred from attending protests when their safety felt threatened and their access to emergency aid was restricted. Additionally, county ambulance and emergency medical services did not enter the heavily securitized zone around the protests – further restricting protestors’ access to emergency medical aid.

PHR has concluded that the response by federal agents that it documented in Portland was disproportionate, excessive, and indiscriminate, and deployed in ways that caused severe injury to innocent civilians, including medics. PHR has also concluded that some instances of discriminate force appeared to be knowingly targeted at medics and other aid workers, including during the provision of their services. Below are a few examples:

- Injuries to protestors hit directly with tear gas canisters. One medic was hit directly in the chest with a canister and sustained a 12 x 15-cm hematoma.
- Injuries from pellets that were fired directly into people’s faces and necks. These injuries could have been lethal if they landed a mere inch in a different direction. Among the victims interviewed and examined by the PHR team was Kristen Jessie-Uyanik, a mother who was shot in the forehead with a projectile, resulting in a 4 x 2-cm deep laceration that required seven stitches.
- Tear gas canisters were fired into crowds in an apparent effort to force dispersal, with agents clearly aiming not only at people’s feet but directly at their torsos and heads. This is clearly a violation of international principles governing the use of force by law enforcement, namely that:
 - The use of force must be minimized, targeted, proportional, and directed at de-escalating violence;
 - The use of crowd-control weapons must be carefully controlled;
 - The deployment of crowd-control weapons must occur in a manner that minimizes the risk of endangering uninvolved people; and
 - Restraint must be shown in all use of force by law enforcement agents, with a view to minimizing injury and loss of life, in accordance with the principles of necessity, proportionality, and legality of the use of force modality used.

Significantly, in this context, PHR noted the absence of appropriate responses:

- PHR did not see official ambulances or learn of EMS services offering effective and timely aid without police intervention.
- PHR did not hear any accounts of effective de-escalation techniques used by either federal or local police officers.
- Neither PHR, nor demonstrators or other concerned officials in Portland, nor the media know the rules of engagement regarding targeting of volunteer medics with crowd-control weapons and tactics.



- There is no transparency regarding the chemical specifications (SDS sheet) of the chemical irritants used in Portland that would enable proper medical care by first responders and the local hospitals charged with caring for patients.

Recommendations:

- It is critical for members of Congress to affirm the rights of all to engage in free speech and to assemble. In order to protect speech, law enforcement and federal forces should refrain from employing excessive use of force.
- Crowd-control weapons should be an absolute last resort, only used when dealing with genuine and imminent threats to the safety of those present, and after all other means have been exhausted. The use of tear gas, rubber bullets, and other crowd-control weapons for crowd dispersal is often counterproductive, as they cause confusion and panic, resulting in additional injuries as well as an escalation of tensions and of violence. Law enforcement should make every effort possible to de-escalate the situation, promote dialogue and negotiation, and protect the safety and the rights of those present.
- Transparency in this matter is key. In order to actively protect the right to free speech, there must also be transparency regarding instances when force is used in the context of protests in order to ensure that the principles of proportionality, targeting, and restraint are applied.
- PHR also calls for additional protection of medics, medical personnel, and aid workers in the context of protests. By protecting the safety of protestors and their access to emergency care, Congress also safeguards their right to peacefully assemble and their right to free speech.

Illustrative Cases of the Injured: Three Medics and One Portland “Mom”

1) **“I am a medic. Don’t shoot.” A former U.S. military combat medic who was targeted with a tear gas canister and rubber bullets while responding to a call for medical help.** The medic, whom we spoke to on July 28, 2020, described how, the prior week, he had responded to a woman calling for medical assistance at a protest against violence by law enforcement officials. He was wearing garb clearly marked “Medic,” a white helmet covered with bright pink crosses, and red crosses on both shoulders and on his backpack. According to his testimony, as he approached the woman, he saw a security official point him out to another man dressed in camouflage-colored fatigues who was holding a grenade launcher. The medic described to us what happened next: “I was holding my hands up in the surrender position over my head saying as loud as I could, ‘I am a medic checking injuries. Don’t shoot.’ But the guy pointed the grenade launcher and shot me with a 40- mm CS [tear gas] canister that hit my left thigh, right on the side of my left upper thigh. I turned in a pain response, and they hit me with a rubber bullet on my right lateral thigh.”



2) A medic who was shot in the chest with a tear gas canister while attending to injured protesters. This medic was at the site of the demonstrations on Friday, July 24 and was standing on the street apart from other protesters next to a journalist with a helmet clearly marked "Press." Estimates of the number of demonstrators that evening were between six and ten thousand people. The medic was wearing work pants, a BLM hoodie, a baseball cap marked with a red cross on the back and a red cross on upper left. His clothing also had one red cross on each shoulder, one on each leg, and a very large one on the back of his backpack. He wore an N95 mask and ski goggles, but no protective armor. Everyone in his group was observing the protest as journalists or organizers, or, in his case, as a medic. He indicated to PHR that no one in his group of eight was there to demonstrate; rather, all were working in some capacity.

The medic reported that around 1:00 a.m., federal agents rushed the crowd, advancing rapidly with much ammunition. They sealed off streets so that demonstrators could not gain access to the park where they had been gathering nightly. Federal forces were lobbing tear gas and shooting pepper balls at the crowd. As the only person delivering first aid, this medic began covering the area, giving people eye washes and helping a person who had fallen. He checked on people who were hunched over to assess their condition. At one point, an official pointed at the medic, spoke to another colleague, and continued to track him as he crossed a street. He observed a tear gas canister aimed at a group of journalists nearby and spewed gas. As he doused it with a water bottle to extinguish it and checked on a person next to it who was hunched over a lamp post and a journalist who was leaning against a car taking photos, the medic stood up straight and glanced at the advancing federal agents, who were no more than 20 yards away. Suddenly, he felt something slam into his chest with a force that almost threw him off balance and caused him to stagger backwards. He looked down and saw a burning canister spewing gas at his feet. He reported that he was in so much pain, he couldn't remember anything else. Our physical exam showed injuries consistent with his account. PHR documented a 15 x 12 cm hematoma over the victim's left breast, extending over the nipple, and a clear area above the left nipple where the end of the cannister hit, causing an almost full abrasion the size of the cannister.

3) A first responder who was burned by a flash grenade as she cared for a protester with a head wound. In early June, the medic was doing her first shift as a first responder at the protest site at the Justice Center. It was still daylight, but immediately after the 8:00 p.m. curfew, security forces started spraying people with chemical irritants. The medic reported that Portland police were using severe tactics – driving around in militarized vehicles and wearing riot gear. The medic stopped to treat a patient who had been running from the Justice Center and had fallen and hit their head. The patient had a one-inch superficial laceration, so the medic worked to stop the bleeding and apply disinfectant, when a troop carrier began throwing flash grenades and tear gas at the crowd. As the medic was bent over caring for the patient, wearing a clearly marked huge red patch, a red backpack marked "Street Medic First Aid," and red crosses on her arms and hat, police threw a flash grenade at the medic's heel. The medic was approximately 30 feet from others, focused solely on the injured protester. She felt a severe burning sensation at the bottom of her leg and had difficulty walking for the next few days. The medic told PHR that she had the strong impression that the law enforcement officers were directly targeting her and her injured patient.

4) "I couldn't believe how relentless they were.... I knew that they were there to hurt us." A Portland Mom who was shot at pointblank range.



PHR conducted an extensive interview with a mother of three who had not attended any protests until the “Wall of Moms” was formed in late July. This is an excerpt from her detailed testimony of being injured on July 25, when federal forces moved to clear the park where protests were taking place.

“We were enveloped with tear gas. You could not see anything. My head kept getting hit with hard projectiles that made me feel I was being shot with automatic fire. I had my helmet on. It really hurt and I was wondering why it hurt so much. I kept thinking that I couldn't believe how relentless they were. People were smashing into us trying to retreat. We took a few steps backwards. The gas lifted a bit and I could see the street under the cloud of gas.

“What I perceived next was that the gas lifted. Everybody in front of us was gone. I thought, ‘Oh shit. We are the front line. We are defenseless on the front line.’ We were assaulted with gas, pepper balls. There were no shields in front of us. Then I knew that they were there to hurt us, and all the shields were gone. There were only five Moms left. Everybody had retreated and there were five Moms with arms linked standing in the street. That was the moment I got shot. I suddenly felt a smashing pain on my left foot. The pain was overwhelming. I thought, ‘They shot me!’ I was so surprised. Then, I thought, ‘Oh my God. They broke my good foot.’ My friend bent over was also hit in the foot. This felt like somebody had taken a sledgehammer and swung it as hard as possible on the front of my foot. I stayed on my feet, and she went down. We realized they were shooting us directly. We were at most 10 feet. We realized they were shooting us at pointblank range. She was bent [in] half, so I realized I had to get her out of there. We stumbled backwards. We got out of the street. I didn't know where we were. I could not see. I did not know where I was...

“By then my respirator was failing, I was choking, and my eyes were burning. We went one full block before I could see. I was not feeling pain, as I was so worried about being asphyxiated. I did not think to call for a medic. Kept walking until the air was clear. Sat down and started throwing off stuff. I used my asthma inhaler. I took off my left shoe and realized that it was so incredibly painful they must have broken it. It hurt much more than my [previously broken right] ankle. My sister called and I burst into tears. Her husband is an ED doc, medical director of their EMS services at SF General. Two women came by and said ‘We will get a medic.’ I said ‘Don't, as I am fine and other people need the medics more.’ ... One of the women was a nurse and said, ‘We have to get you to a hospital.... You are in shock and you have injury.’ [At the hospital], they did x-rays immediately. My big toe was broken. There was a fracture right through the center, as if you split the bone with a hatchet.”

Key PHR resources on crowd-control weapons:

- **Landmark report:** [“Lethal in Disguise: The Health Consequences of Crowd-Control Weapons.”](#) PHR and INCLO, 2016
- **Overview of PHR’s work** on [crowd-control weapons and their health and human rights impacts](#).
- **Fact sheets** that describe the health impacts of [acoustic weapons](#), [directed energy devices](#), [rubber bullets](#) (and other kinetic impact projectiles), [stun grenades](#) (and other disorientation devices), [tear gas](#) (and other chemical irritants), and [water cannons](#). They also outline when and how these weapons can legally be used.



- **Primer:** [“Crowd-Control Weapons and Social Protest in the United States,”](#) 2020. This primer compiles an overview of the weapons used by law enforcement on protesters in the United States beginning in May 2020, including how they work, how they are used, and the serious health effects they can cause.
- **Scientific journal systematic review:** [“Death, injury and disability from kinetic impact projectiles in crowd-control settings: a systematic review,”](#) *British Medical Journal* systematic review co-authored by Dr. Rohini Haar, 2017.