



October 20, 2020

Dear Mayor and City Council Members,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



Kenneth Roth  
Executive Director  
Human Rights Watch



Bob Goodfellow  
Interim Executive Director  
Amnesty International USA



Donna McKay  
Executive Director  
Physicians for Human Rights



Michael Breen  
President and Chief Executive Officer  
Human Rights First

## Legal Standards and Recommendations on the Policing of Assemblies

### The Right to Freedom of Peaceful Assembly

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

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

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

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

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

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

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

<sup>2</sup> UN Human Rights Committee, General Comment 37, Right of Peaceful Assembly, CCPR/C/GC/37, para. 24, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRICAqhKb7yhsrdB0H1I5979OVGGb%2bWPAXj3%2bho0P51AAHSqSubYW2%2fRxcFiagfuwxcuvi40wJfdPLI9%2fcedeDWBX%2fij2tgqDXgdjqx8wTKKbloySyDPtsMO> (accessed October 19, 2020). The United Nations Human Rights Committee is the institution charged with issuing authoritative interpretations of the ICCPR.

<sup>3</sup> *Ibid.*, para. 24.

<sup>4</sup> *Ibid.*, para. 36.

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

<sup>6</sup> *Ibid.*, para. 17.

<sup>7</sup> *Ibid.*, paras. 17-18.

<sup>8</sup> ICCPR, art. 9.

<sup>9</sup> UN HRC, General Comment 37, para. 85.

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

## Use of Force

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

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

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

## Less-Lethal Force

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

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

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

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<sup>10</sup> Ibid., para. 84

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

<sup>12</sup> Ibid.

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

<sup>14</sup> Ibid., paras. 7.3.2, 7.3.6, 7.3.7.

<sup>15</sup> Ibid., para. 7.5.4

<sup>16</sup> Ibid., para. 7.2.7

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

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

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

## **Lethal Force**

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

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

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

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

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<sup>17</sup> Ibid., para. 7.5.2

<sup>18</sup> Ibid., para. 7.5.4

<sup>19</sup> Ibid., para. 7.5.6

<sup>20</sup> Ibid., paras. 7.7.2 and 7.7.3

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