



A RIGHT NOT A THREAT

DISPROPORTIONATE RESTRICTIONS ON DEMONSTRATIONS
UNDER THE STATE OF EMERGENCY IN FRANCE

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EXECUTIVE SUMMARY

In the wake of a series of appalling attacks in Paris on 13 November 2015, which left 130 people dead and hundreds injured, a state of emergency was declared in France. Today, more than 18 months later, the state of emergency remains in force.

While the French government has a duty to take the necessary measures to protect the population, it also has a responsibility to ensure that the state of emergency does not become the norm and that special powers under the law on the state of emergency do not result in disproportionate restrictions of human rights.

Amnesty International's past research has raised serious questions about the extent to which the imposition of emergency measures had been necessary and proportionate to prevent "further terrorist attacks", the stated aim of the French authorities when they first declared a state of emergency, and the basis for claims that there is a need for further extensions.¹

This report shows that the authorities have resorted to the use of emergency powers for wider purposes, in particular to protect public order in the context of public assemblies. The French government has to ensure that emergency powers are not used for purposes other than those for which it was declared; namely, preventing further violent attacks on the general population. Amnesty International is concerned that individuals not linked in any way to acts of terrorism who are seeking to lawfully exercise their right to freedom of assembly are getting caught in the cross-hairs of the emergency measures.

By their very nature emergency powers threaten the enjoyment of human rights. This risk is aggravated where the powers are broad, vaguely worded and repeatedly extended. The frequent use of emergency powers to restrict the right to freedom of assembly in situations unrelated to any specific threat of attacks on the general population is a worrying example of this inherent risk becoming a reality.

In practice, whether restrictions were imposed by using ordinary powers with reference to the context of the state of emergency or emergency powers themselves, the existence of the state of emergency has resulted in lowering the high bar set out in international human rights law for restricting the right to freedom of peaceful assembly. Invoking a state of emergency does not absolve authorities from the requirement to ensure that any restrictions are necessary and proportionate for a specified legitimate purpose and limited to what is strictly necessary in a given situation.

In the aftermath of the November 2015 attacks, the Paris Prefect of Police imposed a general ban on public assemblies in the capital for two weeks. On the instructions of the Minister of the Interior, prefects banned all demonstrations throughout France from 28 to 30 November 2015.

Civil society organizations had planned dozens of public assemblies throughout the country both during and after the general ban to call for a far-reaching agreement on climate change at the United Nations Conference of Parties (COP 21). In December 2015, the authorities prevented more than two dozen individuals from participating in these public assemblies. The Minister of the Interior imposed assigned residence orders on them, effectively preventing them from leaving the municipalities where they lived, and required them to report to a police station several times a day.

¹ See Amnesty International, *Upturned Lives. The disproportionate impact of France's state of emergency*. EUR 21/3364/2016, http://www.amnestyusa.org/sites/default/files/eur2133642016english_final_pdf.pdf. Amnesty International, *Dangerously Disproportionate. The ever-expanding national security state in Europe*. EUR 01/5342/2017, <https://www.amnesty.org/es/documents/eur01/5342/2017/en/>

In 2016, an increasing number of public assemblies took place to express opposition to changes to the country's labour laws. On 24 March 2016, the government introduced a labour law reform bill into Parliament. On 31 March, students' networks and other informal groups opposed to the bill staged an occupation of the Place de la République in Paris which lasted for several months. From March to September, several trade unions and other groups organized hundreds of protests throughout France calling on the government to withdraw the bill.

Some of those involved in these public assemblies did engage at times in acts of violence targeted at both public and private buildings, especially banks and estate agents. There were also a number of clashes between protesters and police and, according to the Ministry of the Interior, 336 police officers and 45 gendarmes sustained injuries while policing public assemblies between 19 March and 4 October 2016.²

Amnesty International condemns those violent acts. Authorities have the duty to protect public order and ensure the safety of persons and properties in the context of public assemblies. However, they responded to these violent incidents by scaling up the use of emergency measures to impose unjustified restrictions on the right to freedom of peaceful assembly. Using emergency powers, prefects adopted 639 individual measures that prevented people participating in public assemblies from November 2015 to 5 May 2017. Most of them (574) were used in the context of the public assemblies opposing the reform of labour laws.³

Prefects initially imposed these measures on activists who had played a prominent role in the social movement opposing the labour law reforms, even though they had not committed any criminal offence. Following a ruling by the Paris Administrative Court in May 2016 suspending some of the individual measures, prefects imposed restrictions on protesters who had been arrested but not charged as well as those facing prosecution for criminal offences allegedly committed during previous demonstrations.

Protecting public order is a legitimate reason for restricting the right to freedom of peaceful assembly. However, under international human rights law such restrictions should be necessary and proportionate to the purported aim. The measures adopted by the French authorities against individual protesters do not appear to have been necessary to counter concrete threats to public order. Amnesty International spoke with representatives of the Ministry of the Interior and of the prefectures of Nantes, Paris and Rennes; none were able to provide specific information on whether the measures had proved effective in maintaining public order during public assemblies.

The multiple restrictions on public protest are an egregious example of the use of an emergency measure in pursuit of objectives unconnected with the specific purpose for which the current state of emergency was declared and extended; namely, preventing further violent attacks on the general population.

Between November 2015 and May 2017, prefects used emergency powers to issue 155 decrees prohibiting public assemblies, in addition to banning dozens of protests using ordinary French law.⁴ They often sought to justify these bans on the basis of violent actions by some protesters during previous demonstrations. However, under international human rights law and standards, the right to freedom of peaceful assembly is an individual right and the fact that a minority of protesters engage in violent acts on previous occasions does not justify banning future assemblies, preventing those who wish to exercise their right to peaceful assembly from doing so. Prohibiting a public assembly should be a measure of last resort adopted only if less intrusive measures cannot achieve the legitimate aim. Any prohibition aimed at protecting public order should be based on specific risks identified through a thorough assessment.

Invoking a state of emergency does not remove the obligation on the authorities to ensure that any restriction on the right to peaceful assembly is strictly proportionate and necessary to achieve a legitimate aim under international law. In the cases described in this report, it would appear that bans on public assemblies were not necessary and/or proportionate to the purported aim of maintaining public order.

Since November 2015, law enforcement officials, including forces specializing in policing demonstrations, have been deployed to enhance the protection of specific venues and sites that could be the targets of violent attacks; these include places of worship, embassies, government buildings and tourist attractions. The authorities have often justified bans on public assemblies by arguing that they lack sufficient policing resources to maintain public order while carrying out the priority task of preventing further violent attacks on the general population.

However, some of the resource-intensive strategies and tactics used to police public assemblies call into question arguments advanced regarding the lack of adequate resources. Under international human rights law and standards, there should be a presumption that a demonstration is peaceful unless authorities can

² Email communication with the Ministry of the Interior, 5 May 2017.

³ *Ib.* 2

⁴ *Ib.* 2

show concrete reasons that it will present a threat to public order. However, in many instances, policing tactics deployed at public assemblies were reminiscent of the logic underpinning the state of emergency – that is, the pre-emptive neutralization of potential risks – rather than countering precise and concrete threats.

The authorities have frequently deployed hundreds of law enforcement officials to contain peaceful protesters who did not represent any concrete threat to public order and who were either holding spontaneous public assemblies or were collectively gathering at the meeting points of planned demonstrations. The containment of hundreds of peaceful protesters who intended to participate in a spontaneous protest against the reform of labour laws on 5 July in Paris is one of the most striking cases where authorities resorted to resource-intensive tactics which do not appear to have been necessary to maintain public order and thus unlawfully restricted the right to freedom of peaceful assembly.

In several instances documented by Amnesty International, law enforcement agents resorted to the use of unnecessary or excessive force. In some cases, they used hand-held batons and tear gas against peaceful protesters who did not constitute any specific threat to public order. In other instances, they made use of kinetic impact projectiles (informally known as rubber bullets) or other weapons, including sting-ball grenades, in situations where a minority of protesters were engaging in acts of violence, but did not pose an immediate threat to the physical integrity of law enforcement officials or others. In addition, they sometimes unlawfully restricted the right to freedom of expression by resorting to force, or obstructing by other means, journalists and other media workers who were documenting the protests.

The unnecessary and excessive use of force resulted in injuries to hundreds of protesters. The authorities have not put in place a system to gather comprehensive data on injuries sustained by protesters. However, 102 protesters filed complaints with the bodies responsible for investigating the excessive use of force by police (*Inspection Générale de la Police Nationale*, IGPN, 99 complaints) and the gendarmerie (*Inspection Générale de la Gendarmerie Nationale*, IGGN, 2 complaints) in the context of protests against the reform of labour laws.⁵ These are likely to represent only the tip of the iceberg. The Street Medics, an informal movement of first-aid workers, estimated that in Paris around 1,000 protesters sustained injuries following the unnecessary or excessive use of force by law enforcement officials during public assemblies against the labour law reforms.⁶

Amnesty International is concerned that authorities have failed to respect, protect and ensure the right to freedom of peaceful assembly by imposing restrictions which go beyond what is demonstrably necessary for protecting public order. In many cases, they have done so by resorting to special powers under the emergency legislation, which was introduced for a different objective. To use emergency legislation so extensively for the purpose of protecting public order in the context of demonstrations, which is not connected at all to the emergency constituting a threat to the life of the nation which led to the enactment of emergency powers in November 2015, is excessive and amounts to a misuse of emergency powers. Individuals not linked in any way to acts of terrorism but seeking to lawfully exercise their right to freedom of assembly are getting caught up in the emergency measures, highlighting the inherent dangers of emergency measures becoming the norm, instead of the exception.

KEY RECOMMENDATIONS

- Amnesty International urges the French government and Minister of the Interior to ensure that emergency measures are used solely to achieve the purpose for which the government and the Parliament declared and extended the current state of emergency; that is, preventing further attacks on the general population. In particular, measures aimed at restricting freedom of movement must not be used to prevent individuals from participating in public assemblies on speculative grounds that they could potentially constitute a threat to public order.
- Amnesty International urges prefects to use their powers to ban public assemblies only as a measure of last resort. They must ensure that any prohibition complies with the criteria of necessity and proportionality set out in international human rights law. In particular, prefects should refrain from banning public assemblies unless they can demonstrate that no other less intrusive measure can achieve the stated aim of maintaining public order.

⁵ *Ib.* 2

⁶ Phone interview with a representative of Street Medics in Paris, 2 March 2017. Amnesty International was not in a position to verify either the data provided by the Minister of the Interior or the estimate given by Street Medics regarding the number of protesters who had suffered injuries.

- Amnesty International calls on the French government to lift the current state of emergency unless it can effectively demonstrate that it is facing a public emergency threatening the life of the nation and that the emergency measures are strictly necessary to confront that situation.
- Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. In particular, the police must as far as possible apply non-violent means before resorting to the use of force. Whenever the lawful use of force is unavoidable, the police must use it with restraint and in proportion to the seriousness of the law enforcement objective. In dispersing assemblies that are unlawful but non-violent, law enforcement officials must avoid the use of force or, if that is not practicable, must restrict it to the minimum necessary.

METHODOLOGY

The research on which this report is based was undertaken between June 2016 and May 2017. Amnesty International carried out five field research visits to France in September 2016 (four days), October 2016 (one week), November 2016 (one week), December 2016 (four days) and February 2017 (three days).

Amnesty International monitored three public assemblies against the reform of labour laws organized in Paris on 28 June, 5 July, 15 September 2016 as well as the “March for Justice and Dignity” on 19 March 2017. The monitoring process consisted of the observation of those public assemblies and resulted in the production of internal reports; this report refers to some of their elements.

Amnesty International focused on restrictions on the right to freedom of peaceful assembly mainly in Nantes, Paris and Rennes. From March to September 2016, trade unions and other informal groups organized dozens of public assemblies in these three cities to protest against the proposed labour law reforms. Some protesters committed violent and unlawful acts in the context of many of those demonstrations.

This report focuses on restrictions imposed by the authorities on public assemblies, including general bans and other wide-ranging restrictions, and on measures imposed on individuals to prevent them from participating in public assemblies. The report also examines the tactics and strategies adopted in the policing of public assemblies, as well as the use of force by law enforcement officials. It analyses whether these policing tactics and strategies resulted in disproportionate and unnecessary restrictions of the right to freedom of assembly.

Amnesty International conducted 62 interviews with 82 individuals. Interviewees included: 15 trade union representatives from the General Confederation of Labour (*Confédération générale du travail*, CGT); the CGT affiliated *Fédération générale des syndicats de la Police nationale* (CGT-Police); the National Confederation of Labour (*Confédération nationale du travail*, CNT); and the National Union of Students of France (*Union Nationale des Étudiants de France*, UNEF). In addition, Amnesty International met 30 members of other civil society organizations or informal groups who have organized or participated in the public assemblies opposing the labour law reforms. The police trade union Alliance declined Amnesty International's request for a meeting.

In addition, Amnesty International interviewed 10 people subject to individual measures to restrict their freedom of movement and their right to freedom of peaceful assembly as well as 20 protesters and 7 journalists and media workers who alleged that they had been subjected to unnecessary or excessive use of force by law enforcement officials.

Amnesty International interviewed representatives of the Ministries of the Interior and Justice, as well as of the Police Prefecture of Paris and the Prefectures of Nantes and Rennes. The office of the French Ombudsperson (*Défenseur des Droits*) declined Amnesty International's request for a meeting arguing that they were not in a position yet to share conclusions on these issues.

Interviews were conducted in French without interpretation. Most of the interviews were conducted in person and a few over the telephone. In some cases pseudonyms have been used where interviewees asked that their names be withheld in order to protect their privacy and safety.

1. BANS AND OTHER RESTRICTIONS ON PUBLIC ASSEMBLIES

Between 14 November 2015, when the French government declared a state of emergency, and 5 May 2017, prefects issued 155 measures banning public assemblies using the additional powers conferred on them by the state of emergency.⁷ On numerous occasions, they also banned or imposed wide-ranging restrictions on public assemblies by resorting to their ordinary powers. There are concerns as to whether such broad and sweeping measures and the restrictions they imposed on the right to freedom of peaceful assembly were necessary and proportionate in pursuit of the legitimate aim of maintaining public order. More generally, Amnesty International is concerned by the use of emergency powers to impose restrictions on human rights which did not appear to be strictly required by the exigencies of the situation. In particular, those measures did not appear to be necessary to prevent violent attacks on the general population, the objective stated by the French government when it declared a state of emergency.

1.1 INTERNATIONAL LAW ON DEROGATIONS UNDER A STATE OF EMERGENCY

Under international human rights law, states are permitted, in exceptional circumstances, to derogate from certain of their obligations set out in provisions of international human rights treaties, subject to strict conditions. In particular:

- Derogations are permitted only in time of an officially proclaimed state of emergency which threatens the life of the nation;⁸
- They must be exceptional and temporary. The UN Human Rights Committee has stated that the state's predominant objective when derogating must be the restoration of a state of normalcy;⁹
- Such measures must be limited to what is strictly required by the exigencies of the situation. This applies not only to the derogation itself, but to specific measures taken pursuant to it. This requirement reflects the same principles of necessity and proportionality which apply to limitations on the exercise of human rights outside a state of emergency;¹⁰

⁷ Email communication with the Ministry of Interior, 5 May 2017.

⁸ Article 4 of the International Covenant on Civil and Political Rights (ICCPR) and Article 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). In the case *A. and others v. UK*, the European Court of Human Rights highlighted that a public emergency threatening the life of the nation is “an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed”, para. 176, [http://hudoc.echr.coe.int/eng?i=001-91403#{"itemid":\["001-91403"\]}](http://hudoc.echr.coe.int/eng?i=001-91403#{)

⁹ Human Rights Committee, General Comment 29 (2001), paras. 1, 2. UN Doc. CCPR/C/21/Rev.1/Add.11.

¹⁰ General Comment 29, para. 4.

- Derogations must be consistent with the state's other obligations under international law. In particular, some obligations cannot be derogated from in any circumstance, including in a state of emergency. They include for example the right to life, the prohibition of torture and other ill-treatment and the principle of non-discrimination;¹¹
- They are subject to an international regime of notification – that is, the state which is derogating must notify the other states parties to the relevant treaties of the provisions from which it is derogating and the reasons for it.¹²

Under international human rights law, states may restrict some human rights, including the rights to freedom of peaceful assembly, expression and association, to achieve a legitimate aim, including protecting public order or national security, provided that any restriction is necessary and proportionate to the aim it purports to achieve. States may therefore restrict those rights without resorting to a state of emergency.

The Human Rights Committee, the body of experts tasked to monitor the compliance of states with the International Covenant on Civil and Political Rights (ICCPR), highlighted in its General Observation on States of Emergency that the existing possibility for states to restrict some rights, including the right to peaceful assembly, provided by international human rights law, including the ICCPR (article 21), are generally sufficient in emergency situations and no derogation from the provisions in question would be justified by the exigencies of the situation.¹³

1.2 THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY IN INTERNATIONAL LAW

The right to freedom of peaceful assembly is enshrined in human rights treaties to which France is a party, as are the closely related rights of freedom of association and expression. These treaties include the International Covenant on Civil and Political Rights (ICCPR, Article 21) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention, Article 11). It is also included in the Charter of Fundamental Rights of the European Union (Article 12).

The European Court of Human Rights (European Court) has on numerous occasions affirmed that the right to freedom of peaceful assembly covers meetings on public thoroughfares and in enclosed places or privately owned premises, as well as both static meetings and public processions. It is a right that can be exercised both by individual participants and by those organizing the assembly.¹⁴

States have an obligation to respect, protect and fulfil the right to freedom of peaceful assembly; that is, to ensure that their own agents do not violate that right and that no restrictions are imposed on the exercise of that right other than those which are demonstrably necessary and proportionate for one of the specific legitimate purposes permitted under international law; to protect the exercise of that right against interference by third parties; and to ensure that individuals within their jurisdiction are able to exercise that right in practice.

International law permits certain restrictions on the exercise of the rights to freedom of peaceful assembly, association and expression. However, such restrictions are only permissible if they are: provided by law; for the purpose of protecting certain public interests (such as national security or public safety, public order or public health) or the rights and freedoms of others; and demonstrably necessary for that purpose.¹⁵

The UN Human Rights Committee, the body of independent experts that monitors states' compliance with their obligations under the ICCPR, and the European Court have underlined that restrictions may be imposed only for the specific purposes permitted under international human rights law and must conform to strict tests of necessity and proportionality for that particular purpose. They also stipulated that such restrictions

¹¹ Article 4.1 of the ICCPR, General Comment 29, para. 8. Measures derogating from provisions of the Covenant must not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin; this prohibition is absolute. Moreover, measures taken under a state of emergency must not involve direct or indirect discrimination on any other prohibited ground; any distinction on these grounds is permissible only if it demonstrably has a reasonable and objective justification.

¹² In the case of the ICCPR, this requires notification via the UN Secretary-General, and in the case of the European Convention on Human Rights via the Secretary General of the Council of Europe.

¹³ General Comment 29, States of Emergency, (article 4), para. 5.

¹⁴ See, for example, *Sergey Kuznetsov v. Russia*, N. 10877/04, 23/01/2009, para. 35; *Djavit An v. Turkey*, N. 20652/92, 20 February 2003 para. 56; and *Ezelin v. France*, N. 11800/85, 26 April 1991, para. 52. See also *Christians against Racism and Fascism v. the United Kingdom*, N. 8440/78, Commission decision of 16 July 1980; and the Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Venice Commission *Guidelines on Freedom of Peaceful Assembly*, Second edition (Warsaw/Strasbourg, 2010), para. 1.2

¹⁵ Article 21 of the ICCPR and Article 11.2 of the European Convention.

can be imposed only when no lesser restriction will suffice and must not put in jeopardy the right itself.¹⁶ Any restrictions that do not meet all these elements constitute violations of the right to freedom of assembly.

States may require those organizing an assembly to give prior notification to the authorities. However, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has stressed that the exercise of the right to freedom of peaceful assembly should not be subject to prior authorization and that any notification procedure should not function as a de facto request for authorization. Prior notification should have the aim of facilitating the exercise of the right of peaceful assembly and enabling measures to be put in place to protect public safety and public order. However, notification should not be expected for assemblies that do not require prior preparation by state authorities (for example when a small number of participants is expected).¹⁷ Moreover, state authorities should provide for the possibility of spontaneous assemblies organized without prior notification, for example in instances where an assembly is a reaction to an unexpected event.¹⁸

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.¹⁹

Under international law and standards, any measure to ban or restrict any form of peaceful assembly must be assessed on a case-by-case basis. Any restriction must also have a clear basis in a law and must be set out in terms which are sufficiently precise to prevent the authorities applying undue discretion. The burden is on the authorities to demonstrate the legal basis for any restrictions imposed.²⁰

Any restrictions placed on an assembly should be communicated promptly and in writing to the event organizer, with an explanation of the reason for each restriction. This should be done as early as possible so that any appeal to a court or another independent body can be completed before the date notified for the assembly.²¹

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has highlighted the presumption in favour of holding peaceful assemblies, which is also set out in the *Guidelines on Freedom of Peaceful Assembly* produced by the Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR). This means that an assembly should be presumed to be lawful and not to constitute a threat to public order.²²

The *Guidelines on Freedom of Peaceful Assembly* make clear that the intentions of the organizers of demonstrations should be presumed to be peaceful unless there is compelling and demonstrable evidence that those organizing or participating in a particular event intend to use, advocate or incite imminent violence.²³ The right to freedom of peaceful assembly is a right held by each individual participating in an assembly; acts of violence or criminal offences perpetrated during a public assembly must not be attributed to others whose behaviour remains peaceful. An individual who remains peaceful in his or her own intentions or behaviour does not cease to have the right to peaceful assembly because of sporadic violence or other punishable acts committed by others in the course of the demonstration.²⁴ Moreover, the use of violence by a small number of participants does not categorize as non-peaceful an assembly that otherwise would have been peaceful. Therefore any intervention should aim to deal with the particular individuals involved rather than dispersing the entire event.²⁵

While states have a responsibility to ensure public order, and the protection of public order is one of the permissible reasons for imposing demonstrably necessary restrictions on the right to freedom of peaceful assembly, it is important that the authorities show a certain degree of tolerance for the inevitable disruption

¹⁶ Human Rights Committee, General Comment No. 34 on Freedom of opinion and expression, paras 21 and 22. The Committee has clarified that the General Comment also provides guidance with regard to elements of the right to freedom of peaceful assembly. See also General Comment No. 31, para. 6.

¹⁷ 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; see also OSCE/ODIHR *Guidelines on Freedom of Peaceful Assembly*, 4.1.

¹⁸ A/HRC/31/66, para.23, OSCE/ODIHR *Guidelines on Freedom of Peaceful Assembly*, 4.2.

¹⁹ A/HRC/31/66, para. 23.

²⁰ Human Rights Committee, General Comment No. 34, para. 27.

²¹ A/HRC/31/66, para. 36 b and c; OSCE/ODIHR *Guidelines on Freedom of Peaceful Assembly*, 2.6, 4.5-6.

²² A/HRC/23/39, para. 50.

²³ OSCE/ODIHR *Guidelines on Freedom of Peaceful Assembly*, para. 25.

²⁴ A/HRC/31/66, para. 20. OSCE/ODIHR *Guidelines on Freedom of Peaceful Assembly*, para. 26, citing European Court of Human Rights *Ziliberberg v. Moldova*, admissibility decision 4 May 2004.

²⁵ OSCE/ODIHR *Guidelines on Freedom of Peaceful Assembly*, paras 25 and 164.

that demonstrations entail.²⁶ Assemblies are a legitimate use of public space²⁷ and while the police have a responsibility to uphold public order and the law, their role also gives them a degree of discretion.²⁸ Public order may be defined as “the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded. Respect for human rights is part of public order (*ordre public*)”.²⁹

1.3 THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY IN FRENCH LAW

In France, public assemblies are subject to two distinct legal regimes, depending on whether they are in an enclosed venue (*réunion*) or on a public thoroughfare (*voie publique*).

Since 1881, French law has not required organizers of public assemblies in an enclosed venue, such as conferences for example, to notify the authorities or seek authorization.³⁰ In 1933, the Council of State clarified that the authorities can ban a public assembly in an enclosed venue only when it is likely to constitute a serious disruption to public order which cannot be addressed by relying on regular police measures.³¹

However, organizers of public assemblies that are to take place on a public thoroughfare must notify the competent authorities at some point between three and 15 days before the event is due to take place. The notification must be signed by three organizers and include the purpose of the event, the scheduled date and time, the venue and, if relevant, the proposed route. In municipalities where there is a police station, the prefect is responsible for receiving the notification. Where there is no police station, the official who is notified is the mayor.³² In Paris, notification is given to the Police Prefecture (*Préfecture de Police*). Under French law, organizers who fail to notify a public assembly or who pursue the organization of a prohibited public assembly are criminally liable³³, which is at odds with international human rights law and standards.

Under French law, the police officials or mayors responsible for receiving notification of a public assembly can issue a decree banning a particular public assembly if they consider it is likely to disrupt public order.³⁴

Under the state of emergency currently in force, prefects can ban public assemblies on vaguely formulated grounds. For instance, they can ban public assemblies in enclosed or privately owned venues (*réunions*) on the grounds that they are likely to “provoke or encourage disorder”.³⁵ They can also restrict the movement of persons in specific areas with the effect of preventing public assemblies.³⁶

Since 21 July 2016,³⁷ prefects can prohibit parades, marches and rallies if they cannot ensure public order in view of the policing resources available.³⁸ Under the state of emergency, non-compliance with an emergency measure, including a ban on a public assembly, is a criminal offence.³⁹

²⁶ See *European Court of Human Rights, Bukta and Others v. Hungary*, N. 25691/04, 17 October 2007, para. 37, *Oya Ataman v. Turkey*, N. 74552/01, 5 March 2007, paras 41-42.

²⁷ See OSCE/ODIHR *Guidelines on Freedom of Peaceful Assembly*, Chapter 3.2. See also *European Court of Human Rights, Patyi and Others v. Hungary*, N. 5529/05, 7 October 2008, paras 42–3, where the Court rejected the government’s arguments relating to potential disruption of traffic.

²⁸ OSCE *Human Rights Handbook on policing assemblies* (2016), p. 93.

²⁹ Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4, Annex (1985), para. 22, <http://hrlibrary.umn.edu/instree/siracusaprinciples.html>

³⁰ Article 1 of the Law on Freedom of Assembly of 30 June 1881 (*Loi sur la liberté de réunion*).

³¹ Council of State, judgment of 19 May 1933 (*arrêt Benjamin*), N. 17413 17520, <https://www.legifrance.gouv.fr/affichJuriAdmin.do?idTexte=CETATEXT000007636694&dateTexte=>

³² Article L 211.2 of the Law on National Security (*Code de la Sécurité Intérieure*), https://www.legifrance.gouv.fr/affichCode.do?sessionId=739984452B2ECA8507922DDB723FCEA4.tpdila14v_2?idSectionTA=LEGISCTA000025508382&cidTexte=LEGITEXT000025503132&dateTexte=20170112

³³ Article 431-9 of the Criminal Code.

³⁴ Article L 211.4 of the Law on National Security.

³⁵ Article 8 of Law 55-385 of 3 April 1955 on the State of Emergency (*Loi relative à l'état d'urgence*).

³⁶ Article 5.1 of Law 55-385.

³⁷ On 21 July 2016, Parliament extended the state of emergency until January 2017. It also amended the Law on the State of Emergency which spells out the emergency powers conferred on authorities. The law is available at <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000024042375&dateTexte=20170309>

³⁸ Article 3.2 of Law 2016-987 amending Article 8 of Law 55-385 of 3 April 1955 on the State of Emergency.

³⁹ Article 13 of the Law on the State of Emergency.

1.4 PROHIBITION OF PUBLIC ASSEMBLIES

Since 14 November 2015, prefects have been able to ban public assemblies using either emergency or ordinary powers (see Section 1.3). In many cases, they used the two sets of powers jointly or interchangeably. Many of the decrees issued to impose a ban referred indeed to both sets of powers.⁴⁰

Thousands of public assemblies were organized in France in 2015 and 2016. For example, 5,178 and 5,393 demonstrations took place in Paris in 2015 and 2016, respectively. According to the figures provided by the Ministry of the Interior, prefects issued 155 decrees prohibiting public assemblies between 14 November 2015 and 5 May 2017 using emergency powers.⁴¹ Some of these measures prohibited any public assembly within a specific period of time in specific areas (see for example Section 1.4.1.). The Ministry of the Interior noted that it did not collect official figures regarding the number of public assemblies prohibited on the basis of ordinary powers.⁴²

The authorities have often justified banning public assemblies by referring to the context of the state of emergency, even when the prohibitions were imposed under ordinary powers. They have sought to justify the bans on the basis of the lack of adequate policing resources to maintain public order during public assemblies because of the additional demands on law enforcement resulting from the state of emergency. A July 2016 amendment to the Law on the State of Emergency explicitly establishes that a lack of adequate policing resources to maintain public order is a permissible ground for banning public assemblies.⁴³ However, representatives of the Ministry of the Interior, the Police Prefecture of Paris and the Prefecture of Ille-et-Villaine, confirmed that the justification regarding the lack of policing resources had been used prior to the amendment.⁴⁴ However, while the risk of violent attacks on the general population has certainly strained police resources, authorities implemented strategies and tactics to police some public assemblies that appeared to be resource-intensive and therefore called those arguments into question (See Sections 1.4.3 and 3.3).

1.4.1 GENERAL BANS IN NOVEMBER AND DECEMBER 2015

Shortly after the declaration of the state of emergency on 14 November 2015, the Police Prefect of Paris issued a decree banning all demonstrations in Paris and in all the departments of the Ile-de-France region until 16 November. The ban was subsequently renewed until 30 November.⁴⁵ Representatives of the Police Prefecture of Paris explained to Amnesty International that the general ban was necessary because public assemblies could have constituted targets for further violent attacks and police resources had to be deployed as a priority for the protection of tourist attractions, media headquarters, embassies and places of worship.⁴⁶

Following a communication from the Minister of the Interior to all prefects on 23 November, prefects banned all public assemblies, apart from those commemorating the victims of the Paris attacks, scheduled in their departments between 28 and 30 November.

Moreover, the authorities banned all demonstrations in specific areas of central Paris – the areas around Champs-Élysées – and in some municipalities in the Paris region from 1 to 13 December.⁴⁷ These measures had the specific purpose of imposing restrictions on public assemblies calling for a far-reaching climate agreement at the 21st Conference of Parties (COP 21), whose official meetings were taking place in those areas. Representatives of the Police Prefecture of Paris stated in a meeting with Amnesty International that

⁴⁰ Assemblée Nationale, Rapport d'information sur le contrôle parlementaire de l'état d'urgence, p. 85, <http://www.assemblee-nationale.fr/14/pdf/rap-info/i4281.pdf>

⁴¹ Data provided by the Ministry of the Interior in response to a request by Amnesty International, email communication of 5 May 2017. Some data regarding the prohibition of public assemblies in the context of the state of emergency are publicly available here: <http://www2.assemblee-nationale.fr/14/commissions-permanentes/commission-des-lois/contrôle-parlementaire-de-l-etat-d-urgence/contrôle-parlementaire-de-l-etat-d-urgence/donnees-de-synthese/donnees-relatives-a-l-application-de-l-etat-d-urgence-du-14-novembre-2015-au-21-juillet-2016/mesures-administratives-prises-en-application-de-la-loi-n-55-385-du-3-avril-1955>

⁴² Data provided by the Ministry of the Interior to Amnesty International, email communication of 5 May 2017.

⁴³ Article 8 of Law 55-385 of 3 April 1955 on the State of Emergency.

⁴⁴ Meeting with the representatives of the Prefecture of Ille-et-Villaine, 9 December 2016, the Paris Police Prefecture, 22 February 2017 and the Prefecture of Loire-Atlantique, 1 March 2017.

⁴⁵ The ban was renewed by subsequent decrees issued on 16 November 2015 (No. 2015-00914) and on 18 November 2015 (No. 2015-0089). The decrees were adopted on the basis of the Law on the State of Emergency as well as ordinary prefectural powers established by article 122.8 of the Code of National Security.

⁴⁶ Meeting with the representatives of the Paris Police Prefecture, 22 February 2017.

⁴⁷ Decrees 2015-010012 and 2015-010017, <http://www.prefectures-regions.gouv.fr/content/download/8871/50895/file/2015-12-01-05-03-16-RAA-DEP-NORMAL-NV372.pdf>

many individuals and groups, including some arriving from abroad, intended to disrupt public order during COP 21.⁴⁸

Under international human rights law, restrictions on the right to peaceful assembly should be necessary and proportionate to the legitimate aim they pursue. In particular, the principle of necessity implies that the authorities should choose the least intrusive method at their disposal to achieve the desired result and consider a range of measures, with prohibition a last resort. Blanket bans, which include total bans and bans at specific times or in specific places, are often disproportionate as they preclude the consideration of the specific circumstances of each assembly.⁴⁹ While restrictions on public assemblies in Paris may have been necessary and proportionate in the immediate aftermath of the Paris attacks, it is not clear that the general ban on all public demonstrations, except for those commemorating the victims of the November attacks, throughout the country between 28 and 30 November was the least intrusive measure available to the authorities to protect public order and national security. The ban appears to have amounted to a disproportionate restriction of the right to freedom of peaceful assembly.

1.4.2 BANS IN NANTES ON PUBLIC ASSEMBLIES AGAINST THE LABOUR LAW REFORMS

Between March and September 2016, trade unions organized at least 18 public assemblies in Nantes to protest against the labour law reforms.⁵⁰ The Prefect of the Department of Loire-Atlantique issued nine decrees prohibiting nine public assemblies in Nantes. Of these, seven prohibited anti-labour reform protests organized by informal networks of students and young people between 19 May and 15 September 2016.⁵¹

A group of activists who participated in some of the protests organized by students and young people told Amnesty International that in April 2016, youth groups started calling for separate protests because they opposed the trade unions' decision to comply with the instructions of the Prefecture to march outside the city centre.⁵² Many activists who spoke to Amnesty International were surprised by the bans. Pierre, an independent journalist and activist said: "I have been mobilizing on many issues for the past 20 years and I don't remember any instance in which authorities prohibited a protest".⁵³

The bans on the seven public assemblies against the labour law reforms were imposed using ordinary powers.⁵⁴ For example, the decree prohibiting the protest on 9 June highlighted the fact that trade unions were organizing another public assembly on the same day, that violent acts had been perpetrated in the context of previous protests organized by groups other than trade unions and that, in view of the state of emergency, the authorities did not have the policing resources to maintain public order during those public assemblies.⁵⁵ The Prefect of the Department of Loire-Atlantique made similar points when imposing a general ban on all marches before and after the public assembly organized by trade unions for 15 September.⁵⁶

In a meeting with Amnesty International, the Prefect explained that the decisions to prohibit those public assemblies were mostly based on the presumption that they were likely to constitute a threat to public order because they were not organized by trade unions. He explained that the organizers of these demonstrations had not explicitly incited violence but may have had what he described as "ambiguous connections" with violent groups. He also argued that the benefit of these prohibitions in terms of preventing violence outweighed their negative impact on the right to freedom of assembly of peaceful protesters.⁵⁷

In order to comply with international human rights law, the authorities should identify the precise nature of the threat and the specific risks posed when they invoke national security and the protection of public order

⁴⁸ Meeting with the representatives of the Paris Police Prefecture, 22 February 2017.

⁴⁹ A/HRC/31/66, para. 30.

⁵⁰ Meeting with a representative of the trade union Solidaires, 10 October 2016.

⁵¹ One decree banned a public meeting organized on 12 January by the white supremacist organization White Rebels Crew; another banned the public assembly organized on 26 September against Climate Change, a summit of non-state actors opposing climate change. For a list of the measures, see : Recueil des Actes Administratifs (RAA) de la Préfecture de Loire Atlantique, <http://www.loire-atlantique.gouv.fr/Publications/Recueil-des-actes-administratifs-RAA-de-la-prefecture-de-Loire-Atlantique>.

⁵² Meeting with a group of five activists who participated in the protests against the labour law reforms in Nantes, 11 October 2016.

⁵³ Interview with Pierre, 9 October 2016.

⁵⁴ Article L 211.4 of the Law on National Security.

⁵⁵ Decree 2016-67 of 8 June 2016, <http://www.loire-atlantique.gouv.fr/content/download/21528/153949/file/RAA%20sp%C3%A9cial%20n%C2%B0%2056%20du%208%20juin%202016.pdf>

⁵⁶ Decree 2016-80 of 12 September 2016, <http://www.loire-atlantique.gouv.fr/content/download/23659/173706/file/RAA%20sp%C3%A9cial%20n%C2%B0%2087%20du%2013%20septembre%202016.pdf>

⁵⁷ Meeting with the Prefect of Loire-Atlantique and the Office Director, 1 March 2017.

to restrict a public assembly.⁵⁸ But in these instances, the Prefecture largely based its decisions to prohibit some public assemblies on the grounds simply of a likelihood, based on past events, that some protesters might commit violent acts. The mere existence of a risk, however, is not sufficient to prohibit an assembly. In addition, even if there is some level of risk, violent acts perpetrated by a minority of protesters should not automatically result in an assembly being banned, thereby denying other protesters their right to assemble peacefully.⁵⁹

The Prefect also sought to justify the ban by invoking the lack of notification on the part of the organizers. However, as both the trade unions and the Prefect confirmed, since the killing of Jean Rigollet, a protester who was shot by police in 1955, organizers of public assemblies have not formally notified the authorities of public assemblies in Nantes. None of the public assemblies organized by trade unions to oppose the labour law reform in Nantes was formally notified.

If the lack of formal notification prevented the authorities from effectively communicating with the organizers, the principle of necessity nevertheless required them to adopt the least restrictive measure to maintain public order. In particular, the Prefecture could have imposed restrictions on the time or place of public assemblies, rather than issuing an outright ban, in order to ensure that they did not take place at the same time as other planned demonstrations.

1.4.3 BANS AND OTHER RESTRICTIONS IN RENNES

According to the representatives of the Prefecture of the Department of Ille-et-Vilaine, about 50 public assemblies were organized in Rennes between February and July 2016 to oppose the labour law reforms.⁶⁰ The Prefect prohibited at least four public assemblies between May and September 2016 using ordinary powers.⁶¹

For example, on 27 June the Prefect prohibited a public assembly scheduled for 28 June and organized by the trade union SUD-PTT.⁶² The organizers had suggested a route for the march starting and ending on the Esplanade Charles de Gaulle, a square just outside the historic city centre. Other trade unions also organized another public assembly to oppose the labour law reforms on that day. They had initially suggested the same route as that proposed by SUD-PTT, but amended it at the request of the Prefecture.

The Prefect justified the ban on the SUD-PTT march by highlighting that another protest against the labour law reforms was planned for the same day and that the route proposed by SUD-PTT was incompatible with ensuring public safety and order during the march. In a letter sent to the SUD-PTT on 24 June, the Prefect pointed out that several violent acts had been perpetrated in the context of previous protests on the Esplanade Charles de Gaulle which had not been organized by SUD-PTT.⁶³ However, the authorities provided no evidence that the SUD-PTT intended to perpetrate any violent acts. Nor was there any evidence of previous events organized by SUD-PTT involving violent acts. The assembly should therefore have been presumed to be peaceful in the absence of any evidence to the contrary.

The Prefecture also imposed de-facto restrictions on most of the protests that were not banned. In particular, at the end of March 2016, they restricted protesters' access to the historic city centre by cordoning it off whenever a public assembly took place. The authorities justified these measures by referring to violence by some individuals who had held a protest in the city centre against the building of a new airport in Notre-Dame-des-Landes in February 2016. Representatives of the Prefecture explained to Amnesty International that policing public assemblies in the narrow streets of the historic city centre was a challenge and would have required substantial policing resources, which were not available in view of the state of emergency and the allocation of police to the priority task of countering terrorist threats.⁶⁴

However, all the representatives of trade unions and other civil society organizations who spoke to Amnesty International pointed out that protesters had attempted to march in the city centre despite the restrictions

⁵⁸ A/HRC/31/66 para. 31.

⁵⁹ A/HRC/31/66, para. 25.

⁶⁰ Meeting with the representatives of the Prefecture of Ille-et-Vilaine, 9 December 2016.

⁶¹ Articles L211-1 and L211-2 of the Law on National Security.

⁶² The text of the decree is available at https://expansive.info/home/chroot_ml/ml-rennestest/ml-rennestest/public_html/IMG/pdf/arrete_portant_interdiction_d_une_manifestation.pdf

⁶³ Meeting with representatives of the trade union, 10 November 2016.

⁶⁴ *Ib.* 55

and that authorities had systematically deployed considerable police resources to enforce the restrictions by cordoning off many of the entry points to the city centre.⁶⁵

Many representatives of civil society organizations and protesters were surprised by the restriction. Louis Morel, a CGT representative in Rennes, told Amnesty International: “This is the first time I’ve ever heard of the city centre being out of bounds. It has never happened before, not even when there were violent incidents during demonstrations”.⁶⁶ Hugo, an activist who was subjected to an administrative measure restricting his freedom of movement (see Section 2.2.1), told Amnesty International: “This is the first time demonstrations have been banned from Rennes city centre. It has never happened in the past, not even when there were a lot more confrontations with the police, such as during the demonstrations against the CPE [a proposed first employment contract for under-26s]. Banning access to the city centre plus the extent of the police presence have been seen as a provocation by many demonstrators and this has increased tension. Regaining access to the city centre became a political issue at each demonstration”.⁶⁷

When imposing general restrictions on public assemblies in the historic city centre of Rennes, the authorities did not take into account the specific circumstances of each assembly and, in particular, they did not justify the restriction in terms of any concrete or specific threats to public order. The enforcement of the ban required the deployment of substantial police resources, which not only calls into question the authorities’ argument regarding the lack of police resources to maintain public order during an assembly, but also appears to have contributed to escalating tensions between protesters and police (see Section 3.6).

1.4.4 BANS ON PUBLIC ASSEMBLIES IN CALAIS

In October 2016, the Prefecture of Nord-Pas-de-Calais banned two public assemblies organized by the International Coalition of Sans-Papiers and Migrants (Coalition Internationale des Sans-Papiers et Migrants, CISPM) to protest against the authorities’ plan to evict people from the informal settlement on the outskirts of Calais where thousands of migrants, asylum-seekers and refugees were living. The prefectural decrees banning the demonstrations referred to both emergency and ordinary powers.

On 28 September, the Prefecture banned the public assembly organized by the CISPM in Calais and neighbouring municipalities planned for 1 October.⁶⁸ They justified the measures by stating that the protest was likely to attract what they described as far left and far right groups. They added that a previous protest organized by the CISPM in Calais on 23 January 2016 had threatened public order, in particular when some activists had blocked the port of Calais after the demonstration. Moreover, the authorities referred to the lack of adequate policing resources due to the violent attack that had occurred in Nice in July and the subsequent renewal of the state of emergency.

On 30 September, the Lille Administrative Court rejected the appeal by the CISPM against the ban. Sissoko Anzoumane, a CISPM spokesperson, told Amnesty International: “During the hearing, the Prefecture reiterated that the ban was justified on the basis of the events that had occurred on 23 January. I stressed that it was not the responsibility of the organizers if some public properties had been damaged and the port had been occupied at the end of the protest”.⁶⁹

The organizers decided to go ahead with the protest despite the ban. On 1 October, 180 people travelling by coach from Paris were effectively prevented from attending the protest in Calais by gendarmes who for almost four hours blocked their departure from a petrol station where they had stopped.

On 6 October, the CISPM notified the Prefecture of another public assembly planned for 14 October in Calais. A week later, and the day before the assembly was due to take place, on 13 October, the Prefecture banned the public assembly, invoking the same arguments as they had two weeks earlier to ban the previous protest.⁷⁰

The bans imposed by the authorities on the protests organized by the CISPM were not based on a detailed assessment of the nature of the threat that they may have posed to public order but on assumptions based on the violent acts perpetrated by a minority of those who had taken part in previous demonstrations.

⁶⁵ Meeting with representatives of: the trade union CGT, 9 November 2016; the trade union Solidaires, 8 November 2016; le Club de la Presse de Rennes et Bretagne, 8 November 2016; and the informal network “interditsdemanif”, 11 November 2016.

⁶⁶ Interview with Louis Morel, 9 November 2016.

⁶⁷ Interview with Hugo, 22 November 2016.

⁶⁸ Press release of the Prefecture of Pas-de-Calais, <http://etat-a-calais.fr/2016/09/30/la-prefete-interdit-toute-manifestation-revendicative-en-lien-avec-la-question-des-migrants-a-calais-et-dans-plusieurs-communes-du-calais-le-samedi-1er-octobre-2016/>

⁶⁹ Interview with Sissoko Anzoumane, 15 November 2016.

⁷⁰ Press release of the Prefecture of Pas-de-Calais, <http://etat-a-calais.fr/2016/10/13/la-prefete-interdit-tout-rassemblement-revendicatif-en-lien-avec-la-question-des-migrants-a-calais-et-dans-plusieurs-communes-du-calais-le-vendredi-14-octobre-2016/>

Authorities did not establish any direct link between the CISPM and those who had committed violent acts. Therefore, the bans appear to constitute disproportionate restrictions on the right to freedom of peaceful assembly.

1.5 CONCLUSION

The state of emergency gave prefects additional powers to restrict the right to freedom of peaceful assembly. And even in cases where they used ordinary powers to prohibit demonstrations, prefects often referred to the lack of adequate police resources to maintain public order during public assemblies in view of the state of emergency and the need to prioritize countering the threat of violent attacks on the general population.

It is the case that since the declaration of a state of emergency in November 2015, law enforcement officials, including forces specialized in policing demonstrations, have been deployed to enhance the protection of specific venues and sites that could be the targets of violent attacks. These include places of worship, embassies, government buildings and tourist attractions. However, some of the restrictions imposed by prefects and the substantial police resources deployed to enforce them call into question arguments regarding lack of police resources to ensure public order during public assemblies.

While the French government invoked the aim of preventing further violent attacks on the general population when it declared a state of emergency, in practice the authorities have resorted to emergency powers and the emergency context more generally in pursuit of broader objectives, in particular to maintain public order in the context of specific demonstrations. Moreover, although a risk to public order was given as the rationale for restrictions on freedom of assembly, the risks cited were often generalized and non-specific, consisting of references to acts of violence perpetrated at past assemblies, without any clear indication that the organizers intended to engage in violent acts.

In practice, whether restrictions were imposed using ordinary powers with reference to the context of the state of emergency or emergency powers themselves, the existence of the state of emergency has resulted in lowering the high bar set out in international human rights law for restricting the right to freedom of peaceful assembly. Invoking a state of emergency does not absolve authorities from the requirement to ensure that any restrictions are necessary and proportionate for a specified legitimate purpose and limited to what is strictly necessary in a given situation. However, as illustrated by the cases highlighted in this chapter, very often the restrictions appear to have gone beyond the criteria of necessity and proportionality, often undermining the right to peaceful assembly itself, and frequently appeared to prove ineffective or indeed exacerbated tensions between police and protesters (see Section 3.6).

As highlighted by the Rapporteurs of the National Assembly tasked with overseeing the implementation of the emergency measures: “The state of emergency allows prefects to forbid any gathering as a precautionary measure, because of a very broad and undefined threat to public order”.⁷¹

⁷¹ See: http://www2.assemblee-nationale.fr/static/14/lois/communication_2016_05_17.pdf, p.6.

2. RESTRICTIONS ON INDIVIDUALS' RIGHT TO PEACEFUL ASSEMBLY

The law on the state of emergency has conferred entirely new powers to prefects to impose individual measures that have been used to restrict the right to freedom of peaceful assemblies.⁷²

Between 14 November 2015, when a state of emergency was declared, and the 5 May 2017, the French authorities adopted 683 measures restricting the freedom of movement of specific individuals. In particular, 639 measures were explicitly aimed at preventing people from attending public assemblies; 44 measures were imposed in the context of the UEFA Football Championship. According to the Ministry of the Interior, 21 and 574 measures had been imposed on individuals in the context of COP 21 and the social movement opposing the labour law reforms, respectively.⁷³ The measures were issued on the basis of emergency powers. Under ordinary French law, authorities have only the power to restrict freedom of movement to prevent individuals from attending sports competitions.

In November and December 2015, the authorities imposed assigned residence orders on 26 people to restrict their freedom of movement. The decrees imposing the orders explicitly stated that they were intended to prevent the individuals from attending public assemblies organized in the context of COP 21.⁷⁴

2.1 LEGAL FRAMEWORK

As stated in Section 1.2, under international law, restrictions on the right to peaceful assembly should only be imposed for one of the specific purposes permitted under international human rights law, should be limited to measures necessary to achieve that purpose and must be proportionate to the aim they seek to achieve.

Under Article 5.3 of the Law on the State of Emergency, prefects can impose an order requiring individuals to stay within a department or particular parts of a department if they deem that the individual has attempted to “hinder in any possible way the action of public authorities”.⁷⁵ The law does not specify the nature of behaviour or the extent of the disruption it could cause that would bring someone within its scope. As a result, the Minister of the Interior, especially initially, interpreted the provision very broadly and imposed measures restricting the freedom of movement of individuals who had simply participated in public

⁷² Article 5.3 of Law 55-385 on the State of Emergency.

⁷³ Email communication with the Ministry of the Interior, 5 May 2017. More than one measure could have been imposed on the same individual. Data on the number of individuals subject to these measures were not available. Authorities imposed 10 measures to prevent individuals from attending a public assembly organized on 1 May 2017, 17 measures in the context of the protests against the alleged rape of Théo, a young man, by law enforcement officials on 2 February 2017, 44 measures in the context of the UEFA European Championship and 17 measures in the context of a public assembly supporting the Kurdistan Workers' Party (PKK) in January 2016.

⁷⁴ See Amnesty International, *Upturned Lives. The disproportionate impact of France's state of emergency*. EUR 21/3364/2016, p. 18, http://www.amnestyusa.org/sites/default/files/eur2133642016english_final_pdf.pdf

⁷⁵ Article 5.3 of law 55-385.

assemblies where some violence had occurred, but who had never been charged with or convicted of any offence (see Section 2.2). As it is not specified by the law, the duration of the restrictions in practice considerably varied; some applied for several weeks, some only on the days when a protest was scheduled to take place and some until the end of the state of emergency. While these measures can be challenged before administrative courts, they do not require any prior judicial authorization.

Under ordinary administrative law, freedom of movement may be restricted only in the context of sports competitions, not in the context of public assemblies. In particular, prefects have the power to prevent individual supporters from entering or approaching specific venues where sports competitions take place on the grounds that they constitute a threat to public order.⁷⁶ In addition, the Ministry of the Interior can restrict the freedom of movement of individuals or groups who are planning to attend specific sports competitions.⁷⁷

2.2 ADMINISTRATIVE MEASURES RESTRICTING FREEDOM OF MOVEMENT

According to the Ministry of the Interior, prefects imposed 574 individual measures aimed at restricting freedom of movement in the context of the protests against the labour law reforms and 21 measures in the context of the demonstrations around COP 21.⁷⁸

In May 2016, prefects adopted the first measures restricting the right to freedom of peaceful assembly in the context of the movement against the labour law reforms. The measures to prevent people attending public assemblies were initially imposed on people who had never been arrested during public assemblies and on people who had been arrested without eventually been charged with any crime, in blatant violation of their right to freedom of peaceful assembly. In light of successful challenging of some measures before administrative courts, prefects subsequently started imposing those measures on protesters who were being prosecuted.

In response to questions from Amnesty International, representatives of the Ministry of the Interior and the Police Prefecture of Paris were unable to offer an assessment of whether the imposition of these measures made an effective contribution to maintaining public order during public assemblies.⁷⁹

2.2.1 MEASURES IMPOSED ON ACTIVISTS WITH NO CRIMINAL RECORD

In May, prefects imposed administrative measures restricting the freedom of movement of activists who had been involved in the student movement for years and who opposed the reforms to the labour laws, but who had never been convicted or prosecuted for any criminal offences perpetrated during public assemblies.

On 16 May, the Prefect of the Department of Ille-et-Vilaine issued a decree restricting the freedom of movement of **Hugo**, a PhD student at the University Rennes II and an activist with the left wing political party Ensemble-Front de Gauche. The restrictions, which were for a period of two weeks ending on 30 May, prohibited Hugo from entering a very large area of the city centre, indicated on a map appended to the order. The Prefect stated in the decree that the measure was aimed at preventing Hugo's participation in public assemblies and was justified on the basis of Hugo's leading role within the student movement and his participation in previous protests. Authorities could not establish Hugo's involvement in any of the violent acts committed in previous protests opposing the reforms to the labour laws. Hugo told Amnesty International: "I was heavily involved from the beginning in the movement and I got a lot of media coverage. They could not prosecute me as I had not committed any crime. So, they found an administrative measure that curtailed my freedom and is very vexing. I believe they just wanted to punish me and find ways to stop me from being a political activist. The state of emergency gives the prefecture the power to do so".⁸⁰

On 23 May, following Hugo's appeal, the Administrative Court of Rennes suspended the measure. The Court ruled that the measure violated Hugo's right to freedom of movement, especially as no public assemblies had been scheduled for the period during which it applied. Following the Court judgment, the Prefect

⁷⁶ Articles 332-16 and 332-16-2 of the Sports Code.

⁷⁷ Article 332-16-1 of the Sports Code.

⁷⁸ *Ib.* 73

⁷⁹ Meetings with representatives of the Prefecture of Ile-et-Vilaine, 9 December 2016; the Paris Police Prefecture, 22 February 2017; and the Ministry of the Interior, 16 December 2016.

⁸⁰ Interview with Hugo, 22 November 2016.

imposed similar restrictions on Hugo on the specific days or periods when protests against the labour law reforms were planned (26 May, 2 June and between 27 June and 25 July).

2.2.2 MEASURES IMPOSED ON ACTIVISTS WHO HAD BEEN ARRESTED BUT NOT CHARGED

Using emergency powers, prefects imposed similar restrictions on protesters who had been arrested during a public assembly, but released without charge. Nevertheless, the authorities quoted the arrests as justification for the restrictions.

For example, on 13 September 2016, the Prefect of Ille-et-Vilaine imposed an order on **Frédéric**, a trade unionist and activist, banning him from entering a large area of Rennes city centre whenever public assemblies were planned to protest against the labour law reforms, police violence or plans to build a new airport in Notre-Dames-des-Landes (Loire-Atlantique). The restriction was set to remain in force until the end of the state of emergency, which at that time was January 2017.

The Prefect justified the measure on the basis of Frédéric's arrest for alleged involvement in criminal damage and theft on 6 May 2016, in the context of the blockade of the main bus station (depot de bus) that he had organized together with other activists, even though he had been released without charge. On 17 October, following Frédéric's appeal, the Administrative Court of Rennes suspended the measure. The Court found that the measure constituted a violation of Frédéric's rights to freedom of movement and to peacefully assemble, especially in view of the lack of evidence regarding his role in the crimes for which he had been arrested.⁸¹ Frédéric told Amnesty International: "They focused on me because I was quite active in the movement. In September, the authorities started to hand out bans, they tried to do it to me too, but they had nothing on me. We got the impression that the authorities were trying to criminalize certain activities, such as economic blockades for example, which hadn't been the case before."⁸²

Charles, a young student living in Paris, was subject to an order prohibiting him from attending two protests against the labour law reforms on 17 May and 14 June in Paris. The ban was based on his arrest on 17 March in the context of a previous protest; he was subsequently released without charge. He explained to Amnesty International the chilling effect of the measures imposed: "I wanted to protest against the reform of labour laws but after my time in pre-charge detention I didn't go to another demonstration until June, because I wasn't prepared to demonstrate and then get arrested and beaten up. After 17 May, every time there was a demonstration, I wondered whether the police would come to my house to see if I was there. They had accused me of being one of the violent demonstrators and my mother had started to have some doubts. I felt like I had been treated like a terrorist, like someone dangerous. At first I was isolated, I didn't know anyone else who had been banned from demonstrating. Then I realized that other people had been targeted too. I started to think that they wanted to intimidate us so we wouldn't go to the demonstrations."⁸³

2.2.3 MEASURES IMPOSED ON PEOPLE FACING PROSECUTION

Since May 2016, after the courts suspended some of the orders,⁸⁴ prefects narrowed their focus and started imposing measures mainly on individuals facing prosecution for offences allegedly perpetrated in the context of previous public assemblies.⁸⁵ While the imposition of some restrictions on the right to freedom of peaceful assemblies on people who face prosecution for crimes allegedly committed in the context of protests could be permissible, Amnesty International is concerned that the use of emergency measures in those instances was not strictly required by the exigencies of the situation. In particular, judicial authorities have the powers under the criminal code of procedure to impose restrictions on the right to freedom of movement and the participation in social or professional activities on people awaiting trial.⁸⁶

⁸¹ Administrative Court of Rennes, judgment No. 1604533 of 17 October 2016.

⁸² Interview with Frédéric, 11 November 2016.

⁸³ Interview with Charles (pseudonym), 15 November 2016.

⁸⁴ The judgments of the Administrative Court of Paris are available at <http://paris.tribunal-administratif.fr/Actualites-du-Tribunal/Selection-de-decisions-Acces-aux-jugements/Arretes-d-interdiction-de-sejour>.

⁸⁵ Meeting with the representatives of the Ministry of the Interior, 16 December 2016.

⁸⁶ The French Code of Criminal Procedure also allows judges to impose restrictions on individuals facing charges punishable by imprisonment who have been released on bail awaiting trial (Article 138.12). Bail conditions can include, among other things, restrictions on freedom of movement or a prohibition on participating in professional or social activities connected with the alleged offence that triggered the charges.

The Paris Police Prefect issued an order on 14 May prohibiting **Ernest**, a young activist living in Paris, from participating in the marches organized on 17 May. The prefect justified the measure by arguing that Ernest was likely to engage in acts of violence simply on the basis of his participation in previous protests where some participants had committed violent acts.

Following Ernest's appeal against the measure, the Paris Administrative Court suspended the measure against him as well as 8 similar measures against other individuals on 17 May 2016. The Court found that the Minister of Interior had failed to show that Ernest had perpetrated violent acts during previous protests.⁸⁷

Authorities subsequently imposed two further measures to prevent Ernest from participating in the marches organized on 23 and 28 June in Paris. He told Amnesty International that police had given him notice of the measures the day before each event, which effectively prevented him from appealing them. The authorities sought to justify the measures by pointing out in the order that Ernest had been subjected to a "procedure" for violence against a police officer; the nature of the "procedure" was not specified in the order. Ernest told Amnesty International that on 5 April he had been arrested for having allegedly thrown a projectile at a police officer, but he had subsequently not been charged with any offence. At the time when authorities imposed the measures against him, he was being prosecuted for having allegedly damaged a CCTV camera in the context of a protest on 28 April he was acquitted of this offence in January 2017.⁸⁸

On 13 September, the Prefect of Ille-et-Villaine imposed an administrative measure based on Article 5.3 of the Law on the State of Emergency on **Christian** and **Fabien**, two activists in Rennes facing prosecution for criminal damage. The measure prevented them from entering specific areas of the city whenever a public assembly was planned to protest against the labour law reforms, police violence or the building of a new airport in Notre-Dame-des-Landes. The restrictions were set to remain in force until the end of the state of emergency, which at that time was January 2017, and were not subsequently renewed.

The measure against Christian was justified on grounds that he was being prosecuted for allegedly tagging (signing graffiti on) a wall on 23 June 2016. The restrictions imposed on Fabien were based on his facing charges for criminal damage in the context of a protest in May 2016. They were also both subjected to a control regime while awaiting trial that included a ban on attending public assemblies.⁸⁹ Both Christian and Fabien were subsequently acquitted for the charge of criminal damage.⁹⁰

Christian told Amnesty International: "We see that investigations have been launched months after the alleged incidents. They are based on poor evidence, such as photos of people causing damage but where no one can't be identified. You get the impression that they use any means at their disposal to attack those who are the most active in the movement".⁹¹

On 24 March, **Constantin**, a young Paris-based activist, was arrested on Boulevard Montparnasse (Southern Paris) during a protest against the labour law reforms. He was subsequently charged with violence resulting in minor injuries to a police officer. On 26 March, the investigating judge of the Paris High Court decided to impose a control regime on Constantin while he was awaiting trial; the regime included an explicit ban on attending public assemblies, which was latterly converted into a restriction to his freedom of movement.⁹²

Even though Constantin was already prevented from attending assemblies by the restrictions imposed by judicial authorities, the Prefect of Paris subsequently issued two administrative measures by resorting to emergency powers preventing him from attending public assemblies scheduled to take place in Paris on 23 June and 5 July to protest against the labour law reforms.⁹³ The Prefect pointed to Constantin's previous participation in public assemblies and his arrest on 24 March and concluded that he was likely to engage in further violent acts should he attend the protests.

According to Constantin, the emergency powers allow the authorities to exercise a firmer grip on social movements and to further restrict rights. He told Amnesty International: "Before the state of emergency, independent and anarchist movements were subject to surveillance and occasionally to investigation. Today,

⁸⁷ The 10 judgments delivered by the Court on 17 May 2016 are available at: <http://paris.tribunal-administratif.fr/Actualites-du-Tribunal/Selection-de-decisions-Acces-aux-jugements/Arretes-d-interdiction-de-sejour>

⁸⁸ Interview with Ernest, 28 September 2016; email communication 26 April 2017.

⁸⁹ In November 2016, the High Court of Rennes struck down the prohibition to attend public assembly that had been imposed on them on the basis of article 138.12 of the Code of Criminal Procedure. The Court argued that participating in public assemblies did not fall within the category of "social activities" in respect of which restrictions can be imposed on the basis of article 138.12.

⁹⁰ Email communication with Christian and Fabien (pseudonyms), 26 April 2017.

⁹¹ Interview with Christian and Fabien, 11 November 2016.

⁹² On 5 April, Constantin appealed against the order. On 19 May, the Paris Appeal Court concluded that the explicit ban imposed on Constantin fell outside the scope of Article 138.12 of the Code of Criminal Procedure. However, the Court imposed new restrictions on Constantin's freedom of movement, whose effect in practice was to prevent him from attending public assemblies in Paris.

⁹³ Decrees 2016-00625 and 2016-00891. The measures prevented Constantin from entering several Parisian districts on 23 June and 5 July between 11am and 8pm and banned him from a specifically defined area around Place de la République from 6pm until 7am the following day.

with the state of emergency, they're relentless, those who are active in the movement, such as for example those against the construction of the airport at Notre-Dame-des-Landes, are really feeling the pressure".⁹⁴ When this report went to press (May 2017), Constantin was still awaiting trial for the charge of violence against a police officer. In February 2017, judicial authorities lifted the control regime that had been imposed on him.

2.3 CONCLUSION

The authorities have exercised the new powers acquired under the state of emergency to impose, on the vaguest of grounds, restrictions on the rights to freedom of movement and peaceful assembly. In particular, prefects have sought to restrict the freedom of movement of individuals whom they consider likely to attempt to disrupt the actions of public authorities.

States are permitted under international human rights law to impose restrictions on the rights to freedom of peaceful assembly and movement for the protection of public order. However, they must demonstrate that these restrictions are necessary to achieve their legitimate aim and proportionate, and that they do not undermine the right itself. A state of emergency cannot legitimately be used to justify a crackdown on the exercise of human rights.

The imposition of hundreds of individual measures restricting freedom of movement and the right to peaceful assembly on very vague and general grounds as described in this chapter, raise strong doubts as to whether, at least in many of these cases, the restrictions met these tests. Moreover, the authorities applied all those restrictions by making use of emergency powers citing often vague objectives linked to the protection of public order. Such objectives fall outside the scope for which the state of emergency was declared and subsequently extended; namely the prevention of further violent attacks such as those that took place in Paris on 13 November 2015.

⁹⁴ Interview with Constantin, 14 October 2016, email communication 25 April 2017.

3. HUMAN RIGHTS VIOLATIONS DURING THE POLICING OF PUBLIC ASSEMBLIES

Policing public demonstrations can be a difficult task. Law enforcement agents must ensure that everyone can exercise their right to peaceful assembly by ensuring their safety, preventing the perpetration of crimes and tackling instances in which protesters or counter-protesters engage in violent acts.

The number and frequency of public assemblies increased throughout France from March to September 2016. Hundreds of thousands of people participated in hundreds of protests throughout the country to oppose the labour law reform bill introduced into Parliament on 24 March 2016.⁹⁵

Some protesters committed unlawful and violent acts in the context of these public assemblies. They damaged public and private property, especially banks and estate agents, and, in some cases, used violence against the police. In some instances, law enforcement officials sustained serious injuries while policing protests against the labour law reforms. According to the Minister of the Interior, 336 police officers and 45 gendarmes suffered injuries while policing public assemblies between 19 March and 4 October 2016.⁹⁶

The authorities responded to violence by some protesters by banning dozens of demonstrations (see Section 1) and restricting the freedom of movement of hundreds of individuals (see Section 2). They often justified these measures by pointing to a lack of police resources in light of the state of emergency and the need to prioritize security in a context where there was a high risk of further violent attacks on the general population. However, it is questionable whether this rationale is consistent with some of the strategies and tactics deployed by the authorities in enforcing restrictions on public assemblies, which resulted in resource-intensive operations.

Some of the measures imposed by the authorities resulted in restrictions of the right to peaceful assembly that appeared to go beyond what was strictly necessary and therefore were not in line with international law. In a number of instances, the measures did not appear to be effective in maintaining public order; indeed on occasion they exacerbated rather than reduced tensions.

For example, in some cases law enforcement officials restricted the freedom of movement of peaceful protesters for hours by containing them unnecessarily and in a way that effectively prevented them from exercising their right to peaceful assembly. In other instances, law enforcement officials made use of strategies to maintain public order, such as preventing protesters from accessing specific city areas (see Section 1.4.3), that had the effect of escalating tensions between protesters and the police.

⁹⁵ Loi 2016-1088 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels, concernant la modernisation de l'emploi, http://www.assemblee-nationale.fr/14/dossiers/nouvelles_libertes_entreprises_actifs.asp

⁹⁶ Email communication with the Ministry of the Interior, 31 January 2017.

Moreover, civil society organizations, including Amnesty International, documented several instances of unnecessary, arbitrary or excessive use of force by law enforcement officials during public assemblies.⁹⁷ Amnesty International also received reports that law enforcement officials had obstructed and used unnecessary force against journalists and other media workers who were documenting public assemblies.

The French authorities do not collect comprehensive data on injuries sustained by protesters as a result of excessive use of force by law enforcement officials during public assemblies. According to the Ministry of the Interior, some data is available for Paris, where the Police Prefecture indicated that 32 protesters had suffered injuries. However, first-aid workers in Paris estimated that overall something approaching 1,000 protesters were injured in the context of the protests against the labour law reforms in Paris.⁹⁸

In May 2017, the Ministry of the Interior pointed out that the *Inspection Générale de la Police Nationale* (IGPN) and *Inspection Générale de la Gendarmerie Nationale* (IGGN), who are responsible for investigating allegations of excessive use of force by the police and gendarmerie, investigated 99 and two cases respectively regarding complaints about their treatment by law enforcement officials during the protests against the labour law reforms in 2016.⁹⁹ The Ministry pointed out that the IGPN had transferred the results of 64 investigations to judicial authorities.

The authorities, including the Minister of the Interior and the Prime Minister, repeatedly condemned acts of violence by protesters. While this condemnation is legitimate, authorities should also have raised concern regarding the allegations of excessive use of force by law enforcement agents. For example, on 15 September, the Minister of the Interior condemned violence during protests organized throughout the country, highlighting that 15 law enforcement officials had been injured and 62 protesters had been arrested in Paris.¹⁰⁰ However, he did not raise concerns about, nor did he call for an impartial and thorough investigation into, allegations of the excessive and arbitrary use of force by police, which, for example, inflicted serious injuries on Laurent (see Section 3.4).

3.1 INTERNATIONAL LAW AND STANDARDS ON THE POLICING OF PUBLIC ASSEMBLIES, INCLUDING THE USE OF FORCE

Law enforcement officials, as representatives of the state, have an obligation under international law to respect and protect human rights. In the context of the policing of assemblies, the rights of particular concern are those to freedom of expression and peaceful assembly; to liberty of movement; to life, liberty and security of the person; and to be free from torture and other cruel, inhuman or degrading treatment or punishment.

This obligation includes the positive duty to enable people to exercise the right of peaceful assembly and not to place restrictions on this right that go beyond those expressly permitted under international law. Law enforcement agents must therefore facilitate assemblies so as to ensure that participants can exercise this right.¹⁰¹ At the same time, they must take effective steps to ensure the safety and rights of participants as well as of bystanders.¹⁰²

In order to ensure this, they need to engage in a dialogue with organizers¹⁰³ and try to foresee problems and identify solutions that give due consideration to the rights of all involved, while also helping to defuse

⁹⁷ See, for example, « Maintien de l'ordre: la dangereuse dérive », https://reporterre.net/IMG/pdf/rapport_de_la_mission_civile_sur_le_maintien_de_l_ordre.pdf. The network "Collective contre les violences policières" informed Amnesty International that it had collected 68 testimonies of disproportionate use of force and policing tactics, such as containment of protesters, that violated French law. On 19 July 2016, the network submitted them to the Ombudsperson (*Défenseur des droits*); meeting with a representative of the network, 14 October 2016.

⁹⁸ Phone interview with a representative of Street Medics in Paris, 2 March 2017. Amnesty International was not in a position to verify either the data provided by the Minister of the Interior or the estimate given by Street Medics regarding the number of protesters who had suffered injuries.

⁹⁹ Email communication with the Ministry of the Interior, 5 May 2017.

¹⁰⁰ See: <http://www.interieur.gouv.fr/Actualites/Communiqués/Manifestation-du-15-septembre-professionnalisme-et-sang-froid-des-forces-de-l-ordre-salues-par-Bernard-Cazeneuve>

¹⁰¹ See the 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. 14, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/018/13/PDF/G1601813.pdf?OpenElement>

¹⁰² A/HRC/31/66, para. 41.

¹⁰³ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27, para. 38, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf. See also A/HRC/31/66, para. 38.

tensions. In general, law enforcement officials should use methods of persuasion, negotiation and mediation with a view to the peaceful settlement of any conflicts.¹⁰⁴

Certain policing tactics are problematic given the obligation to respect the right to freedom of peaceful assembly. These include the containment of protesters (“kettling”), which consists of using police cordons to block protesters from leaving a certain area. The UN Special Rapporteur on the rights to freedom of peaceful assembly and association has concluded that “[this tactic] is intrinsically detrimental to the exercise of the right to freedom of assembly, due to its indiscriminate and disproportionate nature”.¹⁰⁵ Moreover, he highlighted concerns that containment tactics could have a chilling effect on the exercise of freedom of peaceful assembly as people may refrain from attending peaceful demonstrations for fear of being contained.¹⁰⁶ The European Court of Human Rights, referring to the potentially coercive and restrictive nature of this measure, has underlined that it should be used only where there is a pressing need to prevent serious injury or damage.¹⁰⁷

In view of such concerns, containment tactics, if used at all, should be strictly aimed at containing violence in order to enable the rest of the assembly to continue peacefully, and only for the shortest time possible.¹⁰⁸ They should not be used as a means of preventing people from participating in an assembly, even one that has not been declared or has been prohibited. Moreover, it should not be used as a preventive measure deployed on the assumption that some people might engage in violence. People accidentally caught in the containment should be allowed to leave and provision should be made for people who need to access sanitation facilities, medical care or other types of assistance. Proper communication should be established between law enforcement officials and protesters to inform them about the purpose of the containment.

With regard to the use of force generally, the UN Code of Conduct for Law Enforcement Officials states: “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty”.¹⁰⁹ The principles of legitimate purpose, strict necessity and proportionality encapsulated in this provision are elaborated in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Basic Principles), which also set out practical measures to be taken by governments and law enforcement agencies to ensure compliance with Article 3 of the Code of Conduct and with international human rights law and standards more generally.¹¹⁰ In particular, the police must as far as possible apply non-violent means before resorting to the use of force.¹¹¹ Whenever the lawful use of force is unavoidable, the police 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.¹¹² The UN Basic Principles stipulate that in dispersing assemblies that are unlawful but non-violent, law enforcement officials must avoid the use of force or, if that is not practicable, must restrict it to the minimum necessary.¹¹³

Even in instances where demonstrators act in a violent way, police must use only the minimum force necessary to contain the situation and re-establish public order. In doing so, they must differentiate between those who are acting violently and those who are not. If only a minority of demonstrators acts violently, it contravenes the principles of proportionality and minimum use of force if the police use force against the demonstrators generally. Nor is it legitimate to disperse a demonstration simply because some protesters are committing acts of violence. In such instances, any police action should be directed towards the particular individuals involved in violent acts.¹¹⁴

The police in France have used kinetic impact projectiles (also known informally as rubber bullets) as well as chemical irritants (tear gas) and sting ball grenades¹¹⁵ when policing public assemblies.

Kinetic impact projectiles can cause serious injuries, especially if the point of impact is the head, face or upper torso. In order to comply with the principles of necessity and proportionality, and more generally with respect for the right to life and personal integrity, law enforcement officials must not use kinetic impact projectiles as a general tool to disperse a crowd but only to stop individuals engaged in violence against

¹⁰⁴ See for example, UN Basic Principles on the Use of Force and Firearms, Principle 20.

¹⁰⁵ A/HRC/23/39/Add.1, para. 37, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39.Add.1_AUV.pdf

¹⁰⁶ A/HRC/23/39/Add.1,

¹⁰⁷ *Austin and Others v. The United Kingdom* (39692/09, 40713/09 and 41008/09).

¹⁰⁸ Amnesty International, *Use of Force. Guidelines for the Implementation of the UN Basic Principles for the Use of Force and Firearms by law enforcement officials*, “Guideline 7f”.

¹⁰⁹ Article 3, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>

¹¹⁰ Basic Principles on the Use of Force and Firearms, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>

¹¹¹ UN Basic Principle 4.

¹¹² UN Basic Principle 5.

¹¹³ UN Basic Principle 13.

¹¹⁴ OSCE *Guidelines on Freedom of Peaceful Assembly*, para. 167.

¹¹⁵ Sting-ball grenades are explosive grenades that upon firing eject rubber balls into a radius surrounding the device.

persons. They should be used only in situations where it is feasible to target such individuals specifically and must not be fired into the crowd or as random shots. They must never be skip-fired (that is, bounced off the ground) as this makes them highly inaccurate and they should be aimed only at the lower parts of the body so as to minimize injuries.¹¹⁶

Chemical irritants, including those delivered by hand-thrown grenades or weapon-launched projectiles, are by their very nature likely to have an indiscriminate effect, with a high probability of affecting not only those protesters who engage in violence, but also bystanders and peaceful protesters. In order to comply with the principles of necessity and proportionality, chemical irritants should be used only in situations of generalized violence in order to disperse a crowd or when the level of violence has reached such a degree that law enforcement officials cannot contain the threat by directly targeting solely violent individuals. They may only be used when people have the opportunity to disperse, not in confined spaces or in areas where exits are blocked or restricted. Clearly audible warnings must be issued prior to their use and people must be allowed sufficient time to leave the area. Any generalized use affecting to a large extent peaceful protesters or bystanders is likely to be disproportionate.¹¹⁷

Sting-ball grenades carry a risk of serious harm, as shown by the case of Laurent (Section 3.4.1), and cannot be aimed exclusively at persons engaging in acts of violence without presenting a risk of harm to others nearby. It is hard to envisage a public order situation, such as may arise in the policing of assemblies, which cannot be addressed by other more precise and less potentially harmful means. Accordingly Amnesty International calls on the Minister of the Interior to prohibit the use of sting ball grenades in public order situations.

3.2 DOMESTIC FRAMEWORK ON THE USE OF FORCE AND WEAPONS BY LAW ENFORCEMENT OFFICIALS

In France, two specialized forces are responsible for policing assemblies: the *Compagnies Républicaines de la Sécurité* (CRS), which are part of the national police force; and the *Gendarmes Mobiles*, which are part of the gendarmerie. Other agencies tasked with maintaining public order more generally may also be involved in policing public assemblies. They include the *Brigades Anti-Criminalité* (BAC) and the *Compagnies Départementales d'Intervention* (CDI), which form part of the national police force.

The use of force by law enforcement officials in France should comply with the principles of necessity and proportionality and weapons should be used only when absolutely necessary (*necessité absolue*).¹¹⁸ On 28 February 2017, a new law on the use of force and weapons by law enforcement officials¹¹⁹ entered into force.¹²⁰ This spells out explicitly the situations in which law enforcement officials can use weapons but does not make a clear distinction between firearms, which are weapons that by the nature of their ammunition are designed to take life, and less-lethal weapons, which are designed for the use of force without causing death.¹²¹ By contrast, according to the UN Basic Principles, the use of firearms is permissible only in instances where their use is strictly unavoidable to protect life.¹²²

The 2017 law allows law enforcement officials to use weapons without any explicit requirement to give a warning in instances where their own or others' lives or physical integrity are in danger or threatened, or to prevent further killings or attempted killings. Moreover, law enforcement agents can use their weapons after giving two warnings if they are not able to defend their position or if they cannot otherwise stop individuals or vehicles that are likely to threaten their lives or the lives of others.¹²³

¹¹⁶ Amnesty International, *Use of Force: Guidelines for implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Section 7.4.2. http://www.amnestyusa.org/sites/default/files/amnesty_international_guidelines_on_use_of_force-2.pdf

¹¹⁷ Amnesty International, *Use of Force*, p. 158.

¹¹⁸ See Article R434-18 of the Law on Internal Security.

¹¹⁹ Law 2017-258 of 28 février 2017 on Public Security (loi relative à la sécurité publique), <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034104023&dateTexte=&categorieLien=id>

¹²⁰ In the final months of 2016, law enforcement officials organized several public demonstrations calling on the government to strengthen the penalties for crimes perpetrated against them and to review the legal principles regarding the use of force. On 21 December 2016, the government introduced a bill on public security. In doing so, it referred to the specific context faced by law enforcement officials in 2016; pointed out that they had always exercised a high degree of self-control, which contributed to reducing tensions; and highlighted the need to strengthen the judicial safeguards for law enforcement officials when they use their weapons. The justifications provided by the government for proposing the bill is available (in French) at <http://www.senat.fr/leg/pj16-263.html>.

¹²¹ Amnesty International, *Use of Force*, pp. 22-23.

¹²² UN Basic Principle 9.

¹²³ Article 1 of law 2017-258 adding a new article (L 435-1) to the law on National Security.

According to the UN Basic Principles, however, law enforcement officials should always give a warning prior to the use of firearms, unless that would put them or third parties at risk of death or serious injury (Principle 10). Moreover, the use of weapons such as kinetic impact projectiles should be limited to instances where they are necessary to prevent violence against individuals.¹²⁴ The use of such weapons in situations where law enforcement officials cannot defend their position is likely to be at odds with the principles of necessity and proportionality unless defending their position is associated with another compelling law enforcement purpose such as counteracting violence against persons.

Under French law, the use of force, including by using the weapons noted below, is permissible to disperse a public assembly that is likely to constitute a threat to public order.¹²⁵ In such cases, law enforcement officials can use force only when it is strictly necessary to protect public order and when it is used in a way that is proportionate to the threat to public order that they claim to address. The use of force is permissible only after two warnings, unless law enforcement agents are targeted with violence by protesters or cannot defend their position.¹²⁶ For the reasons outlined above, under international law and standards, the use of force to disperse a public assembly on grounds that law enforcement officials cannot defend their position is likely to be disproportionate if the latter is not associated with another compelling law enforcement purpose such as countering violence on individuals or preventing serious damages to properties

French law sets out the specific categories of weapons that can be used by law enforcement agents to disperse a public assembly that is likely to constitute a threat to public order. In general, they can use several types of sting-ball and tear-gas grenades after giving two warnings to protesters.¹²⁷ In instances where law enforcement officials are the targets of violence or cannot defend their position, they can also use other weapons including kinetic impact projectiles without giving a warning.¹²⁸

Further guidelines on the use of specific weapons are included in instructions issued by the directors of the police and the gendarmerie, published in 2014.¹²⁹ In particular, law enforcement officials are permitted to use kinetic impact projectiles only if they hold an authorization, obtained through training, and after clearance from their superiors. Kinetic impact projectiles 40X46mm (fired with the LBD40 launcher, *Lanceur de balles de défense-LBD40*) should be fired only at the chest or limbs of the target and not at the head. Before firing, law enforcement officials should carefully evaluate the context to ascertain, as far as possible, that no one else could be hit and that they are not targeting a vulnerable person (for example, someone who is injured pregnant or has a disability). Similar rules apply for another type of kinetic impact projectiles (44mm), which is usually fired with another launcher (Flash-ball Super Pro). The instructions are not prescriptive with regards to the distance from the target at which kinetic impact projectiles should be fired. The guidelines highlight that they are more likely to cause injury if fired at a distance of less than 10m (40X46mm) or 7m (44mm).

According to the instructions, sting-ball grenades (*Grenade à main de désencerclement*) are intended to be used in instances where law enforcement agents are surrounded or targeted by violent or armed groups.

In July 2015, the French Ombudsperson (*Défenseur des droits*) called on the Ministry of the Interior to introduce a moratorium on the use of the Flash-ball Super-Pro launcher and the 44mm kinetic impact projectiles for public order operations during demonstrations. In particular, he highlighted the numerous cases of injuries suffered by protesters due to the weapon's lack of precision. According to the Association of Christians to Abolish Torture (ACAT), the use of the Flash-ball Super Pro launcher and the 44mm kinetic impact projectiles has declined and progressively been replaced by the LBD40 launcher and 40X46mm projectiles since 2010.¹³⁰

¹²⁴ Amnesty International, *Use of Force*, chapter 7.4.2.

¹²⁵ Article 431-3 of the Criminal Code. A public assembly that is likely to constitute a threat to public order is referred to as an "attoupelement".

¹²⁶ Article L211-9 of the Law on National Security. Article R431-1 of the Criminal Code spells out the modalities through which the warnings must be made.

¹²⁷ Article D211-17 of the Law on National Security. They include: grenades GLI F4 (tear-gas grenade), grenades OF F1 (*grenade offensive*, the use of this was suspended by the Minister of the Interior in 2014 in the aftermath of the death of Rémi Fraisse), sting-ball grenades (*grenade à main de désencerclement*) and the instant grenade (*grenade instantanée*).

¹²⁸ Article D211-19 of the Law on National Security. They include two types of kinetic impact projectiles (40X46 mm and 44 mm) and their launchers.

¹²⁹ See the instructions here : http://circulaire.legifrance.gouv.fr/pdf/2014/09/cir_38735.pdf

¹³⁰ ACAT, *L'ordre et la Force. Enquête sur l'usage de la force par les représentants de la loi en France*, p. 29, https://www.acatfrance.fr/public/rapport_violences_policiers_acat.pdf:

3.3 STRATEGIES AND TACTICS TO MAINTAIN PUBLIC ORDER

Many of the demonstrations which took place between March and September 2016 to oppose the labour law reforms were organized by trade unions who rejected the reform overall and called on the government to withdraw the bill.¹³¹ Trade unions, civil society organizations and many activists who spoke to Amnesty International explained that most of the protesters who attended the marches joined the trade union blocs.¹³² However, some protesters decided to march autonomously, ahead of the trade union blocs.

According to the testimonies collected by Amnesty International as well as the field observations carried out by the organization's representatives during three protest marches in Paris,¹³³ a minority of the autonomous protesters engaged quite regularly in acts of violence, especially damaging buildings and throwing objects at law enforcement officials. Representatives of the Ministry of the Interior told Amnesty International that law enforcement officials had faced many challenges in maintaining public order during protests against labour law reforms. In particular, they stressed that protesters had used violence strategically and in a coordinated manner.¹³⁴

Nevertheless, in some instances, law enforcement officials resorted to the use of tactics that prevented peaceful protesters from exercising their right to freedom of assembly and were not necessary to maintain public order.

3.3.1 THE CONTAINMENT OF PROTESTERS

Some of the strategies and tactics used by law enforcement agencies to maintain public order during demonstrations against the labour law reforms entailed unlawful restrictions on the right to peaceful assembly. In particular, many activists and representatives of trade unions referred to many instances in which protesters were contained by police,¹³⁵ which can result in an unlawful restriction of the right to freedom of peaceful assembly (see Section 3.3.1).

Representatives of the Paris Police Prefecture told Amnesty International that the police had indeed relied on containment to restrict the freedom of movement of protesters during the public assemblies against the labour law reforms.¹³⁶ In particular, they argued that the tactic had been used to block marches that had not been notified to the authorities or that were staged outside agreed routes. However, they highlighted that they were relying less on containment since a November 2015 decision of the Ombudsperson (*Défenseur des droits*) finding its use in policing a public assembly in December 2013 disproportionate on the basis of its duration (about two hours) and the peaceful nature of the assembly.¹³⁷

Many representatives of trade unions told Amnesty International that police had often blocked the main body of protest marches in order to isolate protesters at the front who were carrying out violent acts. According to many of those interviewed, such containment tactics were often used in ways which did not appear to be aimed at facilitating the arrest of protesters involved in violence and were ineffective in doing so.

Amnesty International observers at demonstrations noted that law enforcement officials restricted the freedom of movement of peaceful protesters by using containment tactics, as happened, for example ahead of the protest organized on 15 September in Paris. On that day at about 12.30pm, law enforcement officials blocked about 50 protesters who gathered outside the train station Gare de Lyon with the intention of walking to Place de la Bastille, from where a protest march was scheduled to depart at 2pm. Amnesty International's observers noted that none of the protesters were engaging in violent acts. At about 2.15pm, police allowed those protesters at Gare de Lyon who produced their identity documents to leave. After a few

¹³¹ The trade unions who jointly organized the protests were: the Confédération Générale du Travail (CGT), Force Ouvrière (FO), Fédération Syndicale Unitaire (FSU), Solidaire-Sud, Union Nationale des Etudiants de France (UNEF), Union Nationale des Lycéens (UNL) and the Fédération Indépendante et Démocratique Lycéenne (FIDL).

¹³² Meeting with representatives of: CGT in Paris, 28 September 2016 and Rennes, 9 November 2016; CGT Police in Paris, 29 September 2016; UNEF in Paris, 28 September 2016 and Nantes, 10 October 2016; CNT in Lille, 27 September 2016 and Paris, 26 September 2016; Solidaires-Sud in Paris, 29 September 2016, Rennes, 8 November 2016 and Nantes, 11 October 2016; Street Medics in Paris, 26 September 2016 and Nantes, 11 October 2016; Mouvement Inter Luttes Independent (MILI) in Paris, 14 October 2016; and several youth activists in Nantes 11 October 2016.

¹³³ Four Amnesty International's representatives observed the public assemblies in Paris on 28 June, 5 July and 15 September 2016.

¹³⁴ Meeting with the representatives of the Ministry of the Interior, 16 December 2016.

¹³⁵ *Ib.* 132

¹³⁶ Meetings with representatives of the Police Prefecture of Paris, 8 July 2016 and 22 February 2017.

¹³⁷ Decision MDS-2015-298 of 25 November 2015, <http://www.defenseurdesdroits.fr/fr/actions/protection-des-droits-libertes/decision/decision-mds-2015-298-du-25-novembre-2015-relative-0>.

minutes the others who refused collectively to be subjected to identity checks were also allowed to leave and to reach Place de la Bastille.

CONTAINMENT OF A PROTEST AGAINST POLICE HARASSMENT OF MIGRANTS IN PARIS

On 4 August, a group of civil society organizations notified the authorities of their plans to march from Stalingrad (10th district of Paris), where hundreds of migrants were camping, to Place de la République, about 2km away, to protest against police harassment and ill-treatment of migrants.¹³⁸ Aubépine, a Paris-based activist, was one of those who signed the notification.

On 5 August, she received a phone call from the Police Prefecture of Paris (*Département pour l'Ordre Public et la Circulation*) informing her that, due to the state of emergency and other summer events in Paris, the authorities did not have the policing resources to ensure public order during the march. The Prefecture said, however, that as an alternative there could be static demonstration in Place de la République. The organizers agreed with that suggestion. However, on 6 August, police prevented about 150 protesters from leaving the camp in Stalingrad to reach the planned static demonstration in Place de la République by cordoning them off for several hours until about 7pm. Aubépine told Amnesty International: "It is incredible that they managed to find the resources to block us, but not to ensure public order for a march. The migrants in Stalingrad should have been able to go to République for the meet, we told them it was not a march, but they kettled us for many hours."¹³⁹

The following day, Aubépine and Houssam, another organizer, spent nine hours in detention and were subsequently charged for having organized a public assembly that did not comply with the information provided by the notification (Article 431-9 of the Criminal Code). On 9 November, the High Court of Paris acquitted them. The Court highlighted that there was no evidence that the march of migrants towards Place de la République constituted any threat to public order.

In a meeting with Amnesty International, the representatives of the Paris Police Prefecture stated that in some instances police had resorted to containment tactics to prevent protesters from staging a march that had not been notified. They considered that containment tactics constituted a necessary measure to prevent possible threats to public order.¹⁴⁰ However, nothing suggests that the protesters who were contained on 15 September outside the Gare de Lyon were organizing a march separate from the public assembly that had already been notified. Nor, did they constitute a threat to public order. Similarly, nothing suggests that the protesters who were contained in Stalingrad on 4 August were organizing a march or that they constituted a threat to public order. It therefore appears that French authorities disregarded the principle that public assemblies should be presumed to be peaceful. They assumed instead that the protesters in the two aforementioned instances could have constituted a threat and implemented strategies that unnecessarily restricted their right to freedom of peaceful assembly.

CONTAINMENT OF PROTESTERS ON PONT DE LA CONCORDE

On 5 July, the authorities contained a group of peaceful protesters for several hours. The protesters had intended to stage a spontaneous demonstration after the official march to protest against the labour law reforms.

On that day, the government had made use for the second time of a special procedure provided for by Article 49.3 of the French Constitution allowing it to pass the reforms without a formal parliamentary vote.¹⁴¹ At the end of the official march, some protesters announced on social media that they would gather in front of the National Assembly to protest against the government's decision.

According to the four Amnesty International observers on the march, as well as the statements of eyewitnesses subsequently collected by Amnesty International, law enforcement agents restricted the movement of hundreds of peaceful protesters for at least four hours in a manner that was disproportionate, effectively preventing them from exercising their right to peaceful protest.

The four Amnesty International observers reached the area surrounding the bridge Pont de la Concorde, a few hundred metres from the National Assembly, at about 5.30pm. Police were cordoning off the southern side of the bridge and allowed the observers to access the bridge from the northern side, which was blocked shortly afterwards by another police cordon. Several hundred peaceful protesters were stuck on the bridge,

¹³⁸ The organizers did not notify the public assembly within the delay established by French law (max 3 days). They told Amnesty International that the Police Prefecture had nonetheless acknowledged receipt of the notification despite the delay.

¹³⁹ Interview with Aubépine, 12 October 2016.

¹⁴⁰ Meeting with the representatives of the Paris Police Prefecture, 22 February 2017.

¹⁴¹ The government used this procedure three times, on 9 May, 5 July and 20 July. See: http://www.assemblee-nationale.fr/14/dossiers/nouvelles_libertes_entreprises_actifs.asp.

unable to move forwards or backwards. The police did not provide protesters with any information regarding the purpose of the containment.

Martha, a protester who reached the area in front of the bridge at about 5.30pm, told Amnesty International that she was surprised by the strength of the police presence there. She said police had told her to proceed to the bridge after searching her bag; shortly afterwards she realized both exits had been blocked off. She told Amnesty International: “I was prevented from leaving the bridge for about three hours. We asked questions and police told us they were abiding by the instructions they had received. When I could finally get away, the crowd surged and I held myself upright against the police officer who was blocking the way in front of me. He sprayed tear gas directly into my eyes with the tear gas canister in his hand”.¹⁴²

Mariana Otero, a film-maker who was prevented from filming the violent arrest of a protester (see Section 3.5) and who was subsequently briefly detained, told Amnesty International that law enforcement officials did not allow anyone to leave the bridge and that she was not allowed to leave to go to the toilet until about 10.30pm, shortly before the containment ended.¹⁴³

Representatives of the Paris Police Prefecture told Amnesty International that the authorities wanted to prevent people on the bridge joining a protest that had not been notified.¹⁴⁴ However, this was a spontaneous protest in response to a decision taken by the government that day. Under international human rights law and standards, law enforcement officials should protect and facilitate peaceful assemblies and that includes spontaneous assemblies where it has not been practicable to notify the authorities in advance and which should be exempt from notification requirements.¹⁴⁵ The containment of peaceful protesters on Pont de la Concorde therefore constitutes an unnecessary restriction of the right to peaceful assembly, which effectively prevented people from exercising that right.

3.3.2 IDENTITY CHECKS AND SEARCHES

Under French law, law enforcement officials can check the identity of a person to prevent a breach of public order without obtaining prior authorization from prosecutorial authorities.¹⁴⁶ In addition, identity checks can be conducted in more specific circumstances, such as when there are reasonable grounds to suspect that someone has or is about to commit a crime.¹⁴⁷

In June 2016, Parliament passed a law that increased the ordinary powers of law enforcement officials to conduct searches of vehicles or bags with a view to preventing a serious breach to security¹⁴⁸ and to carry out identity checks to investigate specific offences, including terrorism-related offences.¹⁴⁹

The Law on the State of Emergency allows prefects to designate special security areas (*zones de sécurité et défense*),¹⁵⁰ to which public access can be restricted.¹⁵¹ Moreover, prefects can authorize law enforcement officials to conduct identity checks in special security areas, as well as searches of luggage or vehicles, to prevent a breach to public order without seeking prior authorization from prosecutorial authorities.¹⁵²

Amnesty International observers noted that law enforcement agents routinely searched the bags of protesters who were gathering ahead of the public assemblies organized in Paris on 28 June and 5 July. On 28 June, police seized saline eyewash from Nicolas, an Amnesty International observer, on Place de la Bastille where police were searching protesters before letting them into the assembly point. He said: “Police asked me why I was carrying the eyewash. I told them I needed it to rinse my eyes in case tear gas was fired. A police officer replied by pointing out that ‘it is precisely for that reason that it was forbidden. Otherwise, how can we effectively disperse protesters?’”

¹⁴² Interview with Martha, 15 December 2016.

¹⁴³ Interview with Mariana Otero, 16 December 2016.

¹⁴⁴ Meeting with the representatives of the Police Prefecture of Paris, 8 July 2016.

¹⁴⁵ A/HRC/31/66, para. 23.

¹⁴⁶ Article 78.2 of the Code of Criminal Procedure.

¹⁴⁷ Article 78.2 of the Code of Criminal Procedure.

¹⁴⁸ Article 78.2.4 of the Code of Criminal Procedure. Authorization from prosecutorial authorities is required in cases where the individual subject to the search does not consent to it.

¹⁴⁹ Article 78.2.2 of the Code of Criminal Procedure. Prior authorization from prosecutorial authorities is required.

¹⁵⁰ As of 21 April 2017, 14 special security areas remained designated as such. Special security areas have been established in connection with specific events, including COP 21, See: <http://www2.assemblee-nationale.fr/14/commissions-permanentes/commission-des-lois/controle-parlementaire-de-l-etat-d-urgence/controle-parlementaire-de-l-etat-d-urgence/donnees-de-synthese/donnees-relatives-a-l-application-de-l-etat-d-urgence-depuis-le-22-decembre-2016/synthese-des-mesures-administratives-prises-en-application-de-la-loi-du-3-avril-1955>

¹⁵¹ Article 5.2 of the Law on the State of Emergency.

¹⁵² Article 8.1 of the Law on the State of Emergency.

According to all the trade union representatives who spoke to Amnesty International, as well as many protesters and first-aid workers, the police systematically seized objects that protesters were carrying to protect themselves from tear gas, including goggles and saline eyewash.¹⁵³ Representatives of the Police Prefecture of Paris explained to Amnesty International that law enforcement agents had conducted bag searches after obtaining instructions from the public prosecutor's office and that protesters could recover all the seized objects at a later stage.¹⁵⁴ However, neither Amnesty International's observers nor other protesters who talked to Amnesty International received specific information from law enforcement officials on how to recover the seized objects.

Five first-aid workers in Nantes told Amnesty International that searches had become more systematic as of May and resulted in equipment, such as goggles and saline eyewash, being seized. On some occasions, they said law enforcement agents had justified the measure by referring to decrees issued by the prefecture prohibiting any object that could be used as a weapon.¹⁵⁵ Annaliese, a first-aid worker in Nantes, told Amnesty International: "Every time we explained that we needed those materials to provide first-aid care to protesters who for example did not feel well because they had been exposed to tear gas. They told us not to come to protests if we were afraid that tear gas could be used".¹⁵⁶

The Prefect of Loire-Atlantique issued several such decrees ahead of public demonstrations, including for example on 18 and 27 April.¹⁵⁷ The decrees banned the carrying of objects that could be used to threaten people or to cause injury or death in large parts of the municipality of Nantes.¹⁵⁸ In a meeting with Amnesty International the Prefect of Loire-Atlantique stated that neither those decrees nor the instructions given to law enforcement officials include a prohibition on first-aid materials and that he was not aware that first-aid materials had been seized.¹⁵⁹

Under international law and standards, law enforcement officials should not use intrusive anticipatory measures in the context of public assemblies. Participants on their way to an assembly should not be stopped and searched unless there is a clear and present danger of imminent violence.¹⁶⁰ Sometimes, the authorities may have specific information regarding the intention of some protesters to engage in violent and unlawful acts in the context of public assemblies. In such cases, identity checks carried out ahead of public demonstrations to identify such protesters could have met the criteria of legitimate purpose, necessity and proportionality. However, the seizure of first-aid materials appears to be an arbitrary measure that was neither necessary nor proportionate to maintain public order.

3.4 UNNECESSARY AND EXCESSIVE USE OF FORCE

While the authorities do collect data on law enforcement agents who sustain injuries in the context of public assemblies, no figures are available regarding protesters injured as a result of excessive use of force by law enforcement agents involved in policing public assemblies. In 2015, the National Assembly recommended the establishment of a system to record such data but to date little progress has been made in implementing this recommendation.¹⁶¹

Regarding public assemblies against the labour law reforms, the Ministry of the Interior stated that 32 protesters been injured in Paris. However, first-aid workers put the overall number of protesters injured in Paris alone in such protests at around 1,000.¹⁶² The Ministry pointed out that data are not available nationally and referred to the complaints filed for excessive use of force as a proxy. In particular, 101

¹⁵³ *ib.* 132

¹⁵⁴ Article 78.2.4 of the Code of Criminal Procedure. Meeting with the representatives of the Paris Police Prefecture, 22 February 2017.

¹⁵⁵ Interview with first-aid workers in Nantes, 11 October 2016.

¹⁵⁶ Interview with Annaliese (pseudonym), first-aid worker in Nantes, 11 October 2016.

¹⁵⁷ The decrees are based on the ordinary powers of prefects (Article L211-3 of the Law on National Security) and not on emergency powers. The decrees are available at <http://www.loire-atlantique.gouv.fr/content/download/20970/150696/file/RAA%20sp%C3%A9cial%20n%C2%B0%2031%20du%2018%20avril%202016.pdf>, <http://www.loire-atlantique.gouv.fr/content/download/21075/151272/file/RAA%20sp%C3%A9cial%20n%C2%B0%2036%20du%2027%20avril%202016.pdf>

¹⁵⁸ In French "armes par destination", Article 132-75 of the Criminal Code.

¹⁵⁹ Meeting with the Prefect of Loire-Atlantique, 1 March 2017.

¹⁶⁰ A/HRC/31/66, para. 49(g), OSCE *Guidelines on Freedom of Peaceful Assembly*, para. 154.

¹⁶¹ http://www.assemblee-nationale.fr/14/rap-eng/r2794.asp#P470_127531, p. 51.

¹⁶² Phone interview with a representative of Street Medics in Paris, 2 March 2017. Amnesty International was not in a position to verify the data provided by the Ministry of the Interior and by the movement Street Medics regarding the number of protesters who had suffered injuries.

individuals had filed complaints of excessive use of force by law enforcement officials (99 police officers and two gendarmes) during anti-labour law public assemblies.¹⁶³

The cases collected by Amnesty International, some of which are highlighted below, raise concerns regarding the unnecessary and arbitrary use of force by law enforcement officials. These include the use of hand-held batons against protesters who were peaceful and did not pose any threat to law enforcement agents (Laurent, Gildas, Sandrine and Stéphane). In other instances, in situations where some protesters were committing violent acts, law enforcement officials used excessive force against protesters who were not involved in the violence (Jean-François, Paco and Philippe). The cases below raise concerns regarding the failure of law enforcement officials to comply with international human rights law and standards regarding the use of force.

International human rights standards require police officers to display their identity badges in order to facilitate accurate reporting of violations and accountability for excessive use of force or other unlawful behaviours. These tags should be visible in all circumstances and not be covered by other parts of clothing or by other protective gears during public order situations.¹⁶⁴ French law also requires officers to wear a personal identification number,¹⁶⁵ including when exercising their functions in plainclothes. However, many civil society organizations and individuals who experienced unnecessary or excessive use of force told Amnesty International that law enforcement officials often either did not wear their personal identification number or they did not wear it visibly. According to the Director of the IGPN, officers usually wear their personal identification number. However, she explained that it may be covered by the specific protective equipment worn by police at public assemblies. She argued that while the personal identification number improved police accountability in some contexts, especially when carrying out identity checks, it was of little use in the context of usually crowded public assemblies. She added that the lack of visible identification did not constitute a barrier to investigate allegations of excessive use of force by law enforcement officials when policing public assemblies and that investigators can rely on other elements, including witnesses or video footage, to identify suspects in those cases.¹⁶⁶

3.4.1 UNNECESSARY AND ARBITRARY USE OF FORCE

Under international human rights law and standards, law enforcement officials should, wherever possible, use non-violent means before resorting to the use of force. They should use force only when it is unavoidable for a legitimate law enforcement objective, and always in proportion to the harm they are seeking to prevent, which implies balancing the potential negative consequences and harm of the use of force against its benefits.

Amnesty International has documented instances in which the use of force by law enforcement officials did not appear to be necessary as it was directed against protesters who were peaceful and did not appear to pose a threat to public order. In some cases, law enforcement officials used force in an arbitrary manner, without making a distinction between different protesters in circumstances where only some of the protesters were engaging in violent conduct but others were not.



LAURENT

On 15 September 2016, Laurent, a member of the Solidaires-Sud trade union, lost sight in his right eye following injuries sustained as a result of the explosion of a sting-ball grenade fired by an officer from the Corps Républicains de Sécurité (CRS) in Place de la République, Paris.

That day, Laurent had been demonstrating in Paris against the labour law reforms. After joining the demonstration in Bastille around 2.30pm, he walked with the Santé-Sud union bloc reaching Place de la République, where demonstrators were due to disperse, at around 4.20pm. A small group of demonstrators were singing, but did not represent a threat to police. However, two groups of CRS officers fired tear gas grenades twice towards the demonstrators positioned around the statue in the middle of Place de la République, before separating to cover more ground. Just as Laurent was about to leave Place de la République, another police charge occurred. He told Amnesty International: “I was not far

¹⁶³ Email communication with the Ministry of the Interior, 31 January 2017.

¹⁶⁴ ¹⁶⁴ Amnesty International, Use of Force, para. 3.5.2, p. 80.

¹⁶⁵ Article R 434-15 of the Law on National Security, Article 2 of decree INTC1327617A, <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028387708&dateTexte=20170308>.

¹⁶⁶ Meeting with Marie-France Monéger, Director of the IGPN, 23 February 2017.

from the place where the demonstrators could leave, I wanted to leave because the situation was getting more and more tense. I remember seeing a cloud of tear gas in the air. Then I heard a loud explosion near me and felt appalling pain. It was 4.53pm when the explosion occurred. I didn't realize what had happened. I knelt on the floor and then the street medics took care of me. My eye had been hit and I was losing a lot of blood. I was scared it was bleeding on the brain. I asked the CRS to call an ambulance but they replied saying that wasn't their job. I started to shout and after a few minutes they finally called an ambulance. I had to wait for around 40 minutes before the ambulance arrived."¹⁶⁷

Laurent was taken to the Accident and Emergency department of the Hôtel Dieu Hospital, where doctors told him his eye had burst and he would lose sight in that eye. They operated on Laurent that evening and he remained in hospital for eight days. On 17 September, two investigators from the IGPN visited him in hospital. Laurent explained to Amnesty International that the IGPN completed its inquiry into the case at the end of December and that his lawyer had been able to take notes regarding the final report, to which Laurent still hadn't had access when he was interviewed by Amnesty International. The report identified the CRS officer who had fired the sting-ball grenade. In addition, it underlined that the police officer had not been in any danger when it was fired, that he had not received an order to fire and he was not authorized to use this type of weapon.

The use of a sting-ball grenade in this context appears to be contrary to French law, according to which this weapon can be used only after two warnings to disperse and in the context of an assembly that constitutes a threat to public order and, more specifically, in instances where law enforcement officials are surrounded or targeted by violent groups (see Section 3.2). Moreover, it seems that the police officer was not using sting-ball grenades according to the French guidelines on the use of weapons which state that sting-ball grenades should be fired at ground level. That being the case, this would amount to an abusive use of force resulting in serious injury, and as such there must be a thorough and impartial investigation with a view to prosecution of the officer responsible. At the time when this report went to press (May 2017), Laurent was waiting to be called to see the examining magistrate following the indictment of the police officer.

Laurent explained that there are two things of particular importance to him: "I want the police officer in question to be convicted as the police are rarely found guilty in this type of incident and that creates a climate of impunity. In addition, I think that sting-ball grenades should be banned given how dangerous they are."

In February 2017, many months after the incident, Laurent was still experiencing the consequences on his mental health: "I experienced post-traumatic shock, it took me a long time to handle it and to reach a point where I am not overwhelmed by my emotions. I had to go through the private sector and pay a therapist myself as the waiting time to find qualified professionals in the public health sector are very long".



SANDRINE

On 9 April, Sandrine and her partner, Romuald, participated in a march organized by trade unions in Rennes to protest against the labour law reforms. After the march, they joined a group of protesters who headed towards the city centre. Shortly before 3pm, Sandrine reached Place des Lices where some protesters had set some wooden crates alight in the middle of the square. Sandrine told Amnesty International that she had realized that the situation was escalating but could not leave as all the exits had been blocked by police. She said no one around her was using violence. She described the police use of force that followed: "I was at the corner of rue Juillet and the Place des Lices, with around a hundred other demonstrators. Suddenly the CRS [riot police] charged the demonstrators without warning. I was caught up in the crush of people trying to run away. I managed to escape into a small side street and there five or six of the CRS running down the street in the opposite direction ran straight into the people who were with me. A policeman in front of me said "get out of here, you silly bitch (connasse)" and smacked me across the hips with his truncheon. The other police were also hitting the other people, indiscriminately. There was a lot of tear gas, I couldn't see anything. We were caught in a trap; all the streets were blocked by the CRS. I think it's absurd to claim you want to disperse the crowd without leaving them anywhere to go."¹⁶⁸

¹⁶⁷ Interview with Laurent, 24 February 2017.

¹⁶⁸ Interview with Sandrine and Romuald, 9 November 2016.

The use of force in this context, and in particular of hand-held batons on peaceful protesters, appears to be inconsistent with the principles of necessity and proportionality required by both international and French law and standards on the use of force by law enforcement officials (see Sections 3.1 and 3.2).

On the same day, Sandrine filed a complaint at a police station about the injuries she had sustained. In particular, she had a large bruise on her thigh. She also sent an open letter to the Prefect condemning the excessive use of force by police.¹⁶⁹ She told Amnesty International she had been outraged by the authorities' declarations to the media according to which "young violent protesters" were entirely responsible for the clashes.¹⁷⁰ She told Amnesty International: "I have been demonstrating since I was very young and I have never seen such aggression from the police. I am a 50-year-old woman, a manager in the private sector and a pacifist, and I want to set the record straight when the authorities say that the police only went after the hooligans during the demonstrations in spring 2016."

On 22 July Sandrine received a letter from police authorities informing her that they had closed her case.



STÉPHANE

Stéphane, a member of the SUD-PTT trade union in Rennes, alleged that police had resorted to force unnecessarily against him and other protesters on 31 May 2016.

On that day he attended the public demonstration against the labour law reforms. At about 12pm, he had gathered with other protesters in the city centre (place Bretagne); the march was due to set off at 12.30pm. Shortly afterwards, police blocked access to rue Gambetta to prevent protesters reaching the historic city centre (see Section 1.4.3). Stéphane told Amnesty International that about 50 protesters including himself entered mostly empty public building.

According to Stéphane, about 15 police officers (*Brigade Anti-Criminalité* and *Corp Départemental d'Intervention*) followed the protesters indoors and shortly afterwards started beating them with hand-held batons, even though the protesters were unarmed and peaceful. He said: "A number of demonstrators were beaten with truncheons, I went upstairs with other demonstrators to get away from these physical attacks." A member of the BAC (*Brigade Anti-Criminalité*) and another from the CDI (*Corps Départemental d'Intervention*) came upstairs. We all raised our hands, we had no weapons, we were totally peaceful. I was identified as a union member because I was wearing a Solidaires badge. We moved to go downstairs, and as I started to walk down the stairs, I was hit twice in the back by the truncheon."¹⁷¹

Some artists who were in the building when the events occurred reported to the media that police had used force against peaceful protesters.¹⁷² In a video available on the internet and shot from outside the building, a man shows bruising on his body which he alleged was caused when he was beaten inside the building. As the protesters were leaving the building peacefully, some with their hands raised, in full view of the press and public outside the building, a police officer hit one of them with a hand-held baton as he was walking out of the door, an entirely unnecessary and gratuitous use of force.¹⁷³

On 6 June, Stéphane's general practitioner issued a medical certificate, seen by Amnesty International, describing the bruises he had sustained. On 7 June, Stéphane wrote to the Office of the Public Prosecutor of Rennes reporting the arbitrary use of force which he alleged had been used against him. On 24 June, he was interviewed by the Rennes-based IGPN which was investigating the case. He recognized the police officer who had hit him on two videos shown to him by the investigator. On 21 December 2016, the Prosecutor's Office of Rennes informed Stéphane that the investigation into his case had been closed. The Prosecutor highlighted that the police officer had denied to have resorted to the use of violence against Stéphane and that none of the elements collected in the course of the investigation proved the contrary.

¹⁶⁹ The letter is available at: <https://blogs.mediapart.fr/rene-doudard/blog/130416/sandrine-lucain-lettre-ouverte-monsieur-patrick-strzoda-prefet-d-ille-et-vilaine>

¹⁷⁰ <http://www.leparisien.fr/rennes-35000/manifestation-contre-la-loi-travail-a-rennes-8-interpellations-le-prefet-denonce-des-casseurs-09-04-2016-5701809.php>

¹⁷¹ Interview with Stéphane, 10 November 2016.

¹⁷² <http://www.lesinrocks.com/2016/06/01/actualite/a-rennes-des-artistes-t%C3%A9moignent-de-brutalit%C3%A9s-polici%C3%A8res-11833608/>

¹⁷³ <https://taranis.news/2016/05/rennes-la-bataille-pour-le-centre-ville-part-11/>



GILDAS

Gildas, a university professor in his fifties living in Nantes, told Amnesty International that he had sustained injuries on two occasions when police allegedly fired a sting-ball grenade and a kinetic impact projectile at him.

On 5 April, Gildas was standing in Place de Bretagne together with a colleague. About a dozen protesters were looting GO Sport, a sports equipment retailer, located on the square. At about 6.30pm, before police arrived at the scene to deal with the looters, Gildas and his colleague decided to leave the square. When they reached the intersection between rue du Chapeau Rouge and rue Molière, they saw a police cordon of about 10 officers (*Brigades Anti-Criminalité*). They then turned left on rue Boileau, leaving the cordon behind them. According to Gildas, they did not resemble the protesters who were looting the retailer, especially as they were considerably older. They were walking peacefully without posing any threat to police.

After they had walked for a few meters, an object thrown from behind them exploded in front of Gildas and his colleague, less than 2m from their eyes. They were hit by several splinters which left a bruise on Gildas' forehead and several bruises on his colleague's body. At home, Gilda's wife found a small piece of paper in his hair. Gildas said it was red and white and, following some research on the internet, he identified it as the label of the sting-ball grenade DMP (*dispositif manuel de protection*) SAE 403. The use of a sting-ball grenade in this context appears at odds with French law according to which law enforcement officials can resort to this weapons only when a public assembly constitutes a threat to public order, after giving warnings to protesters and where law enforcement agents are surrounded or the targets of violence (see Section 3.2).

On 9 April, Gildas attended another protest in Nantes organized by trade unions against the labour law reforms. At about 4.30pm, he and a colleague witnessed clashes between police and protesters. A police cordon of about 20-25 officers was deployed at the intersection between allée Turenne and rue du Guesclin. Between 20 and 30 protesters were throwing bottles and pebbles. Police responded by firing kinetic impact projectiles (rubber bullets) and sting-ball grenades. At some point, Gildas decided to move further away. He told Amnesty International:

"That was when we realised that a BAC team had arrived to provide back-up to their colleagues being harassed by the demonstrators. And that was when I was hit by a projectile (a rubber bullet) on my left thigh. Although I quickly left the site due to the pain I was in and the general confusion, I still had time to see the projectile that hit me bounce off the outer left side of my thigh and land on the floor (a cylindrical projectile with a rounded tip, black in colour). There was therefore no doubt that it was ammunition fired from a defensive weapon like an LBD40. It true that it was fired from around 40 metres away (measured using Google Earth) which meant that I sustained only a minor injury. It was nothing more than a painful bruise deep within the muscle that took a little over two weeks to disappear. But that doesn't take away from the fact that I was not in a group of aggressive demonstrators, that I was standing still with a colleague in an area that was not crowded and that I was not in any way involved in the violence against the police that was taking place at the time."¹⁷⁴

In order to comply with international law and standards, law enforcement officials should only fire kinetic impact projectiles to stop individuals engaging in violence against others and in situations where it is feasible to target them specifically. According to the guidelines for the use of weapons, before firing, law enforcement officials should ensure that no one could be hit by a kinetic impact projectile other than the person targeted (see Sections 3.1 and 3.2).

On 19 June, Gildas filed a complaint with the Prosecutor's Office of Nantes. On 16 September 2016, the IGNU, who conducted the investigation, took Gildas' witness statement. On that occasion, the police authorities told him that they had found the recordings of the radio conversations between the police team who allegedly shot the grenade against him on 5 April and their chain of command. Police said the protesters were attacking them with pebbles and stones and that was the reason why they had to fire the grenade. The police officer who dealt with Gildas' complaint told him that a helicopter had been taking images of the protest on 9 April. However, it had already left the area where the rubber bullet was allegedly fired. When this report went to press (May 2017), Gildas had not received any further information about the investigation.

¹⁷⁴ Interview with Gildas, 12 December 2016.

3.4.2 EXCESSIVE USE OF FORCE

In the following cases, some use of force may have been legitimate, in particular to disperse public assemblies where some protesters were targeting law enforcement agents with violence. However, Amnesty International is concerned that the level of force used, including when carrying out arrests, went beyond what was necessary and proportionate and resulted in harm outweighing the benefits of its use.



JEAN-FRANÇOIS MARTIN

On 28 April 2016, Jean-François, a 20-year-old student of geography at the University of Rennes II, attended a public assembly organized in Rennes against the labour law reforms. When the official march ended, he joined a group of protesters who headed towards the historic city centre.

Protesters reached Place de la République at about 1.30pm; they could not walk on any further as police were blocking all the access points to the city centre. Clashes ensued between police and protesters. Jean-François left the intersection where he was standing, between quai Chateaubriand and rue Jaurès, when police started charging protesters and crossed the bridge connecting quai Chateaubriand with quai Emile Zola. He told Amnesty International:

“Once I reached the other side of the bridge, I saw the CRS charge towards the people on the bridge. There was a squad of CRS on the other side, 30 or 40 metres away. I was standing behind a bench. I hadn’t seen that they were pointing the weapon at me. When I was hit, I realised it was an LBD that had been fired, I lost a lot of blood, the street medics took care of me. I was taken to hospital where I underwent two operations, the first lasting five hours and then a shorter one a few days later. I spent five days in hospital”.¹⁷⁵

Jean-François lost his left eye. He told Amnesty International that the forensic doctor had certified that the injury had been caused by a rubber ball projectile fired with a launcher LBD40. The Prosecutor’s Office opened an investigation shortly afterwards, to be carried out by the IGPN. Jean-François told Amnesty International:

“I am very angry. Before that I tended to trust the police. Some of the police were hit and I don’t think that is right. But to me it was inconceivable that that could happen, that I could be shot. Since 2007, 29 people have lost an eye due to police violence, 28 from the firing of a flash ball or an LBD, if I am not mistaken. I’m not interested in the person who shot me being put in jail. I want the state to recognize the mistake”.

In an open letter, the Prefect of Ille-et-Vilaine sought to justify the policing of the public assembly on 28 April. He stated that the use of force was necessary to counter violent protesters who were trying to reach the historic city centre.¹⁷⁶ However, law enforcement officials used kinetic impact projectiles to target a person who was apparently not using violence or posing a threat to anyone. Moreover, the projectile hit Jean-François at head height, indicating that the weapon was aimed not at the lower part of the body, as required by domestic guidelines on the use of these weapons (see Section 3.2) and the officer therefore failed to take into account the possible harm associated with the use of that weapon.



PACO

On 17 May, Paco, a 16-year-old student, attended a public demonstration organized in Paris against the labour law reforms. He and five friends reached Place Denfert-Rochereau (14th district), where the march ended at about 4.30pm. He told Amnesty International that the situation was quite tense there; some protesters were clashing with police, the metro station had been closed and the air was saturated with tear gas.

At some point, Paco lost sight of his friends and remained on his own on the pavement in front of the flower shop Monceau Fleurs. Police arrested him there. Paco told Amnesty International that a group of

¹⁷⁵ Interview with Jean-François Martin, 7 November 2016.

¹⁷⁶ <http://www.ouest-france.fr/bretagne/rennes-35000/manifs-rennes-le-prefet-repond-au-president-de-lunef-4198048>

four officers (*Brigades Anti-Criminalité*) used excessive force against him during the arrest, even though he did not offer any resistance. He was kicked and hit at least three times with hand-held batons.

Amnesty International watched a video shot by two film-makers (see Section 3.5) that showed four people in plain clothes kicking and hitting Paco several times in front of the flower shop. The two film-makers told Amnesty International that Paco was standing on the pavement and was not engaged in any violent acts.¹⁷⁷ However, police arrested him for allegedly having thrown projectiles and for having masked his face during the demonstration. Paco told Amnesty International that police were very threatening while they were taking him to the 14th district police station: “They told me that they had found a projectile in my pocket, that I was going to get 6 months in jail and that I wasn't going to be able to take my baccalaureate exams”.¹⁷⁸

Paco spent 48 hours in police detention. The forensic certificate seen by Amnesty International described the many bruises he sustained; he was signed off sick for six days. The police officers who arrested him claimed that they had seen a projectile fall out of Paco's pocket onto the pavement and that he was already injured at the time of the arrest.

Paco was charged with violence against police officers and masking his face while participating in a public demonstration.

On 23 May, both Lili, Paco's mother, and Paco filed a complaint with the Paris branch of the IGPN about Paco's treatment by police. Lili told Amnesty International that she had to insist several times before she was allowed to file the complaint. She provided the IGPN with the video shot by the two film-makers who witnessed Paco's arrest.

When this report went to press (May 2017), Paco was still waiting to receive information concerning the date of his trial and had received no further information concerning the complaint he had filed against police.



PHILIPPE

On 31 March, Philippe, a 63-year-old nurse, participated in the anti-labour law reforms public assembly in Rennes. He was arrested at about 2pm. He told Amnesty International:

“We were being blocked by a police cordon, which stopped us from going back to the city centre. I personally didn't see anything coming because a banner was blocking my view and the cloud of tear gas was very dense. Suddenly I heard shouting and like other demonstrators, I tried to retreat but I fell to the ground. I received a number of blows to the head and body, to the lower and upper limbs. I heard a police officer shout ‘It's OK, I've got him’ then I was handcuffed and I heard someone say, ‘that's three of them’”.¹⁷⁹

Philippe suffered several injuries, including bruising on several part of his body. One police officer said Philippe had thrown several projectiles at law enforcement officials. Philippe spent 48 hours in pre-charge detention and was subsequently charged with participating in a public assembly which constituted a threat to public order (*atroupelement*) and violence against a public official.

On 4 April, Philippe filed a complaint about police violence with the IGPN in Rennes. The previous day his doctor had signed him off work for four days. Philippe provided the investigators with a publicly available video, shot by a resident, giving an aerial view of the street where Philippe said he had been beaten. The video showed three police officers charging and hitting a person who did not engage in any violent act. Philippe was not recognizable on the video. However, Michel F., a witness who was with him shortly before police arrested him, described the trade union flag he was holding which is visible on the video.¹⁸⁰

On 2 April, a judge imposed a control regime on Philippe while he was awaiting trial. This banned him from attending public assemblies and entering the city centre and required him to report to a police station twice a week.

¹⁷⁷ Interview with Joel and Nathalie, 13 November 2016.

¹⁷⁸ Interview with Paco and his mother, Lili, 15 December 2016.

¹⁷⁹ Interview with Philippe, 8 November 2016

¹⁸⁰ The video is available at: <https://www.youtube.com/watch?v=9lhaHH64sys>

On 23 April, the High Court of Rennes convicted Philippe and gave him a six-month suspended sentence. The Court argued that it could not establish whether the video showed Philippe. When this report went to press (May 2017), Philippe had not received any follow-up information regarding his complaint.

3.5 THE TARGETING OF JOURNALISTS DURING DEMONSTRATIONS

The right to seek, receive and impart information is a core component of the right to freedom of expression.¹⁸¹ All those who report on or record public assemblies, including journalists, other media workers and independent observers, are exercising their right to freedom of expression and playing a key role in the effective realization of all aspects of freedom of expression. Journalists also play a key role in ensuring that independent information is available about public affairs, including public assemblies and related law enforcement operations. The authorities should, therefore, prohibit any interference with the gathering, recording and dissemination of such information; in particular they should prohibit the confiscation, seizure and/or destruction of notes and visual or audio recording equipment without due process.¹⁸²

Amnesty International is concerned at reports that journalists, photographers and other media workers covering demonstrations have been subjected to the arbitrary use of force by police. Several trade unions condemned the targeting of journalists and other media professionals, in particular after some were subjected to the arbitrary use of force on 2 June in Rennes.¹⁸³ On 6 June, the Minister of the Interior met with trade union representatives and the Club de la Presse de Rennes et Bretagne, a journalists' association based in Rennes. The Minister stated that protecting public order was a hard task for police, especially in the context of public demonstrations where some protesters perpetrated violent acts. He also stressed that cases of alleged excessive use of force by police would be investigated.¹⁸⁴

On 9 June, the Minister of the Interior sent a letter to prefects reminding them that police use of force must always be proportionate when policing public assemblies and that journalists must be able to carry out their professional duties.¹⁸⁵



JOËL AND NATHALIE

On 17 May, Joël and Nathalie, two independent film-makers, joined a march in Paris to oppose the labour law reforms. They filmed the protest with a view to producing a documentary film. They reached place Denfert-Rochereau shortly before 4.30pm when clashes were occurring between police and protesters. At about 4.30pm, Joël was filming the violent arrest of Paco (see Section 3.4.2). Two videos shot by Joël and Nathalie showed a police officer standing about 10-15m away from Joël fire a grenade his direction.¹⁸⁶ Joël told Amnesty International that the grenade had hit him in the inside of his thigh and that police had fired at least two more grenades in his direction, but he managed to avoid them.

Joël and Nathalie told Amnesty International that there were no violent protesters around Joël and that police were not facing any specific threat from protesters that could have justified the firing of the grenade. Joël said:

“I don't have any other explanation except that I was deliberately targeted because I was filming the violent arrest of a demonstrator. There were no other demonstrators around me, they were at least 20 or 30 metres behind me and were dispersing”.¹⁸⁷

¹⁸¹ See Article 19 of the ICCPR and Article 10 of the European Convention on Human Rights.

¹⁸² See A/HRC/31/66, paras 68-71 and OSCE *Guidelines on Freedom of Peaceful Assembly*, paras 206-210.

¹⁸³ Interview with a representative of Le Club de la Presse de Rennes et Bretagne, 8 November 2016.

¹⁸⁴ <http://www.snj.fr/article/violences-polici%C3%A8res-les-syndicats-de-journalistes-re%C3%A7us-par-le-ministre-de-l%E2%80%99int%C3%A9rieur-1214459478>.

¹⁸⁵ <https://www.franceinter.fr/justice/manifestations-quand-bernard-cazeneuve-recadre-les-forces-de-l-ordre>.

¹⁸⁶ The videos are available at: <https://vimeo.com/168161554>.

¹⁸⁷ Interview with Joël and Nathalie, 13 November 2016.

On 23 May, Joël filed a complaint with the Paris branch of the IGPN. He explained to Amnesty International that the police authorities did not want to accept his complaint and that his lawyer had to talk to them twice before they eventually registered it.

On 24 May, the forensic medicine department of the Hospital Hotel Dieu explained to Joel that he had been injured by a tear-gas grenade that bounced up from the ground before hitting his thigh; he was signed off work for five days. When this report went to press (May 2017), Joël informed Amnesty International that one witness had been summoned by the IGPN and that he had not received any further information about the investigation into his case.



VINCENT

On 2 June, Vincent, an independent photographer, was subjected to unnecessary and arbitrary use of force by police in Rennes. On that day, he attended a public demonstration against the labour law reforms with other journalists including Linda and Emmanuel. They were all clearly identifiable as journalists as they were wearing press armbands and helmets.

After the march, about 300 protesters went to the Rocade (the orbital road surrounding Rennes) to slow down the traffic. Vincent, Linda and Emmanuel followed the protesters and reached allée Montbarrot, near the entrance of the orbital road, at about 3pm. They told Amnesty International that suddenly four or five police vans (*Compagnie Départementale d'Intervention*) came from the back at high speed, sprayed tear gas on some protesters from the windows and then parked diagonally on the street to prevent protesters reaching the entrance of the orbital road.¹⁸⁸ Vincent told Amnesty International: "The police got out of their trucks and they started hitting everybody with their truncheons. A policeman who was behind me overtook me, stood in front of me and hit me with his truncheon on my helmet. I fell to the ground". Emmanuel told Amnesty International that at least two law enforcement agents had hit him three times with hand-held batons.

Vincent, Emmanuel and another photographer filed a complaint directly with the IGPN regarding what appeared to constitute unnecessary use of force by police.

Two other protesters told Amnesty International that police had used force unnecessarily against peaceful protesters on that day. Vincent said: "I saw trucks from the *Compagnie d'Intervention Départementale* that were heading to the orbital road, driving at an incredible speed, I saw truncheons sticking out of windows and demonstrators were sprayed with tear gas by the police from their cars".¹⁸⁹ Didier told Amnesty International: "I saw four or five trucks arrive at top speed. People were marching peacefully. They sprayed tear gas and beat the demonstrators with truncheons from their trucks. Then the police got out of their vehicles and they starting beating everyone with their truncheons. I saw at least three people injured. I testified to the IGPN in relation to the complaint made by a girl who had been injured by truncheon blows."¹⁹⁰

In a meeting with Amnesty International, representatives of the Prefecture of Ille-et-Vilaine sought to justify the police operation by highlighting the fact that organizers had not notified the authorities of the protest at the Rocade and were about to commit criminal offences, including disrupting traffic, which represented a threat to public safety.

However, law enforcement officials resorted to force without first attempting to achieve their objective, namely, preventing peaceful protesters from reaching the orbital road, by other means, as required under international law and standards. The use of force, which was applied to peaceful protesters and journalists alike was therefore not shown to be necessary.

On 21 December, the Prosecutor of Rennes informed Vincent that the investigation into the alleged unnecessary use of force by police against him had been closed. The Prosecutor highlighted that the use of force was necessary to prevent protesters from reaching the orbital road. On 23 March, the Prosecutor of Rennes informed Emmanuel that the investigation had identified a police officer who had hit him with a hand-held baton. The police officer argued that he had not realized that Emmanuel was a journalist and that the use of force had been necessary. The Prosecutor decided to close the case.

¹⁸⁸ Interview with Vincent, Emmanuel and Linda, 11 November 2016.

¹⁸⁹ <http://www.itele.fr/justice/video/a-rennes-manifestants-et-journalistes-victimes-de-violences-policieres-166750>.

¹⁹⁰ Interview with Didier, 9 December 2016.



MARIANA

On 5 July, Mariana, an independent film-maker, was prevented from filming the police containment of peaceful protesters on Pont de la Concorde (see Section 3.3.1). She told Amnesty International that she had arrived at about 4pm with two other colleagues. At that time, about 50 protesters were contained by police on the bridge. She started filming and after a while police officials asked her to produce her press card. She told Amnesty International:

“I told them that I was a filmmaker and that I didn’t have my press card. They told me that had a prefectural order forbidding any filming. At a certain moment, a group of four or five CRS came towards me and I heard them say “we are going to arrest this one”. A demonstrator, Valentin, told them to stop. They took me and my two assistants to a truck, and at that moment I realised that the CRS had pushed Valentin to the floor, I tried to film this but they stopped me. They confiscated our equipment then they made us wait on the bridge. They told us we had been violent and that we would be prosecuted. They took us to the police station of the 15th district. They let us leave quite soon after, without any consequences. The Policer Commander realized that it was senseless and that we were allowed film.”¹⁹¹

At about 6.30pm, Mariana went back to the bridge and noticed that police were still containing protesters. She told Amnesty International that she had witnessed several instances where protesters were arrested violently, despite offering no resistance. On 8 November, she filed a complaint with the Paris branch of the IGPN for obstructing her from carrying out her professional activities. When this report went to press (May 2017), the IGPN had summoned two witnesses who were part of Mariana’s team on that day. Mariana had not received any further information regarding any investigation into her complaint.



FRED

On 5 July, Fred, an independent film-maker, was filming the containment of protesters on Pont de la Concorde (see Section 3.3.1). He told Amnesty International that he had been arrested for no apparent reason:

“The police had noticed that I was filming from the bridge parapet and asked me to stop a number of times. Then, around 9pm I stopped filming. When the demonstrators were finally allowed to leave, I was arrested, I was hit on the back of the neck by a truncheon. A police officer said I had spat at him and another commander said I spat at him and threatened to kill him”.¹⁹²

He was charged with rebellion, insulting and threatening a public official and violence against a public official (spitting). On 7 February, five witnesses testified in court that Fred had not insulted or spat at police. A video shot by Mariana Otero (see above), did not show any violent actions by Fred while police were arresting him.¹⁹³ However, on 7 March, the High Court of Paris convicted him to 6 month mandatory imprisonment.¹⁹⁴

3.6 THE IMPACT OF POLICING TACTICS AND STRATEGIES

UN special procedures, including the Special Rapporteur on the rights to freedom of peaceful assembly and of association, have stressed that the policing of public assemblies should be premised on the principle of de-escalation, which requires communication, negotiation and engagement between law enforcement officials and protesters.¹⁹⁵

Some of the policing tactics and strategies adopted in the context of the public protests against the labour law reforms helped fan rather than de-escalate tension. Law enforcement officials often opted for the

¹⁹¹ Interview with Mariana, 16 December 2016.

¹⁹² Interview with Fred, 15 December 2016.

¹⁹³ An Amnesty International staff member attended the hearing.

¹⁹⁴ When this report went to press (May 2017), Amnesty International had not had access to the judgment. Fred’s lawyer told Amnesty International that he would appeal the judgment.

¹⁹⁵ A/HRC/31/66, para. 67.

containment of peaceful protesters unnecessarily and without providing them with any information or explanation. Moreover, law enforcement officials resorted to unnecessary or excessive force. Many peaceful protesters suffered the effects of tear-gas grenades or were caught in violent police charges while marching. According to some protesters and civil society organizations, this stoked tensions and resentment. Jean-François, who lost an eye after being hit by a rubber bullet (see Section 3.4.2) told Amnesty International: “The demonstrators heading the march, no more than 50 or 100 of them at a time, were not very truculent at first, but they became more radical as the police presence became more violent. Some of the police were hit, which I think is intolerable, but the actions of the police are becoming more and more worrying, such as when people are hit while on the ground for nothing, for example”.¹⁹⁶

Moreover, many civil society organizations and protesters who spoke to Amnesty International said that the excessive use of force by police had a detrimental impact on the right to peaceful assembly. In particular, many protesters decided to refrain from participating in demonstrations against the labour law reforms because they had either suffered the consequences of excessive use of force or witnessed them.¹⁹⁷ Sabrina, a protester who was injured by a tear-gas grenade that exploded on her shoulder during a spontaneous assembly in Place des Fossés in Rennes, explained the chilling effect of that event on her right to peaceful assembly:

“The police violence that I experienced has changed the way I see many things, I have kept away from demonstrations, whereas I had often demonstrated in the last four years. I have restricted my freedom myself and didn’t go on any demonstrations for at least a month after the events. For me it was like a period of grief, because I had never thought this could happen to me. That day I realized they were capable of doing anything and that we demonstrators were risking our lives. After a month, some friends convinced me to start demonstrating again, but it was as if I was a toddler, I was afraid of everything and I left as soon as there was the slightest incident”.¹⁹⁸

3.7 CONCLUSION

Some of the strategies and tactics adopted by the authorities to police public assemblies call into question their arguments that they lack sufficient resources to maintain public order during public assemblies in light of the priority task of preventing violent attacks on the general population. In many instances, policing of protests was based on the same premise as that underpinning the state of emergency – that is, the pre-emptive neutralization of potential risks – rather than opposition to precise and concrete threats. For example, in the context of public assemblies opposing the labour law reforms the authorities repeatedly deployed hundreds of law enforcement officials to contain peaceful protesters who did not represent any concrete threat to public order and who were either holding spontaneous public assemblies or were collectively gathering at the assembly points of planned demonstrations.

International law recognizes an inalienable right to take part in peaceful assemblies. This right is held by each individual participating in an assembly. Acts of sporadic violence or offences by some should not be attributed to others whose intentions and behaviour remain peaceful in nature. In some instances, those tactics and strategies do not appear to have been necessary to maintain public order and thus unlawfully restricted to the right to freedom of peaceful assembly.

Moreover, in several instances documented by Amnesty International, law enforcement agents resorted to force unnecessarily, arbitrarily or excessively, leaving hundreds of protesters injured.

In addition, they have sometimes unlawfully restricted the right to freedom of expression by resorting to force, or obstructing by other means, journalists and other media workers who were documenting the protests.

¹⁹⁶ Interview with Jean-François, 7 November 2016.

¹⁹⁷ *Ib.* 132

¹⁹⁸ Interview with Sabrina (pseudonym), 10 November 2016. Sabrina did not file a complaint with the authorities. She received first-aid treatment on the spot but she did not see to a doctor afterwards. She suffered minor injuries. She told Amnesty International that her injuries were caused by a tear-gas grenade. Amnesty International was not in position to verify the precise nature of equipment or weapons used by law enforcement agents in this case.

RECOMMENDATIONS

On the current state of emergency

- The French government should lift the current state of emergency and the associated derogations from their treaty obligations unless it can demonstrate that: a) the situation it confronts reaches the very high threshold of a public emergency which threatens the life of the nation and b) that emergency measures pursuant to those derogations are strictly required by the exigencies of the situation;
- Prefects' use of their powers under emergency legislation, and the specific measures they impose, should be limited to what is strictly required by the exigencies of the situation. In particular, the imposition of emergency measures should be only for the purpose indicated by the French government when it declared the state of emergency- that is, to prevent further violent attacks on the general population. Prefects should refrain from using their emergency powers to impose measures aimed at broad objectives such as protecting public order in the context of public assemblies.

On banning or imposing other restrictions on public assemblies

- The law on the state of emergency (law 55-385) should be amended so that authorities are not bestowed additional powers to ban or restrict the right to peaceful assembly. The general possibilities provided by ordinary French law to restrict the right to freedom of peaceful assembly should be sufficient, including to address the heightened risk in the context of the state of emergency, and accordingly emergency measures should not be necessary;
- The Law on National Security (article 211-4) should be amended to explicitly state that authorities are allowed to use their powers to ban a public assembly to protect public order only if the measure is both demonstrably necessary and proportionate for that aim;
- Prefects should not ban public assemblies except as a measure of last resort when it is both strictly necessary and proportionate to protect public order or another legitimate aim expressly recognised under international human rights law. Any such measure must be taken only after a thorough risk assessment and where no less intrusive measure could achieve the same aim;
- The law on National Security (article L211.2) should be amended so that spontaneous assemblies, in particular where an assembly is a reaction to an unexpected event, are exempted from notification requirements;
- The Criminal Code (Article 431.9) should be amended so that organizers of a public assembly who do not comply with notification requirements do not face criminal prosecution.

On individual measures restricting freedom of movement

- Prefects should revoke emergency measures imposed on individuals restricting freedom of movement and the right to freedom of peaceful assembly unless in each individual case these can be shown to be strictly required by the exigencies of the emergency situation—that is, for the purpose of preventing further violent attacks on the general population.

On policing public assemblies

- Law enforcement officials should avoid the use of the tactic of containment while policing assemblies unless that measure is strictly necessary to isolate violent protesters and does not result in a disproportionate restriction of the exercise of the right to peaceful assembly by other protesters;

- Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. In particular, the police must as far as possible apply non-violent means before resorting to the use of force.¹⁹⁹ Whenever the lawful use of force is unavoidable, the police must use it with restraint and in proportion to the seriousness of the law enforcement objective. In dispersing assemblies that are unlawful but non-violent, law enforcement officials must avoid the use of force or, if that is not practicable, must restrict it to the minimum necessary.
- The Law on National Security (Article 435-1) should be amended to comply with international law and standards on law enforcement to ensure that law enforcement officials are allowed to use firearms only in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives, and that after having identified themselves and given a clear warning of their intent to use firearms;
- The Law on National Security (Article 435-1) should be amended to ensure that law enforcement officials cannot use force for the purpose of defending their position unless that purpose is associated with another compelling law enforcement purpose such as preventing or stopping violence against persons or serious damages of properties;
- Amend the Law on National Security (Article D211-19) to ensure that kinetic impact projectiles are used only in instances where they are necessary to prevent violence against persons. The use of those weapons for dispersing a public assembly that is likely to constitute a threat to public order (*attroupement*) in instances where law enforcement officials cannot defend their territory is likely to be at odds with the principles of necessity and proportionality unless defending the territory is associated with another compelling law enforcement purpose such as preventing or stopping violence against persons;
- Sting-ball grenades carry a risk of serious harm, and cannot be aimed exclusively at persons engaging in acts of violence without presenting a risk of harm to others nearby. It is hard to envisage a public order situation, such as may arise in the policing of assemblies, which cannot be addressed by other more precise and less potentially harmful means. Accordingly the Minister of the Interior should prohibit the use of sting ball grenades in public order situations;
- Amend the criminal Code (Article 431.3) to clarify that a public assembly that has not been notified does not necessarily threaten public order. Assemblies which have not been notified to the authorities should not automatically be treated as unlawful and subject to dispersal. In dispersing assemblies that are unlawful, i.e. that have been prohibited, but are non-violent, law enforcement officials must avoid the use of force unless that proves not to be practicable, and any use of force must be restricted to the minimum level necessary;
- Law enforcement officials should respect and protect the right to freedom of expression in the context of public assemblies, which also include the possibility for journalists and video-makers to document them, including instances in which law enforcement agents use force;
- Ensure that law enforcement agents visibly display their personal identification number in all circumstances, including when policing public assemblies, as required by French law;
- Authorities should establish a system to collect data regarding instances of unnecessary or excessive use of force by law enforcement officials, including in the context of public assemblies;
- Judicial authorities should collect and publish data regarding investigations, prosecutions and convictions of criminal offences perpetrated by law enforcement officials;
- Authorities should conduct a thorough, adequate, effective and impartial investigation into all the cases included in this report of unnecessary or excessive use of force by law enforcement officials against protesters.

¹⁹⁹ UN Basic Principle 4.

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A RIGHT NOT A THREAT

DISPROPORTIONATE RESTRICTIONS ON DEMONSTRATIONS UNDER THE STATE OF EMERGENCY IN FRANCE

In the wake of a series of appalling attacks in Paris on 13 November 2015, a state of emergency was declared in France. While the French government has a duty to take the necessary measures to protect the population, it also has a responsibility to ensure that emergency powers do not result in disproportionate restrictions of human rights.

In 2016, French authorities banned dozens of public assemblies using emergency powers and placed restrictions on hundreds of individuals to prevent them from exercising their right to freedom of assembly. Individuals not linked in any way to acts of terrorism are getting caught in the cross-hairs of the emergency measures. This report shows the disproportionate use of emergency powers to restrict the right to freedom of assembly in situations unrelated to any specific threat of attacks on the general population. Moreover, the report shows that French authorities often relied on unnecessarily resource-intensive strategies and used force disproportionately when policing public assemblies.

Amnesty International calls on the French authorities to consider lifting the state of emergency and to ensure that any restriction to the right to freedom of assembly is necessary and proportionate to protect public order or national security.