



INTERNATIONAL NETWORK OF CIVIL LIBERTIES ORGANIZATIONS

WRITTEN SUBMISSION FOR THEMATIC REPORT BY SPECIAL RAPPOREUR ON THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND OF ASSOCIATION ON TO BE PRESENTED AT THE 53RD SESSION OF THE HUMAN RIGHTS COUNCIL BY THE INTERNATIONAL NETWORK OF CIVIL LIBERTIES ORGANISATIONS (INCLO)

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Re: Submission to 53rd session of the Human Rights Council report

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A. INTRODUCTION

1. This written contribution is submitted to the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association (“UNSR”) by the [International Network of Civil Liberties Organizations](#) (“INCLO”) in response to the call for inputs for the thematic report by the UNSR to be presented at the 53rd session of the Human Rights Council. The report will focus on the challenges and good practices to ensure accountability for serious human rights violations of the right to peaceful assembly by law enforcement using crowd-control weapons (CCWs.)¹ This written contribution includes input by 11 INCLO member organisations and is endorsed by 12 INCLO member organisations.² It relies on in-text hyperlinks for ease of reference.

B. ABOUT INCLO

2. INCLO is a network of 15 independent, national human rights organisations from different countries in the North and South that work together to promote fundamental rights and freedoms by supporting and mutually reinforcing the work of member organisations in their respective countries, and collaborating on a bilateral and multilateral basis. INCLO works on four thematic issues: (1) protest rights and policing; (2) surveillance and human rights; (3) religious freedom and equal treatment; and (4) protecting civic space. The responses included in this written input are based on monitoring, research and advocacy efforts led by INCLO members and their unique knowledge in the domestic contexts within which they operate. Given their areas of expertise, the contributions included here by INCLO members focus on their work around the use and misuse of CCWs that lead to a weakening of the right to peaceful assembly and to a chilling effect on civil society, in particular for human rights defenders, social leaders and historically marginalised groups. In addition, in the countries where INCLO members work, but there isn’t a significant use of CCWs, members address other challenges to advance accountability of law enforcement for serious violations, and important contributions from other civil society actors.

¹ Also referred as less-lethal weapons (LLWs)

² INCLO’s 15 member organisations are: Agora International Human Rights Group (Agora, Russia), the American Civil Liberties Union (ACLU, United States), the Association for Civil Rights in Israel (ACRI, Israel), the Canadian Civil Liberties Association (CCLA, Canada), Centro de Estudios Legales y Sociales (CELS, Argentina), the Commission for the Disappearances and Victims of Violence (KontraS, Indonesia), Center for the Study of Law, Justice and Society (Dejusticia, Colombia), the Egyptian Initiative for Personal Rights (EIPR, Egypt), the Human Rights Law Centre (HRLC, Australia), the Human Rights Law Network (HRLN, India), the Hungarian Civil Liberties Union (HCLU, Hungary), the Irish Council for Civil Liberties (ICCL, Ireland), the Kenya Human Rights Commission (KHRC, Kenya), the Legal Resources Centre (LRC, South Africa), and Liberty (United Kingdom). This written contribution was endorsed by all members except for ACLU, ACRI and HRLN. Because the submission does not cover the situation in the United States, the ACLU does not endorse it.

**C. RESPONSES TO THE SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM OF PEACEFUL
ASSEMBLY AND OF ASSOCIATION'S CALL FOR THEMATIC REPORT TO BE PRESENTED AT
THE 53RD SESSION OF THE HUMAN RIGHTS COUNCIL**

**Section B. With regards to bringing accountability for serious violations related to the
exercise of the right to freedom of assembly:**

**Question 1: What legal framework, policies and mechanisms exist in your country to ensure
criminal accountability and redress for the above serious human rights violations committed
in the context of assemblies?**

Australia

3. Despite Australia being a party to the International Covenant on Civil and Political Rights (ICCPR), Australia does not have a national charter of human rights that comprehensively protects human rights. It follows that freedom of assembly and speech is only partially protected in Australia. The High Court of Australia has ruled that Australia's Constitution protects the 'freedom of political communication' which includes demonstrations and other protest activity.³ Australia's common law tradition also recognises the freedom of expression and assembly,⁴ and legislation is interpreted in favour of the right to assemble and protest unless there is a clear, unambiguous intention from the Parliament to restrict those rights.⁵
4. Only in some states is the right to protest protected by legislation. In the state of Queensland, the *Peaceful Assembly Act 1992* provides that a person has the right to assemble peacefully with others. In the state of Victoria and the Australian Capital Territory, human rights legislation expressly protects and promotes the rights to association and assembly.
5. Although protesters in custody do not experience many of the serious human rights abuses seen in other countries, over-policing, the misuse of bail conditions and excessive use of force by Australian police are increasingly becoming a feature of peaceful protests.
6. Anti-protest laws: In addition, state governments are introducing new anti-protest laws which impose disproportionate prison sentences and financial penalties on protesters:
 - a. Last year alone, the states of Tasmania,⁶ New South Wales,⁷ and Victoria⁸ passed laws that significantly curbed people's right to protest. Common elements of these laws include vague and ill-defined offences, disproportionately harsh penalties, and excessive police powers.

³ *Brown v Tasmania* [2017] HCA 43 (18 October 2017).

⁴ *South Australia v Totani* [2010] HCA 39 (11 November 2010) [30] (French CJ); *Evans v New South Wales* (2008) 168 FCR 576 at 594- 596 [72]- [77].

⁵ *Coco v The Queen* (1994) 179 CLR 427; *Evans v New South Wales* (2008) 168 FCR 576.

⁶ *Police Offences Amendment (Workplace Protection) Act 2022* (Tas).

⁷ *Roads and Crimes Legislation Amendment Act 2022* (NSW).

⁸ *Sustainable Forests Timber Amendment (Timber Harvesting Safety Zones) Act 2022* (Vic).

behaviour different from that imposed on them by the law and the Constitution and, in so doing, commit a crime, there is a rupture of the nexus between the conduct under investigation and the function of the Public Force” such conduct must be investigated by the ordinary jurisdiction. Thus, the Constitutional Court has been clear in [stating](#) that the military criminal jurisdiction "is not competent to investigate and prosecute crimes that are generally contrary to its constitutional mission, as is the case with human rights violations, crimes against humanity and violations of international humanitarian law, since such crimes, due to their extreme seriousness, are considered in all cases to be outside the service, without it being possible to affirm that their occurrence is related to the achievement of a constitutionally valid purpose”. When there is doubt, i.e. when it cannot be clearly established that the crime has a direct, close and evident connection to police service, the ordinary jurisdiction must deal with the investigation and prosecution.

11. However, this rule has not been adequately applied in cases of human rights violations in protest contexts. Many of these cases are being investigated by the military criminal jurisdiction and, in others, conflicts have arisen between jurisdictions, significantly delaying the course of criminal proceedings. For example, the case of Dilan Cruz, who died after being hit in the back of his head by a bean bag shot by an ESMAD (Mobile Anti-Disturb Squad) officer during a demonstration in downtown Bogotá in November 2019. Both jurisdictions considered themselves competent to carry out the investigation against the police officer who fired the weapon and a positive conflict of jurisdictions arose, which was resolved a few days later, assigning the investigation to the military criminal jurisdiction. Dilan's mother filed a *tutela* action against this decision, considering it to be wrong, and the Constitutional Court, finally, in judgement SU-190 of June 2021, defined that the investigation should be assumed by the ordinary jurisdiction. It took almost two years to resolve the conflict of jurisdictions. Despite the fact that the investigation is being carried out by the ordinary jurisdiction, there has not yet been a decision on the merits of the case.

Hungary

12. A full analysis of the right to freedom of assembly and its application in the Hungarian legal system, can be found in the 2020 report [The New Law on the Right to Assembly in Hungary as Applied Practice](#) by the Hungarian Civil Liberties Union (HCLU) and the Hungarian Helsinki Committee.
13. Regarding the legal framework in Hungary, the first place that violates the freedom of assembly and any abuse or violence carried out with the contribution of police authority may be in criminal offences. The Act C of 2012 on the Criminal Code includes the following rules specifically on violations of assemblies:
 - a. *Violation of the Freedom of Association and Assembly, Section 217:* (1) Any person who unlawfully prevents another person in the exercise of his right to association or assembly by force or by threat of force is guilty of a felony punishable by imprisonment not exceeding three years. (2) Any person who prevents or ruins an assembly, or otherwise interferes in the execution thereof, or causes a serious

disturbance in the assembly is guilty of a misdemeanour punishable by imprisonment not exceeding one year, insofar as the act did not result in a more serious criminal offence.

- b. *Section 217/A*: Any person who confronts the organiser or leader of the assembly, or defies the organisers in carrying out their lawful responsibilities related to organising such events by force or by threat of force, or abuses them in carrying out their responsibilities related to organising is guilty of a misdemeanour punishable by imprisonment not exceeding two years, insofar as the act did not result in another criminal offence.
- c. *Section 217/B*: (1) Any person who violates the restrictions intended to ensure that the right to assembly is exercised peacefully is guilty of a misdemeanour punishable by imprisonment not exceeding one year, insofar as the act did not result in a more serious criminal offence. (2) The penalty under Subsection (1) shall apply to the leader of the assembly if any organiser in his charge violates the restrictions intended to ensure that the right to assembly is exercised peacefully, and fails to remove such organiser without delay after gaining knowledge.
- d. *Section 217/C*: Any person who organises an assembly that has been prohibited, or induces - under the Act on the Right to Assembly - others to participate in such gathering is guilty of a misdemeanour punishable by imprisonment not exceeding one year, insofar as the act did not result in a more serious criminal offence.

14. Similar regulation can be found in the Act II of 2012 on Petty Offences:

- a. *Violation of the Freedom of Association and Assembly, Section 190*: Any person who unlawfully prevents another person in the exercise of his right to association or assembly is committing a petty offence. This petty offence may be punished with community service and fine.

15. One may also find general rules on disorderly conduct which shall be applied both inside and outside of the context of assemblies but it may occur in protests commonly:

- a. *Disorderly Conduct, Section 340*: (1) Any conduct of violent or intimidating resistance against the actions of the keeper or security personnel to maintain order at a public event or public assembly is guilty of a misdemeanour punishable by imprisonment not exceeding two years, insofar as the act did not result in a more serious criminal offence. (3) The penalty for a felony shall be imprisonment not exceeding three years if disorderly conduct is committed: in a gang; by displaying a deadly weapon; by carrying a deadly weapon; or by a habitual recidivist; by violating the restrictions intended to ensure that the right to assembly is exercised peacefully according to the Act on the Right to Assembly.

16. Additional framework that refer to abuses by and against the police, which may be relevant in the context of assemblies or in relation of protesters and activists, that are regulated by the Criminal Code, include: *Mistreatment in Official Proceedings, Section 301; Unlawful*

*Detention, Section 304; Abuse of Authority, Section 305; and Assault on a Public Official,
Section 310.*

17. The other relevant part of the Hungarian legal framework to impact the right of assembly is the Act XXXIV of 1994 on the Police. The Police Act regulates both police actions in general, including those that are relevant in protest context, and the legal remedies available against a police action. In terms of the latter, the Police Act provides a complaint procedure, free from procedural costs: anyone affected may lodge a complaint against the police action, defined by the Police Act, to the relevant police body. Furthermore, in cases of fundamental rights at stake, including protest-related cases, those who are affected may request, instead, the complaint to be examined by the Commissioner for Fundamental Rights and then by the Chief of the Hungarian Police. The resolution of the Chief of the Hungarian Police can be challenged before the court in an administrative lawsuit. The complaint, if successful, may result in moral justification and internal disciplinary accountability, without any monetary or other compensation for the complainant.
18. While it seems that the Police Act provides an adequate way of seeking remedy against police actions in terms of the fundamental rights around assemblies, it is important to put it into historical context, in order to see that this regulation is a backstep compared with the previous one. From 2008 to 2020 an Independent Police Complaints Board was operated with the power of investigating complaints. The establishment of this independent body - by the Act XC of 2007 - was inspired by the serious violations committed by police as a reaction to the assemblies and riots of 2006 Autumn. The members of this body were elected by the parliament, and it had its own staff. In 2020 the operation of this body was terminated and its tasks were integrated into the office of the Commissioner for Fundamental Rights (Act CIX of 2019), where it is led by an employed officer. While the competencies remained intact, its activity decreased significantly.

Indonesia

19. Normatively, the right to freedom of assembly is recognized and guaranteed by laws and regulations in Indonesia. With the momentum of the socio-political reform in 1998, the right to freedom of association was expressly recognized through Article 19 of the MPR Decree (TAP) Number XVIII of 1998 concerning Human Rights. Overall this TAP MPR is a complete adoption of the Universal Declaration of Human Rights (UDHR) with an awareness that Indonesia needs guidance in respecting human rights. Two years later, this TAP MPR was followed by an Amendment to the 1945 Constitution. Through the second Amendment (2000), the Constitution of the Republic of Indonesia, as the law in the highest formal hierarchy, adopted the enrichment of guarantees for recognition of human rights through Chapter XA on Human Rights of the 1945 Constitution.
20. Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the 1945 Constitution) emphasises that every person has the right to freedom of association, assembly and expression of opinion. Article 28C paragraph (2)

stipulates that everyone has the right to collectively advance himself in fighting for their rights to develop their community, nation and country. Article 28F stipulates that everyone has the right to communicate and obtain information to develop their personality and social environment and has the right to seek, obtain, possess, store, process, and convey information using all types of available channels.

21. Article 24 paragraph (1) of Law Number 39 of 1999 on Human Rights (UU HAM), stipulates that everyone has the right to assemble, meet and organise associations held for peaceful purposes. Everyone is guaranteed the right to enjoy the right to freedom of association as long as the enjoyment of this right is carried out with the intention of peaceful purposes and prioritising the principles of non-violence. More specifically, Law Number 9 of 1998 regulates the Freedom of Expressing Opinions in Public.
22. The freedom to assemble and organise in Indonesia is regulated by other laws, namely: Law Number 9 of 1998 on the Freedom to Express Opinions in Public (UU KMP); Law Number 21 of 2000 on Trade Unions/Labour Unions (Labor Union Law); Law Number 16 of 2001 on Foundations as amended by Law Number 28 of 2004 on Amendments to the Law on Foundations (Foundation Law); Law Number 17 of 2013 on Community Organizations as amended by Law Number 16 of 2017 on the Stipulation of Government Regulations in Lieu of Law Number 2 of 2017 on Amendments to Law Number 17 of 2017 concerning Community Organizations (UU Ormas).
23. The legal politics of the 1945 Constitution obliges the central/regional government to place freedom of association of individuals/groups as a right that must be guaranteed by law. Restrictions (limitation) and reduction (derogation) of freedom must be interpreted as an exception to the freedom itself. Restrictions must be interpreted within the framework of the rule of law and democracy. In addition to formal and written laws, in practice, the discretion to decide what legal policies to apply will significantly influence the extent to which the state can guarantee freedom of peaceful assembly. Ideally, this discretionary practice is followed by an equal measure of control and accountability mechanisms. This touchstone will measure the extent to which state authority is exercised and how accurately it achieves its goals, especially in protecting human rights.

Ireland

24. Ireland has a functioning independent judicial system and criminal justice system that meets international standards of fair trial. A criminal complaint must be made to the police for a criminal case to be taken. However, where a complaint is made against the police, the complaint must be made to the Garda Síochána Ombudsman Commission (GSOC). This oversight body was set up in 2005 and its legislative basis lies in the Garda Síochána [Act 2005](#). However, criticisms of this body have been long standing from civil society and from victims of crime. Two key criticisms are that less serious complaints against police are sent back to the police force for internal investigation, rather than being investigated by the independent complaints body. A second criticism is that GSOC can't do 'own volition'

investigations into system wide failings. While the 2005 Act permits such investigations, the Minister for Justice must approve them.¹¹

25. As part of an overall reform process, GSOC is set to be strengthened under a new Bill, entitled the Policing, Security and Community Safety Bill.¹²

Kenya

26. The [Constitution](#) of Kenya, specifically the Bill of Rights (Chapter 4 of the Kenyan Constitution) and other pieces of legislation like the Penal Code Act, the National Police Service Act, the Criminal Procedure Code [Act](#), the National Police Service Commission [Act](#) are some of the pieces of legislation/ legal framework that is used to ensure criminal accountability and redress for activists experiencing human rights violations due to exercising their rights to freedom of association. The Independent Policing Oversight Authority is a body that is used to monitor police excesses and has been used to ensure that Police officers are held to account. The other critical institution is the [Office](#) of the Director of Public Prosecutions that has been instrumental in prosecuting Police Officers.

South Africa

27. In South Africa, the right to assembly is specifically protected as a constitutional right as contained in section 17 of the Constitution which guarantees that “[e]veryone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions”.¹³ The Constitutional Court, South Africa’s apex court, has emphasised that Section 17 of the Constitution guarantees the right to assemble peacefully and unarmed.¹⁴ The Court highlighted that the content and scope of this right must be interpreted generously.¹⁵ It was further stated that progressive constitutional democracies recognise that the right to freedom of assembly “is central to . . . constitutional democracy”.¹⁶
28. Given the importance placed by both the Constitution and the Constitutional Court on the importance of the right to assembly, it is imperative that sufficient policies and mechanisms exist to prevent any serious violations of this right to assembly. Within the South African context, ensuring criminal accountability and redress for violations committed in the case of assemblies generally occurs within the sphere of violating constitutional rights and police misconduct in violating various constitutional rights, including the right to human dignity¹⁷, freedom and security of the person¹⁸ and freedom of association¹⁹ among others.

¹¹ For further detail on criticisms of the operation of GSOC, see two ICCL submission to the Commission on the Future of Policing, available here <https://www.iccl.ie/justice/policing/>

¹² For a text of the draft bill see

<https://www.gov.ie/en/publication/b70ef-policing-security-and-community-safety-bill-draft/#>

¹³ The Constitution of the Republic of South Africa, 1996.

¹⁴ *Mlungwana and Others v The State and Another* [2018] ZACC.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ Section 10.

¹⁸ Section 12.

¹⁹ Section 18.

United Kingdom

29. In the UK, public order legislation is skewed heavily in favour of the authorities. In the last few years, there have been consecutive moves on the part of the Government to erode the rights to freedom of expression and assembly, beginning with attempted curtailments of these rights during the pandemic and the Police, Crime, Sentencing and Courts Act which introduced new powers for the police to restrict protest on the basis of noise.
30. The Public Order Bill, currently undertaking its passage in Parliament, threatens to introduce Serious Disruption Prevention Orders which could ban named individuals – including those who have not committed a crime – from participating in demonstrations, subject them to onerous conditions and requirements, and even require them to submit to 24/7 GPS tagging; and new stop and search powers in the protest context, as well as a slate of new protest offences targeting climate protesters. Liberty concurs with the statement made in December 2022 by five UN Special Rapporteurs²⁰ including the UNSR on the rights to freedom of peaceful assembly and free association, that if not further amended, the Bill “could seriously curtail the legitimate exercise of the rights to freedom of peaceful assembly and association (see clauses 1, 6, and 7, inter alia), the right to privacy (see clauses 2, 5 and 21), the principle of proportionality (see clauses 3, 4, 5, 6, 7 and 13), and the right to freedom of expression”.
31. The vagueness and breadth of the powers in the Public Order Bill, as well as its attempts to criminalise different protest acts, mean that it may be more difficult for people who have had their rights violated to hold the police and Government to account.

Question 2: Are you aware of any specific steps taken by the Government to provide accountability for cases involving the above-mentioned serious human rights violations against those exercising their right to freedom of assembly, including in the context of protests?

Colombia

32. In 2021 in Colombia there were presidential elections. As a result, on August 7, 2022, Gustavo Petro began his government. Petro's arrival meant a profound change in the discourse about the responsibility of police officers in violations of human rights in protest contexts that had occurred years before, recognizing complaints about homicides, torture, gender-based violence, among others. At the same time, he has recognized the importance of police reform in several areas and, consequently, has announced some changes in gender equality, training and promotions, as well as in the understanding of security. However, so far, no structural changes have been implemented in the functioning of the police and, therefore, no concrete measures have been implemented by this government to demand

²⁰To read the full statement:
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27724>

accountability for cases of serious human rights violations committed against those exercising their right to freedom of assembly.

Kenya

33. The Government of Kenya established the [Independent Policing Oversight Authority\(IPOA\)](#) in 2011 through an Act of Parliament. Since then, the Authority has documented, investigated and recommended for prosecution several police officers who have committed human rights violations in the context of freedom of Assembly. More recently, four Police officers were [charged](#) with killing Baby Samantha Pendo in 2017.

a. Please provide information of any investigations, fact finding efforts, or commissions of inquiry being set up to investigate these crimes; and which institutions were involved.

Colombia

34. On May 4, 2021, on the occasion of the people reported missing in the context of the national strike, an inter-institutional roundtable was created comprising the Attorney General's Office, the Ombudsman's Office, and the Commission for the Search for Missing Persons and the National Police to activate the Urgent Search Mechanisms and other judicial police groups. After approximately two years, on January 19, 2023, the Attorney General's Office and the Ombudsman's Office [announced](#) that all the people who were reported missing at this time in 2021 had been located.
35. However, with regard to other crimes committed by law enforcement officials, the progress has been significantly less. Most of them remain in the initial stages of the process and there have been no convictions. In fact, on April 28 2022, one year after the start date of the national strike demonstrations, the Office of the High Commissioner for Human Rights in Colombia [reiterated](#) the importance of advancing in criminal and disciplinary investigations into these human rights violations. The Office also rejected the threats against a prosecutor who was investigating such conduct.
36. In addition, in December 2022, the Administrative Court of Cundinamarca [recognized](#) that the police abused their authority and violated the right to public security in the context of the demonstrations on September 9 and 10, 2020 in Bogotá. They also reproached the lack of progress in the corresponding criminal and disciplinary investigations and ordered the Attorney General's Office, the Ombudsman's Office and the Police to send a detailed report with the investigations in progress, as well as the transfer of the agents out of Bogotá. It means they cannot continue to carry out their work in the city.
37. It should be noted that on 25 January 25 2023, the Attorney General's Office [charged](#) two agents of the Mobile Anti-Riot Squad-ESMAD with the murder of Daniel Alejandro Zapata, a 20-year-old man, due to the impact of a tear gas grenade during the demonstrations on May 1, 2021 in Bogotá.

Indonesia

38. After experiencing significant democratic setbacks since 2020, Indonesia has made little effort to improve the situation. One of the most egregious cases of serious human rights violations against those exercising their right to freedom of assembly was the Paniai Tragedy in 2014. On the morning of 8th December 2014, hundreds of Papuans staged a protest near the local military and police headquarters in the town of Enarotali in Paniai District, Papua Province. The protest was a response to a violent incident the day before when some military personnel allegedly beat and kicked 11 Papuan children. When protesters started throwing stones and pieces of wood at some state buildings, members of the security forces opened fire on the crowd from different directions. 4 people died (3 children and 1 adult), and 21 others (14 children and 7 adults) were injured. Several weeks later, at a national Christmas ceremony in Papua, newly elected President Joko “Jokowi” Widodo made a statement to the effect that he was committed to bringing those responsible for the killings to justice as soon as possible. Subsequently, the police and military announced that they had set up separate internal investigation teams but no result was made public.²¹
39. The Komnas HAM investigation concluded that there were incidents of crimes against humanity in the Paniai incident on 7-8 December 2014, as a result of a state policy through the National Police and the military (TNI) who established Paniai Regency as one of the vulnerable zones (red zones) of 11 regions in Papua, as part of the “law enforcement operations”. The red zone was determined based on intelligence data which stated that there are many armed criminal groups (OPM) in the area. The determination of the vulnerable areas was followed up with the establishment of Safe Matoa V Operation (Operasi Aman Matoa V) by the Papua Police which was carried out with the assistance of the Cenderawasih Military Command.
40. The Paniai case became the fourth case to be tried by the law, but a number of irregularities have been repeated like the previous three cases. The Indonesian Government is currently holding a Human Rights Court for crimes against humanity in Paniai, Papua. This trial is being held in Makassar, South Sulawesi, 1,885 km away from Paniai, where the victims and families live. Even though a Human Rights Court should have been established also in Papua in accordance with Article 45 paragraph (2) of Law no. 21 of 2001 on Exclusive Autonomy for the Province of Papua. Kontras believes that the trial for gross violations of human rights in Paniai, Papua, which took place at the Makassar District Court (PN) considers that the trial is merely a formality.
41. The AGO’s indictment did not mention anything related to the policy of the Safe Matoa V Operation. During the trial, several witnesses from the military stated that due to Paniai being designated a vulnerable area, the weapons warehouse only had live bullets, not empty or rubber bullets. Thus, the weapons held by the military officers at the crime scene were intended for war/defence against threats from outside the country, not for processing

²¹ <https://www.thejakartapost.com/opinion/2022/12/15/no-justice-for-paniai.html>

armed criminal groups—since criminal groups are the domain of the police, not the military—let alone dealing with civilians without weapons. The police themselves have rules regarding the Use of Force in Police Actions where the use of firearms is the last resort after five other attempts have been made with the principles of legality, necessity, proportionality, and reasonableness. Yet, even though the military officers at the scene were under the Papua Police command (Bawah Kendali Operasi), these rules on the use of force in dealing with civilians were also not adhered to by the military.

42. The Human Rights Court for the Paniai Incident acquitted the defendants on the 8th anniversary of this event, which was the result of the poor performance of law enforcement in resolving gross human rights violations in Indonesia. Even though the events that took place on 7 – 8 December 2014 met the elements of crimes against humanity as gross human rights violations in the form of murder and torture, the State has never revealed the perpetrators.
43. Evidence of the state's incompetence in enforcing the law, in this case, can already be seen since the failure of several teams created to resolve it. The case, which the Attorney General's Office finally investigated as a gross violation of human rights in December 2021, was processed with many irregularities. The Attorney General's Office through investigations to the Public Prosecution Team only brought on one defendant's name and subjected to command responsibility in Article 42 of Law 26/2000 on the Human Rights Court without any legal process concurrent with the field actors.²² Although Komnas HAM has mentioned several categories of perpetrators ranging from field actors, effective commanders in the field, policy-making commanders, and perpetrators of omission, the AGO only indicted a sole perpetrator, a retired low-rank military personnel, for the omission. The indictment, read on September 21, 2022, also cut down the State's operational policies in Papua at the time and weakened the systematic/widespread element of crimes against humanity.
44. The unpreparedness of the Human Rights Court for the Paniai Incident can also be seen from its preparation and implementation. Its panel of Judges was made of ad-hoc judges that seemed unprepared to carry out proceedings on legal events as necessary as crimes against humanity. These concerns were raised multiple times by the 2014 Paniai Monitoring Coalition.²³
45. One of the most concerning factors was the minimal involvement of survivors and victims' families, even though from the initial moment of the incident, they proactively provided information and evidence to support the legal process. The slow follow-up by law enforcement officials resulted in further injustice and disappointment for the survivors and the victims' families. Only two survivor statements were heard at the court, and both were

²² <https://www.thejakartapost.com/indonesia/2023/01/06/ago-appeals-against-bloody-paniai-ruling.html>

²³ <https://kontras.org/en/2022/12/16/the-human-rights-court-for-the-paniai-incident-further-evidence-from-a-p-overless-state-against-human-rights-criminals/>

only in the form of readings, while the viewpoint of the authorities and the alleged perpetrators dominated this trial.

Ireland

46. The Irish Council for Civil Liberties (ICCL) has concerns that members of An Garda Síochána (AGS) (the Irish police service) who may have engaged in disproportionate violence against or harassment of protesters have not been held accountable. As such, there is an ongoing need to carry out inquiries into particular accountability and protest issues in Ireland.
47. ICCL Consultations with Protesters: ICCL carried out three consultations with a range of protest groups in 2019, as part of an INCLLO supported project on the right to protest, with the intention of developing a Know Your Rights Guide on the Right to Protest that responded to real needs on the ground.²⁴ The intimidation and harassment of protesters by members of AGS was reported in all three of the consultations and remains a cause for concern in ensuring the facilitation of the right to protest in Ireland. In this regard, participants in the consultations noted that: AGS officers have intimidated and harassed protesters by filming them at close quarters, recording vehicle registration numbers and misusing policing powers to target activists and protest leaders, including through the confiscation of mobile phones (and erasing content) and through stop-and-search procedures and strip searches in detention. These complaints were made particularly in the context of protesters protesting against the use of an Irish airport- Shannon Airport by US Military Planes- and the complainants cited that this form of harassment was ongoing. Housing activists also reported the use of intimidatory tactics by Gardai.
48. ICCL heard allegations of police intimidation of protesters living in Direct Provision Centres, where asylum seekers are housed. A climate of fear as a result of feared and actual reprisals and threats by managers in Direct Provision centres and, in some incidents by Gardai, against those seeking international protection was reported. The criminalisation of protest activity through the use of the Public Order Act was noted. This Act allows wide discretion to Gardai to arrest people for breach of ‘public order’, though this concept is not clearly defined. Participants in all three consultations reported that arrest was often used as a tactic to suppress protest activity and create a “chilling effect” on a protest but that charges are subsequently dropped or protesters are released, without charge. This was particularly noted by housing rights activists.
49. Shell pipeline protests 2006-2010: ICCL heard that violence was used against protesters who were protesting against the introduction of a pipeline by Shell to County Mayo on the West coast of Ireland from 2006-2010. The allegations of violence were not properly investigated. The protesters submitted a large number of complaints to the Garda Síochána Ombudsman Commission (GSOC) and in 2007 the GSOC sought to do a “policies and practices” investigation into public order aspects of the dispute. The Garda Síochána Act

²⁴ For an ICCL report on the Consultations see
<https://www.iccl.ie/2019/preliminary-report-iccl-national-consultation-with-protesters/>

2005 requires the consent of the Minister for Justice for any such investigation. The then Minister for Justice, Brian Lenihan TD, denied his consent to this investigation without giving any reasons. This “created the impression that the State does not want the Garda Síochána held properly to account over the policing of the Corrib dispute.”²⁵

50. Protest at Frederick Street 2018: A high profile anti-eviction protest in 2018 on Frederick Street in Dublin resulted in complaints of [excessive use of force](#) by Gardai against protesters, including the use of batons and pepper spray. While there was an internal inquiry by AGS, no consequences for the individual Gardai were apparent.
51. Accountability: Concerns were expressed by many protesters to ICCL during the 2019 consultations that complaints about AGS misconduct in the context of protest have not been sufficiently addressed. Participants felt that complaints to the Garda Síochána Ombudsman Commission (GSOC) had not been taken seriously. They stated that accountability for AGS misconduct or violations of human rights, whether through disciplinary proceedings or prosecutions for serious offences, in the context of protest was lacking.
52. The Garda Inspectorate, another oversight body tasked with inspecting the policies and procedures of AGS, conducted an investigation into public order policing in 2019. One of their conclusions concerned the gap in governance around the use of force by AGS. They stated “there is no internal governance group monitoring use of force within the Garda Síochána. This is a significant gap in governance. The effectiveness and proportionality of tactics, training and equipment needs to be closely monitored at the strategic level to ensure the safety and human rights of gardaí and the public are protected. Similarly Garda Síochána compliance with internal policies, such as use of force refresher training and GSOC notification, need to be kept under regular review.”²⁶

Kenya

53. The Independent Policing Oversight Authority has been critical in conducting investigations and fact finding missions regarding crimes committed by police officers in the context of freedom of assembly. In their last appearance before the Justice and Legal Affairs Committee of Kenya’s Senate, the authority disclosed that complaints against police have [increased](#) by 83.4 percent from 594 in 2012 to 3,583 cases in 2021.
54. No commission of inquiry set up in Kenya regarding human rights violations in the context of protests despite numerous [reports](#) by Civil Society Organizations. This is despite the fact that there have been several investigations into excesses by police officers in the context of protests by the Independent Policing Oversight Authority and the Office of the Director of Public Prosecutions.

²⁵ See report by barrister Brian Barrington into the dispute, commissioned by Frontline Defenders in 2010 at http://www.shelltosea.com/sites/default/files/frontline_corrib_gas_report.pdf

²⁶ https://www.policingauthority.ie/assets/uploads/documents/Public_Order_Policing.pdf
Garda Inspectorate Report, Public Order Policing, 2019, p.28

South Africa

55. The most pertinent example of the egregious denial and response to the right to assembly in South Africa occurred just over 10 years ago in Marikana and continues to haunt any instances of violations relating to exercise of the right to freedom of assembly.
56. South Africa experienced a watershed moment within the context of assembly and police misconduct in the infamous Marikana miners' strike in August 2012. The Marikana miners' strike (also known as the "Marikana massacre") was the killing of thirty-four miners by the South African Police Service (SAPS) on 16 August 2012 during a six-week wildcat strike at the Lonmin platinum mine at Marikana near Rustenburg in South Africa's North West province. The massacre constituted the most lethal use of force by South African security forces against civilians since the Soweto uprising in 1976 and has been compared to the 1960 Sharpeville massacre.
57. The massacre on 16 August was the result of the decision by SAPS forcibly to disperse the striking mineworkers, who throughout the week had gathered on a public koppie (Afrikaans for a small hilltop) neighbouring the mine. The shooting took place at two locations, roughly 500 metres away from each other, with 17 people fatally wounded at each location. The vast majority of fatalities were killed by R5 assault rifle fire. The official figure for strikers injured during the shooting is 78.
58. As a response, erstwhile South African President Jacob Zuma recruited an enquiry commission. An official [commission](#) of inquiry (Marikana Commission), chaired by retired judge Ian Farlam, concluded its investigation in 2015 but was ambivalent in assigning blame for the massacre, criticising the police's strategy and actions but also criticising the conduct of the strikers, unions, and mine management. Two years of investigation and spending a colossal R153 million later, no one has been punished by the law.²⁷ Families of murdered labourers received about R70 million as compensation for their loss. However, the state did not compensate the injured miners or their families. Significantly, and given the ambivalent findings of the Farlam commission of inquiry, not a single police officer was charged for the death of the protesting workers.²⁸ The Marikana massacre raised major concerns on police misconduct in preventing protest action and still continues to cast a long shadow over police responses to protest action in South Africa.
59. The aftermath of the Farlam commission of inquiry raised major questions about policing and the extent to which the SAPS was adhering to its constitutional duty to act, teach, and require its members to act, in accordance with the Constitution and the law. The Commission of Inquiry highlighted a range of systemic problems in the functioning of the SAPS, in particular at senior management level, and in its ability to handle complex crowd management operations. In line with the recommendations of the Marikana Commission, the Cabinet established the Panel of Experts (hereafter referred to as the Panel) in April 2016. The report was finalised in May 2018 but only published in early 2021. The terms of

²⁷<https://www.dailymaverick.co.za/article/2022-05-19-marikana-a-massacre-still-without-any-criminal-consequences/>

²⁸ Ibid.

reference of the Expert Panel [report](#) addressed both the broad issue of professionalising and demilitarising the SAPS and the more specific issue of protest, the law and the use of force in crowd management. One of the key focuses in chapter 3 of the report is on the use of force in crowd management. This includes ensuring that firearms capable of automatic fire are not used at all in crowd management and that clearer standards are developed for, and greater control is exercised over, the use of less-lethal-weapons. The report also makes a number of other recommendations intended to ensure that sufficient scrutiny is exercised over the types of weapons that are procured and that they are used in such a manner as to minimise the potential for them to cause death or serious injury (Panel Recommendations 92 to 104). The report motivates for National Instruction 4 of 2014 to be amended to put forward a set of fundamental principles for the use of force in crowd management and these should form the basis for police understanding in any situation where the use of force is considered (paragraphs 898 and following and Panel Recommendation 132).

60. State accountability, from ministers and SAPS alike, has seriously been lacking in criticisms and dialogue on police misconduct in protest action. There has been a constant narrative from state actors on the threats posed by protest action and the responses thereto have mainly been violent and brutal in its suppression of the right to protest. The panel's recommendations have not been implemented despite there being arguably an increase in police violence towards protests in South Africa. Civil society, victim associations, unions and community organisations have been advocating for years on the need for greater accountability and responsibility from police and state in addressing their responses to protest action, these however, have proven futile in addressing the pressing need for reform.

b. Please provide information of any trials and related criminal prosecutions implemented against State or non-State perpetrators responsible for these violations in the context of assemblies? What type of serious violations the trials/prosecutions were related to; and what role have the defendant/s played in the commission of these crimes?

Colombia

61. In the 2021 national strike, there were cases of armed civilians directly threatening and attacking demonstrators, several with firearms. However, few judicial processes have been advanced to clarify criminal responsibility. Moreover, those that are underway have not progressed and the charges have been far less serious than what their actions could configure. For example, Andrés Escobar, a man accused of shooting at protesters in the city of Cali, is being prosecuted for usurpation of public functions, use or throwing of dangerous substances or objects, and aggravated threats, not for attempted murder, despite the fact that he was caught on camera firing his firearm directly at people exercising their right to assembly. In addition, the Attorney General's Office charged eight police officers with prevarication by omission, because they allowed civilians to [shoot](#) indiscriminately against demonstrators, and four others for aggravated torture and unjust deprivation of liberty. However, the proceedings are still at the indictment stage.

Hungary

62. Private security groups restrict, sometimes violently, the peaceful enjoyment of the right to protest, and the police often fail to provide official protection against them. It was the case in 2018 when protesters who tried to prevent construction activity in a public park in Budapest and a security personnel had beaten one of the activists. The criminal procedure, in which the activist presented herself instead of the public prosecutor, is still [ongoing](#).

Ireland

63. An internal Garda investigation into the policing of housing protests at Frederick St identified a number of lessons. A key lesson was the need for advice from a public order tactical advisor (POTAC) or commander in advance of any pre-planned event or operation.²⁹ However, there were no reports of individual accountability for the use of pepper spray or batons against protesters. The Policing Authority asked the Garda Inspectorate to carry out a review of public order policies following this high profile public order incident.³⁰

64. GSOC requested permission from the Minister for Justice to conduct a system wide investigation into “certain policies and practices” of AGS in relation to the public order policing at the Shell protests. However, the Minister of Justice denied this request. No accountability for use of force against these protesters has been forthcoming.³¹

Israel

65. Between 2014 and 2016, there were 20 cases of Palestinian from East Jerusalem losing eyes from sponge bullets, half of them being [minors](#). They were all hit during clashes with the police although they hadn't taken any part in the clashes and they were not suspected of any crime. The cases were investigated by the police investigation unit, but they were all closed without any charges against the policemen. The [conclusion](#) was that since the use of sponge bullets was legitimate in the consequences of violent clashes and it's impossible to prove that the policeman used it intentionally to cause harm, the cases can not be prosecuted.

66. Most of the victims also filed civil lawsuits against the police, but none won their case. Some were unable to prove they were hit by a sponge bullet and not a stone, some couldn't prove the use of the weapon against them was negligible and in some cases it was determined that the action is covered under the definition of "an act of war" which gives the state immunity from the tort claim. For that reason, in the occupied territories, Palestinian victims can never get compensation in a civil lawsuit as the army's actions are always immune under this definition. In one rare instance, in 2021, Israel [agreed](#) to pay compensation to a

²⁹ https://www.policingauthority.ie/assets/uploads/documents/Public_Order_Policing.pdf Garda Inspectorate Report, Public Order Policing, 2019, p.13

³⁰ https://www.policingauthority.ie/assets/uploads/documents/Public_Order_Policing.pdf Garda Inspectorate Report, Public Order Policing, 2019,

³¹ Report by barrister Brian Barrington into the dispute, commissioned by Frontline Defenders in 2010 at http://www.shelltosea.com/sites/default/files/frontline_corrib_gas_report.pdf see p. 8

Palestinian boy who had been shot in the eye by police officers during the demolition of a nearby home, but it dismissed allegations of police misconduct.

Kenya

67. The most notable example that I have seen in Kenya regarding bringing accountability for cases involving serious human rights violations in the context of assemblies including mass protests has been the case of [Samantha Pendo](#), a six month baby who lost her life following the repressive response by the Kenyan police to peaceful protestors in Western Kenya. A Magistrate Court found five commanders culpable for the death of the six-month-old baby Pendo. The High Court would later rule that 12 police officers would face murder charges for causing the unlawful death of Samantha Pendo.

South Africa

68. On 10 March 2021, Mthikozisi Ntumba, a 35-year-old civil servant, was shot and [killed](#) by police using double-ball rounds as he was leaving a medical clinic in Johannesburg city centre during protests. Mtumba was leaving his doctor's room, when he was in the [crossfire](#) of running protests over historical debt between police and students. It was also reported that three students, who were waiting outside the Johannesburg Institute of Engineering and Technology College, were also shot and injured by police using double-ball rounds that day. According to a CCTV video of the alleged incident, police violently pursued a group of people standing on a sidewalk. In the video, the police are clearly seen firing their shotguns indiscriminately as the group of people flee for [safety](#).
69. Siphesihle Mtsweni, 21, then a student at the Johannesburg Institute of Engineering and Technology was also shot by police using double-ball rounds during the protest that day. Mtsweni, who sustained injuries from the double-bullet rounds to the face, said he dropped out of college later that year due to trauma following the shooting incident. "When I would go back to the college, I was reminded of what happened when I was shot. I am reminded of the dead body I saw," said [Mtsweni](#).
70. Four Johannesburg Metropolitan Police Department (JMPD) officers were subsequently arrested and charged with one count of murder and three counts of attempted murder. An investigating officer with the Independent Police Investigative Directorate [reported](#) that she found "Ntumba's body with wounds on the left side of his chest, under his armpit and under his left eye". During Ntumba's post-mortem, a ballistics [expert](#) "confirmed that the deceased was shot by a rubber bullet at close range".

c. Please provide information about any reparations being provided to the victims and when applicable to their families (such as in case of victims being disappeared or killed) – including monetary compensations, rehabilitation, restitution, and measures of satisfaction, such as public apologies? What has been the process to apply for such reparations?

Colombia

71. We have no information on reparation actions for the victims or their families. On the contrary, the victims and their families have been intimidated, threatened, harassed and persecuted after denouncing. Many have had to go into exile. This is the case of Leidy Cadena, who was victim of an eye injury due to a kinetic impact projectile during the 2021 strike, losing her sight and being left with a physical deformity. As part of the criminal proceedings against the ESMAD officer who shot her, she has received threats via social media and on October 16 of that year she was the victim of a gunpowder attack under her door, for which reason she, her mother, and her couple had to leave the country³². The same happened to Álvaro Herrera, a musician who was illegally captured by civilians and subsequently handed over to the police during the National Strike. After the illegal detention, he was tortured into confessing in a video to having been paid to carry out acts of vandalism, but he was released due to lack of evidence and the irregularities in his capture. However, due to the threats he received later, he had to leave the [country](#).

Indonesia

72. Until now, there has been no effective reparation related to the occurrence of serious human rights violations in the context of freedom of assembly. There has been no apology, compensation, restitution, rehabilitation and satisfaction given by the government to the victims whose rights to associate and assemble have been taken away. Including cases that constitute serious human rights violations. One of the new forms is the form of regret expressed by President Joko Widodo for the findings of the Team for the Non-Judicial Resolution of Serious Human Rights Violations. Several cases that were [acknowledged](#) in the context of freedom of assembly including protests were confessions of the massacre of members, sympathisers and suspected members of the Indonesian Communist Party 1965-1966, the May 1998 Riots, the 1998 Trisakti and Semanggi Incidents I and II.

Kenya

73. There have been no reparations that have been paid out to victims or their families for human rights violations that they have suffered in the context of Freedom of Assembly. Despite some successful cases against the Kenyan Government regarding violations to the right to protests, litigants are yet to receive their payments from Courts of law. In the [case](#) of Wilfred Olal and 5 Others V The Attorney General & 2 Others, the court issued several orders prohibiting the police from stopping and violently breaking the peaceful demonstration held on the 13th of February 2014. The Court also granted general damages

³² Shots on sight. Ocular traumas in the framework of the national strike. Temblores NGO, Action Program for Equality and Social Inclusion-PAIIS and Amnesty International, p. 32. At: https://www.temblores.org/files/ugd/7bbd97_6457f37f4e824a23a2e397fdb61f6b82.pdf

to each of the four petitioners (Wilfred Olal, Gacheke Gachini, John Koome and Nelson Mandela).

d. What other measures have been taken by the Government to establish the truth about these crimes (including the circumstances of the crimes; to identify all those responsible including intellectually; and to identify any systemic failures); and what has been the outcome of such efforts?

Colombia

74. So far, in terms of police reform, the Ministry of Defense and the National Police issued Instruction number 009 of September 25, 2022, which refers to the "Institutional guidelines for the restoration of order" in cases of public demonstrations, obstruction of roads that affect public order, and disruption of transport services, among others. It also defines the situations and conditions in which the intervention of the National Unit for Dialogue and Maintenance of Order, formerly known as the Mobile Anti-Riot Squad-ESMAD, will be required. In this sense, another of the actions taken by the government has been the beginning of the transformation of ESMAD, modifying its [name](#), its institutional image and the vehicles it has, until now.

Indonesia

75. As previously explained, the performance of the Attorney General's Office through investigations to the Public Prosecution Team, which in the end only brought on one defendant's name, is highly questionable. As previously explained, the performance of the Attorney General's Office through investigations to the Public Prosecution Team, which in the end only brought on one defendant's name, is highly questionable. The Constitutional Court of the Republic of Indonesia has annulled the Law on the Truth and Reconciliation Commission because the articles of the TRC Law are considered to violate the rights of victims not to be discriminated against, to seek the fairest justice, and to receive legal protection related to human rights that are universally recognized which are detrimental to victims. Until now, the TRC has not been re-established by the Government.

Kenya

76. There have been no other measures by the Government of Kenya to establish the truth about these crimes. In most instances when Police officers unlawfully disperse peaceful protestors, some have been unlawfully arrested while others have suffered injuries as a result of the repressive nature through which the police disperse these protests. The Independent Policing Oversight Authority usually monitors and documents numerous instances of police excesses in the context of freedom of assembly with a view of recommending prosecution, those police officers found culpable.

e. In your view, how the above measures meet victims' expectations and what have been the gaps, taken into consideration the specific needs of vulnerable groups?

Colombia

77. The measures do not meet the expectations of the victims. In fact, the change of name and image of the ESMAD was strongly questioned, considering that during the presidential campaign, Petro had promised to dismantle this squadron. Furthermore, there has been a lack of participation by the victims and their organisations in the design and implementation of these measures.

Indonesia

78. All the efforts made by the Government certainly have not met the expectations of the victims. There is no fulfilment of effective remedies related to serious human rights violations, including in the context of freedom of assembly and protest. The government constantly perpetuates impunity by not bringing the perpetrators to justice, without significant reparations, and by the lack of competent institutions in these cases. As a result, victims of violations do not receive significant reparations.

Kenya

79. The above measures have not met victims expectations and nothing much has been done to address the gaps. This is premised on the fact that most cases against police officers usually take an inordinate period of time in courts of law and in the event that victims are successful, it's another painstaking process to have the Government pay these victims their compensation.

Question 4: What mechanisms exist to ensure independent and prompt accountability when force has been used in the context of protests, including when a state of emergency is declared?

Australia

80. As far back as 2009, the United Nations Human Rights Committee³³ expressed concern at reports of excessive use of force by Australian law enforcement and recommended³⁴ that Australia implement a mechanism to carry out independent investigations against police use of force. An independent mechanism has still not been implemented. This is worrying, particularly at a time when police appear to be mobilising significant resources against protesters.

³³ Human Rights committee, Ninety-Fifth Session, *Consideration of Reports Submitted by State Parties Under Article 40 of the Covenant. Concluding Observations of the Human Rights Committee: Australia*, CCPR/C/AUS/CO.5 2 April 2009, at 20.

³⁴ Human Rights committee, Ninety-Fifth Session, *Consideration of Reports Submitted by State Parties Under Article 40 of the Covenant. Concluding Observations of the Human Rights Committee: Australia*, CCPR/C/AUS/CO.5 2 April 2009, at 20

81. The lack of independent oversight of police is a high profile [issue](#) in Australia, particularly with respect to police misconduct, violence and neglect targeted at Aboriginal and Torres Strait Islander people, who are vastly overrepresented in Australian prisons.
82. Mobilisation of police resources against protesters:
- a. The government of New South Wales has established *Strike Force Guard III*, to “prevent, investigate and disrupt unauthorised protest across the state” following increased climate protest [activity](#). The creation of a Strike Force by New South Wales Police involves a concentration of police [resources](#) usually reserved for serious drug crime, murder or organised crime.
 - b. The International Mining and Resources Conference (**IMARC**) has been held in Melbourne for 8 years. At the 2019 IMARC conference a number of climate protestors and a journalist were [doused](#) with oleoresin capsicum foam after police attempted to arrest two people that had climbed a structure to unfurl a sign. This matter is currently the subject of a class action by protesters against Victoria Police. Protesters [allege](#) the spray was used on them indiscriminately when they were passively resisting, and in some cases already retreating from the protest.
 - c. The 2022 IMARC conference was moved to New South Wales in November. There are [reports](#) from civil liberties advocates that New South Wales may have been chosen as the new location for the conference due to its new anti-protest laws. In the lead up to and during the 2022 IMARC conference, environmental activists in three states and the Australian Capital Territory reported that they received intimidatory visits by police.³⁵ Ahead of the 2022 IMARC event, activists were visited by police at their homes, and provided inaccurate or false information about the legality of protest in New South Wales and actively discouraged from attending.³⁶
 - d. Without an Australian charter of human rights or similar, environmental protesters in particular will continue to see a threat to their rights by the state. Rights such as freedom of association and assembly cannot be adequately safeguarded in Australia against threats and repressive laws without this baseline protection.

Colombia

83. Judgement STC 7641-2020 of 22 September 2020 of the Supreme Court of Justice recognized that in Colombia there is a set of systematic practices -mostly committed by State security forces- that violate and threaten the right to public and peaceful protest: (i) arbitrary and violent dissolution of peaceful demonstrations; (ii) stigmatisation; (iii) disproportionate use of force, lethal and “less lethal” weapons; (iv) illegal and abusive detentions, inhuman, cruel and degrading treatment; and (v) attacks on press freedom. Among the orders they issued was the restructuring of the guidelines for the use of force in demonstrations. This new protocol was issued through Decree 003 of 2021 “Statute of reaction, use and verification of legitimate state force and protection of the right to protest”,

³⁵ Melbourne Activist Legal Support, ‘*End Police Intimidation of activists*’, (5 November 2022, webpage) <<https://mals.au/2022/10/28/end-police-intimidation-of-activists/>>

³⁶Ibid.

which included several articles related to accountability such as Article 42 (public explanation of police action) and Article 44 (annual accountability of the General Police Inspectorate). However, this has not been effectively implemented.

84. In addition, the right to petition has also been a mechanism used for this purpose. Although it is not strictly speaking accountability and it is not a fast track, it has been the way for civil society organisations to access information on police interventions in the context of social protests. However, there are often delays, obstacles and resistance on the part of the police to provide this information because it is considered national security information.

Hungary

85. In 2020 the Hungarian Government declared a state of emergency to counter the COVID 19 pandemic and introduced a general ban on any assembly. In June 2021, the general ban was cancelled but the state of emergency remained in effect. Furthermore, since the beginning of the Russian invasion of Ukraine the state of emergency is justified with the war situation. In the course of the state of emergency the Government has the power to issue decrees with effect on fundamental rights, including the right to assembly, therefore a general ban on protests might be re-introduced by decree at any time. Moreover, the 9th Amendment to the Fundamental Law of Hungary, effective since 2022, [deteriorated](#) some constitutional guarantees of the state of emergency which opens the avenue for the deployment of the army in case of acts intending to overturn the constitutional order of Hungary even without force or means of violence.

Indonesia

86. The only independent mechanism available in Indonesia for pro justitia investigations is the National Human Rights Commission. Furthermore, the investigation is submitted to the Attorney General's Office in cases of serious human rights violations. However, neither has been an effective tool for state accountability, capable of providing justice to victims, when civil society tries to test internal and external accountability spaces for the practice of forced dissolution of freedom of assembly in several cases. The many incidents of violations of the right to freedom of assembly that have occurred have been followed by a lack of room for correction and accountability to the state, especially the security forces who have made restrictions using logic and wrong interpretation and do not refer to legal and human rights standards as well as human rights principles adhered to by a number of national legislation.
87. Violations of the right to freedom of assembly are often not evaluated on issues with the highest intensity of violations such as communism, belief and worship, and LGBT rights. Not to mention other issues such as indigenous peoples, development within the scope of land rights, and labour which occur quite frequently in various regions. The absence of a corrective mechanism and room for state accountability for violations of the right to freedom of assembly is something that results in repeated violations of human rights, including the right to freedom of assembly. At this point, the urgency of having a corrective mechanism and accountability space for violations of the right to freedom of assembly in

relation to other fundamental freedoms becomes a necessity and a necessity in reflection of the many violations of the right to freedom of assembly.

Kenya

88. Kenya has the Independent Policing Oversight Authority (IPOA) whose primary mandate is to monitor and document the conduct of police officers while they discharge their duties including while dealing with peaceful protestors. The authority is also tasked with investigating cases of police excesses and recommending for prosecution, officers implicated in committing human rights violations while discharging their duties including during peaceful protests. to promote accountability of police officers when force has been used in the context of protests.

Question 5: What are the challenges, legal, political, institutional and administrative when trying to secure criminal accountability and redress for such crimes committed in the context of assemblies in your country? Please provide information of any positive steps that the Government has taken to address these challenges with the view of bringing accordingly promptly and according to the international standards to the above types of serious violations in the context of assemblies.

Argentina

89. In Argentina there is a lack of regulations about policing and use of force, as well as on control mechanisms and duty obligations. This problem is exacerbated in the case of the so-called “less lethal weapons”, about which there are no norms or regulations. This deficit is also noticeable in the case of specific protocols that should orient policing actions in the context of social protests. As an exception, in 2011 the Ministry of Security published a Resolution (nº 210/11) to establish Minimum Criteria for the Development of Protocols for Police and Security Forces in Public Manifestations. Then, between 2012 and 2013 the federal security forces (Argentine Federal Police, National Gendarmerie, Naval Prefecture and Airport Security Police) established their own protocols on the matter, according to the Minimum Criteria, although their content showed certain disparities and inconsistencies between each other. The Resolution signals general criteria so that any police intervention offers protection to people who are actively participating in a protest and reduces human rights violations that could arise in this context towards other people and other public goods. Between these criteria, the Resolution sets some standards for the regulation of less lethal weapons. In the provincial jurisdiction there are no norms that regulate use of force by provincial police and other security forces in the context of social protest.
90. Irrational and disproportionate use of so-called less lethal weapons is one of the most repeated obstacles to the exercise of the right to protest in Argentina. Particularly, there is an indiscriminate use of rubber pellets and tear gas that have produced serious injuries to protestors. This kind of police intervention is most prominent among the provincial security forces that most frequently intervene in social protests.

91. These gaps in regulation enlarge the uncertainty about the limits of police intervention and facilitate a normalisation of the use of less lethal weapons by security forces. This situation also produces a lack of initiative by the judiciary regarding investigations of the use of less lethal weapons in the context of protests. Additionally, the lack of transparency and control offices led by civil authorities in charge of the political government of security generates deficiencies in administrative investigations that seek to analyse particular police interventions but that can also produce knowledge to promote regulations and establish solid control mechanisms. Lastly, in this scenario, except for particularly serious cases such as the one of the Lof Cushamen mapuche community³⁷, citizens in general and victims in particular are not prone to reporting events of police violence.
92. Problems in the investigation of use of force incidents in the context of social protest:
- a. Judicial endorsement to police interventions: The main response to violent police interventions by the judiciary is to legitimise it. This response is limited to determine that all actions taken by police were legal and to disengage all criminal responsibility. Where an investigation is initiated, it often only goes against the agents that directly perpetrated violent acts, isolating the actions from the context in which they occurred. This approach directs the collection and production of evidence almost exclusively towards finding a shooter but omits analysing the general context of the police intervention in the protest.
 - b. Deficiencies in planning the interventions: Police operations usually have many coordination problems that make the reconstruction of the facts and the attribution of responsibilities difficult. These problems in planning can be seen as vague instructions by chiefs, delegation of overlapping authorities, lack of clarity regarding assigned resources and the chain of command as well as regarding documentation and record-keeping. Meanwhile, the judiciary does not usually send appropriate authorities to witness the operations, which would in turn contribute to better controlling how the police execute judicial orders.
 - c. Deficiencies in documentation: The assignment of weaponry, ammunition and equipment as well as a comprehensive list of participating agents should be incorporated into official records that later help to piece together which weapons were carried by which agent. However, this is also difficult to do because of corporate reluctance to report and the lack of cooperation by prosecutors and judges' offices to seek out relevant information. During the operations, the assignment of weapons is the result of a decision by whoever is in charge. These decisions should be documented. There should also be especially trained personnel for the custody of persons and weaponry, their distribution and the oversight of weapons and ammunition. The inherent complexity of operations demands that communications between officers are preserved as evidence, as well as film, which is fundamental for investigations into police behaviour and to establish the facts when

³⁷ See below paragraphs 123-126 for a full description of the case.

there is a suspicion of arbitrary detention of protestors. Experience shows that the lack or deficiency of records coincides with situations of arbitrary arrests.

- d. Unidentified police agents: Security agents must wear uniforms with visible identification whenever they are part of an operation. This obligation is explicit in Act n° 5688 of the City of Buenos Aires regarding the Police of the City of Buenos Aires, in the Internal Order n° 184/2006 of the Federal Police, in the aforementioned Resolution n° 210/2011 for federal security forces and is derived of the republican principle of control of governmental acts. Nevertheless, in many occasions police officers do not wear such identification and sometimes they do not even wear a uniform. This presents difficulties to reconstruct police operations in order to assign criminal responsibility for their results.
- e. Lack of administrative investigations: The Executive must also respond for abusive police intervention in the context of protests. National and provincial Security Ministries must initiate administrative investigations when there is a possibility that there might have been irregularities or that police did not abide by the regulations, which are to be independent from the judicial investigations. However, this disciplinary obligation is rarely made effective, which derives from a lack of control by political authorities and the absence of cooperation in judicial investigations. One of the strategies to block this control is to make administrative procedures contingent on the judicial investigation. Frequently, Control Offices, which should carry out these investigations and apply sanctions where necessary, do not advance in these tasks if the judicial processes also do not advance, even when the elements present in the investigations are sufficient to exercise disciplinary control.
- f. The lack of transparency surrounding these investigations is strengthened because the regulations do not incorporate the participation of victims or other interested parties in the procedures, who could carry out a democratic control over these processes. Usually, whenever there is an administrative investigation under place, it only focuses on a case-by-case basis and is solely for sanctioning purposes. Be it for a lack of will, capacity or political assertiveness, there is no structural outlook that seeks to identify common patterns in police interventions and to design relevant policies to address them or to prevent human rights violations.
- g. Lack of compilation and analysis of information: The absence of quali-quantitative information about the effects of police use of force represents an outlook that does not raise questions about the use of violence in all its complexity. Due to its recurrence, the fact that there is no specific approach for the most serious cases of inadequate use of force is a sign of institutional tolerance in that it shows a lack of interest in knowing the specifics about these practices and their concrete impacts. The data that some state offices have tried to produce are in fact fragmented and dispersed, they have been discontinued or are not accessible to the public. This perpetuates the absence of control measures and reduces state responses to eventual reactions. It is worth noting that there are no records that compile

information on the use of less lethal weapons. Use of force documents and data would allow political authorities and police authorities to reflect on the damaging effects of their interventions to impede the reiteration of human rights violations perpetrated by security forces.

Colombia

93. There are several challenges to ensuring criminal responsibility and reparation for crimes committed in the context of peaceful assemblies. Firstly, in relation to the police, there is a lack of recognition of the systematic and structural problems that the institution has in accompanying protests, in the use of force and weapons, and in its training, among others. Not recognizing these problems prevents the existence of a real will for internal transformation. Furthermore, there is also a lack of coordination between the police and other institutions such as the Ministry of the Interior, the Ministry of Justice, the Ministry of Defense, the Attorney General's Office, the Judiciary, local government bodies, among others. All these institutions are involved in dealing with social protest and, some of them, with the investigation and punishment of crimes committed in the context of demonstrations. In addition, the Attorney General's Office is biased, focusing its efforts on persecuting and criminalising demonstrators, even without solid evidence, instead of investigating law enforcement officers allegedly responsible for human rights violations in these scenarios.

Hungary

94. The police often sanction protesters for committing petty offences around protest activities. For example, after the closing of crowded events, participants – in some cases: students –, who were leaving the venue, either as group of pedestrians or eventually protesting citizens, were stopped by the police if they walked on the road instead of the sidewalk or missed to use the crosswalk, on the ground of breaching traffic regulations. This is quite common even if the route was secured by the police. It also happens that participants are forced to identify themselves in front of a turned on police camera. Such actions and sanctions, even if the sanctions are light, have a clear chilling effect on expressing views in the streets. Moreover, it has the practical effect of terminating such marches, and in the lack of formal disbanding action, there's no adequate remedy for those affected: individual petty offence procedures shall be taken, instead of a lawsuit on the ground of violating the right to peaceful protest, and individual complaint may be lodged, but in these procedures the aspect of the protest is hardly taken into consideration.

Indonesia

95. There is an increasing trend towards limiting space for expression, including specific restrictions on the right to assemble in public peacefully. KontraS found recurring patterns; The first is the pattern of restricting the right to assemble using immeasurable restrictions by law enforcement officials. The second is the pattern of limiting the right to assemble directed specifically at civilian groups who are actually using their constitutional rights to balance state discourse. The third is the absence of a state accountability mechanism that effectively provides justice to victims when civil society tries to test the internal and external

accountability spaces for the practice of forced dissolution of freedom of assembly in several cases.

96. One of the root causes causing the continued restriction on freedom of assembly is laws and regulations. This is a significant problem considering that policy is the main basis for citizens to carry out arbitrary actions, and there are often erroneous interpretations by implementing officials in the field. Legislative regulations are the cause of restrictions on the right to freedom of assembly with misinterpretations by implementing officials in the field. Regulations that have the potential to lead to criminalization and the "culture" of law enforcement officials result in reduced civil society space. In addition, the lack of accountability space and weak corrective mechanisms have resulted in repeated violations of the right to freedom of assembly. Then, there is also the arbitrary interpretation of the security forces on the policies that emerge from the central government.

Kenya

97. Some of the challenges present in Kenya include:
- a. A slow legal process: Cases meant to secure criminal accountability and redress take a long time for them to be finalised in Court.
 - b. Some of the human rights violations in the exercise of the right to freedom of assembly are politically instigated. Therefore, securing criminal accountability for some perpetrators has proved to be an inordinate task that has equally been exacerbated by the lack of political goodwill.
 - c. Lack of cooperation between government bodies whose members are suspected of human rights violations with IPOA. IPOA reports that there are periods of deliberate delays to slow down the investigative body.
 - d. Delayed payment of Court awards: In most instances when litigants successfully sue police officers for excesses committed in the context of peaceful assembly, payment of this award by the Government usually takes an inordinate period of time.

Russia, Belarus, Kazakhstan, Tajikistan, and Uzbekistan

98. In recent years there have been a number of mass protests in several States of the former USSR all of which have been violently dispersed and are proof of the total lack of accountability from law enforcement for serious violations against the right to peaceful assembly. Among them were protests in Russia on Moscow regional elections in 2019, against the constitutional reform in 2020, against the arrest of Mr Alexey Navalny in 2021, against the military invasion of Ukraine in 2022, in Belarus against the rigged presidential elections in 2020, in Kazakhstan in early 2022, in Tajikistan's autonomous region of Gorno-Badakhshan in 2021-2022, in Uzbekistan's autonomous region of Karakalpakstan, to just name a few. All of these protests were violently dispersed by the police which used rubber truncheons, less-lethal and occasionally lethal weapons; in all countries except Russia at least some of the protestors were killed. Yet, in none of these states were the police officers who used force against the protesters investigated. If the survivors complained about ill-treatment, the investigative authorities merely replied that the information from

the victims did not disclose any elements of crime committed by the police. If such replies could be challenged before the courts, as in Russia, the courts would unreservedly side with the investigators. Conversely, protesters were charged with crimes ranging from disruption of public order to sedition, many were convicted and sentenced to lengthy prison terms.

South Africa

99. The current framework for providing guidance - and thus frameworks for accountability - to SAPS members with regard to the use of force is inadequate in various ways. One issue is that it does not clearly articulate the protection of life — understood to include the lives of SAPS members, suspects and other civilians—as a broad guiding principle governing the use of lethal force by SAPS members. Recognition of the protection of life as a key principle is a hallmark of professional policing. Another ongoing challenge is ensuring that firearms capable of automatic fire are not used at all in crowd management and that clearer standards are developed for, and greater control is exercised over, the use of less-lethal-weapons. The need for more detailed guidance to be provided to police in relation to the use of force and particularly lethal force, motivated the adoption of a use of force policy developed by the Civilian Secretariat for Police Service, with input from the Panel of Experts (Panel Recommendation 34).
100. The Expert Panel further emphasised the need to demilitarise SAPS. Broadly the Panel's view was that many of the recommendations that it has made in order to advance the process of professionalisation will also contribute to addressing aspects of militarism that are inappropriate for community-oriented policing; this will include changing the militarised characteristic of the SAPS management and training culture to one that supports a professional policing ethos.
101. In addressing protest, the law and crowd management, a major theme running through this section is the need for the legislation governing protest, the administration of this legislation by municipalities, and the policing of protest to more consistently be implemented in a manner consistent with the right to peaceful assembly provided for in Section 17 of the Constitution. The right to assemble peacefully is covered by the Regulation of Gatherings Act (205 of 1993) and is currently the key legislative instrument governing the regulation of protest. National Instruction 4 of 2014⁶ is the key SAPS internal directive in this regard. Neither of these instruments is grounded clearly enough in the right to peaceful assembly that is provided in Section 17. The Panel makes numerous recommendations towards the review of the Regulation of Gatherings Act, 1993, and National Instruction 4 in support of an improved regulatory framework for crowd management.
102. The report also stresses the need for maintaining a special crowd management capability – otherwise known as a Public Order Policing (POP) unit. In order to fulfil its responsibilities, both in supporting the exercise of the right to peaceful protest, but also in addressing protest related or other collective violence, the POP units need to be maintained as a specialist capability. This means that crowd management should clearly be defined as their primary mandate (Panel Recommendation 71). A further important recommendation

in this regard is that POP should be centralised under one component or division within the SAPS (Panel Recommendation 72). Currently most POP units are provincial policing resources falling under the command of one of the provincial commissioners. This results in POP units being used extensively as a 'stop gap' to supplement the crime combating capacity of the SAPS, with the consequence being that POP personnel are frequently deployed to crowd management situations in very small numbers.

103. The provision of psychological and wellness support services to POP personnel should be mandatory and routine and police members who are severely traumatised and unable to effectively perform their policing duties should be withdrawn from an operation and provided with the necessary psycho-social support (Panel Recommendations 77). Revisions to National Instruction 4 and to crowd management training, and other measures to ensure effective inter-police communications (Panel Recommendations 112, 113, 114 and 115).
104. The Panel recommendations discuss the need to address the use of violence in protests. The proposed doctrine (Panel Recommendation 68) that is referred to above not only emphasises negotiation and de-escalation but also foregrounds the principle of differentiation. In part this is to ensure that, even where force is used against individuals, POP units do not unnecessarily create antagonism between themselves and non-violent crowd members. This is intended to reduce the potential for escalation of conflict.
105. A general recommendation is that POP units need to be able to develop greater flexibility and agility in order for them to respond in an appropriate manner to the specific challenges of each situation (Panel Recommendation 55). To support this objective, the Panel has recommended that each POP unit should include a public order restoration capability consisting of one section for each platoon. These sections should be highly trained in line with the crowd management doctrine and fundamental principles on the use of force in crowd management, with particular emphasis on protection of life (Panel Recommendation 74; the fundamental principles on the use of force in crowd management are referred to in Panel Recommendation 132). The Panel has recommended that a prohibition against the use of the R5 rifle, and other weapons capable of automatic fire, in crowd management should be formalised in regulations issued by the Minister of Police. Such a prohibition should apply not only to POP units but to other units who may be deployed in support of POP for crowd management purposes (Panel Recommendation 105).
106. Importantly, the panel addresses the issue of less lethal weapons in the context of protest action and tries to provide clarity and solutions. Most of the violence that occurs during crowd management incidents does not involve the threat of bladed weapons or firearms but rather involves throwing of stones or other projectiles, often from behind a barricade. Petrol bombs and arson are also not infrequent. While POP units need to be able to protect themselves against lethal threats the less-lethal-weapons that they mainly use are teargas, rubber bullets, stun grenades and water cannons. These weapons are sometimes referred to as non-lethal. But experience in South Africa and elsewhere clearly shows that they may potentially have lethal consequences even though this is less likely than it is with the use of firearms and live ammunition. To promote recognition of their lethal potential the

SAPS should consistently use the term less lethal-weapon when referring to the class of weapons used in crowd management situations, recognising that all weapons including less-lethal have the potential to cause injury and death (Panel Recommendation 91).

107. A related recommendation emphasises that it is often vulnerable people, such as young children and the elderly, who are most at risk for injury from these weapons and calls for awareness of this risk to be promoted through training (Panel Recommendation 58).
108. The report also makes a number of other recommendations intended to ensure that sufficient scrutiny is exercised over the types of weapons that are procured and that they are used in such a manner as to minimise the potential for them to cause death or serious injury (Panel Recommendations 92 to 104). As indicated, the report motivates for National Instruction 4 of 2014 to be amended to put forward a set of fundamental principles for the use of force in crowd management and these should form the basis for police understanding in any situation where the use of force is considered (paragraphs 898 and following and Panel Recommendation 132).
109. Significantly, the panel recommends a holistic approach to addressing social conflict. The Panel recognises that South Africa's response to the problem of violent protests cannot rely exclusively on POP units. In the face of evidence that more and more people regard peaceful protest as ineffective this means that there needs to be a broader government lead programme to support and strengthen the culture of peaceful protest in South Africa. One way in which this can be done is by strengthening local-level mechanisms for problem solving, and the management of conflict. Communities should know that peaceful protest is an instrument that they can use, without facing unnecessary impediments to make themselves heard. Existing mechanisms should be strengthened, or a new mechanism should be established, so that where possible, and where this is desired by protestors, the grievances and disputes that give rise to protest, and sometimes to violence, can be mediated and resolved without requiring the involvement of the police (Panel Recommendation 52).

Question 6: Please provide information on what guarantees of non-repetition has the Government implemented to ensure such abuses do not reoccur – such as changes of relevant legislation, policies, practices, institutional changes, security reform?

Colombia

110. Developments or changes in legislation, policies, practices or institutions are not significant. Those that we are aware of have already been mentioned in the previous answers. However, the acknowledgment that these abuses occurred and that there is a systematic problem in the use of force by the law enforcement agents that needs to be addressed is an important change in discourse, compared to the previous government. This discourse needs to be put into practice with reforms aimed at achieving institutional compliance for national and international standards on the right to peaceful assembly.

Furthermore, these changes must be designed with the participation of victims and civil society organisations.

Indonesia

111. There is no control and evaluation within the framework of a corrective mechanism and accountability space which is carried out starting from the highest structure, namely the President as the highest executive holder and his staff including the Head of the National Police to present a mechanism for violations of the right to freedom of assembly through laws and regulations. This mechanism can not be accessed effectively, independently, promptly and thoroughly to investigate allegations of human rights violations or abuses, including those related to the right to freedom of peaceful assembly.
112. KontraS provides recommendations for the understanding of human rights by the police apparatus that internal training can be carried out by Polri institutions, especially at the lowest level of staff, such as Resort Police and Sector Police. This is in view of the presence of the Chief of Police Regulation Number 8 of 2009 on the Implementation of Human Rights Principles and Standards in the Implementation of Duties of the Indonesian National Police. The need for strict supervision of implementing a number of laws and regulations that have a high potential to violate the right to freedom of peaceful assembly. Supervision can be carried out through internal mechanisms such as the Police Profession and Management Division, Military Police, and TNI and externally from state institutions such as the Indonesian Ombudsman, Komnas HAM, National Police Commission, and civil society organisations (CSOs) as human rights defenders to be able to maintain space for participation in access to fundamentals freedom including the right to freedom of assembly.
113. If the laws and regulations and the behaviour of the state apparatus, in fact, further reduce the space for civil society. It is appropriate to examine laws and regulations that are not in accordance with human rights principles and standards so that they can be changed or cancelled. It is important to devise a breakthrough that can guarantee protection for human rights defenders from advocacy work, including using the right to assemble and associate in an inclusive manner. This breakthrough must also bind forms of cooperation and accountability between institutions such as the Indonesian Police, Regional Government, and Komnas HAM in the space of monitoring, guaranteeing, and measuring state accountability.

Section C. With regards to the role of other actors in bringing accountability for serious human rights violations in the context of exercising the rights to freedom of peaceful assembly and associations.

Question 1: What role have civil society, victims and victims' representatives/associations, and social movements played in the creation, design and the implementation of accountability processes regarding serious human rights violations in the context of freedom of association and assembly?

Argentina

114. Most of the impulse for these investigations to go forward is dependent on victims and their families. Whenever a rights violation occurs during a police operation, the State has an obligation to initiate a serious, impartial and effective investigation without delays, and the Prosecutor's Office, as the State representative, must direct its actions to seek the truth. Investigations should never rely on the initiative of victims or their relatives, nor of their willingness to provide relevant evidence. However, this happens in many cases where police are involved: the process is not driven forward by the judiciary, and on the contrary sometimes ask for the accusations of victims and witnesses to be dismissed. Therefore, it is the people affected by this violence who are left to promote the accusation. At the federal level, there are certain areas, such as the Special Prosecutors Office for Institutional Violence (Procuvin, in Spanish) or the Directorate for Accompaniment, Orientation and Protection of Victims (Dovic, in Spanish), and specific initiatives like the Plaintiff Program in the Public Ministry of Defense that seek to sponsor victims and their families. Even then, they must overcome these processes with minimal resources and beat the reticence of the State to investigate itself.

Australia

115. Despite a number of recommendations³⁸ to implement an independent body for investigating complaints against police, no Australian jurisdiction has established a system of truly independent investigations of complaints against police and for deaths in police custody. Typically, complaints are reviewed internally,³⁹ and independent oversight is limited to only serious and systemic corruption or police maladministration.⁴⁰ Complaints against police officers are primarily investigated by other police officers. In the state of Victoria, between 90 and 97 per cent of all complaints made against Victoria Police,

³⁸ Commonwealth of Australia, *Royal Commission into Aboriginal Deaths in Custody*, National Report (1991) Vol 2, <<http://www.austlii.edu.au/au/other/IndigLRes/rciadic/>>, Australian Law Reform Commission, Australian Law Reform Commission, *Pathways to Justice-Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander People*, (Report, 2018)

<<https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/>>

³⁹ Ibid

⁴⁰ Ibid

including those containing allegations of serious rights violations, are investigated by Victoria Police.⁴¹

116. In the state of New South Wales, a frail 78-year-old man who was peacefully protesting by holding a sign in Sydney was left with a fractured skull and bleeding on the brain after New South Wales police officers attempted to arrest him for refusing an order to leave the site. After considerable public [outrage](#), New South Wales police promised an independent review would be conducted into the incident, but in reality the review is being conducted by an officer from a different New South Wales Police command. The investigation will be overseen by the New South Wales Law Enforcement Conduct Commission, an independent body that considers allegations of serious misconduct, but only if the Commission has concerns with the conduct of the internal police [investigation](#).
117. In the absence of truly independent bodies to investigate police complaints, victims are reliant on self-advocacy for redress for breaches of their rights. Each Australian jurisdiction should establish a fair and impartial independent body for investigating complaints against police. Such a body needs to be hierarchically, institutionally and practically independent of police and have features to ensure that investigations are comprehensive, prompt, and subject to public scrutiny.

Colombia

118. Civil society, victims and their representatives/associations, and social movements have been fundamental in promoting accountability processes. Through actions such as litigation (*tutelas*, rights of petition, representation of victims), participation in public hearings in Congress, participation in spaces organised by the police, advocacy for this issue to occupy a place on the legislative agenda, among others, accountability has become an increasingly relevant issue and pressure has been applied (and sometimes ordered through court rulings) to hold governments, local and national level, accountable for their decisions and actions.

Kenya

119. Civil Society has played a critical [role in documenting numerous cases of police excesses in the context of freedom of assembly](#). CSO reports have been extremely useful for oversight bodies like the Independent Policing Oversight Authority as it has given the necessary information and ammunition to investigate police officers for excesses during protests.
120. Civil Society Organizations have supported victims through institutions of public interest litigation cases challenging repressive provisions within certain pieces of legislation that have given the Kenyan police unfettered leeway to use excessive force. [In Constitutional Petition No 410 of 2018, in which Kenya Human Rights Commission](#) was an interested party, the High Court in Nairobi invalidated sections of the National Police Service Act, hence

⁴¹ Sinead O'Brien Butler, 'Policing the police: independent investigations for Victoria', *UNSW Law Journal*, 41 (3) 704

limiting instances when police can use firearms. This [decision invalidated paragraphs 1\(c\), \(d\) and \(e\) of Part B of the sixth schedule of the National Police Service Act.](#)

Question 2: What role have National Human Rights Institutions played/could play in the creation, design and the implementation of accountability processes regarding serious human rights violations in the context of freedom of association and assembly?

Hungary

121. The National Human Rights Institution in Hungary is the Commissioner for Fundamental Rights (ombudsperson), whose duties are regulated by the Act CXI of 2011 on the Commissioner for Fundamental Rights. However, the Commissioner fails to fulfil his duties: to this day, human rights NGOs collected 24 [cases](#), started years before, in which the Commissioner remained silent.
122. The dysfunctional operation of the Commissioner is apparent in the field of the right to freedom of assembly, too. In 2020 the Hungarian Government introduced a general ban on protests allegedly to counter the COVID 19 pandemic. The apparent mistreatment of the pandemic by the Government, however, resulted in driving demonstrations when the participants gathered by their own car and were honking, which were cracked down by the police, and heavy, sometimes repeated fines were imposed on the protesters. The crackdown on these protests that respected social distancing guidelines were in sharp contrast to the police' [response](#) to a protest organised by far-right groups that gathered several thousand people during the pandemic as well. The reasons for the arbitrary treatment of protests by law enforcement remained unclear. The Hungarian Civil Liberties Union and the Hungarian Helsinki Committee turned to the Commissioner for Fundamental Rights and [asked](#) to examine the prevailing freedom of peaceful assembly during the general ban at the time of pandemic and the police treatment of the above-mentioned protests. After ten months of silence the Commissioner [informed](#) the two NGOs that he found no reason to initiate any examination.
123. The ignorance of the ombudsman towards human rights abuses resulted in 2022 that the Global Alliance of the National Human Rights Institutions [downgraded](#) its A status to B status.

D. ADDITIONAL CONSIDERATIONS

124. Outside this submission's main focus on issues of accountability of law enforcement around their use and misuse of less-lethal weapons and the legal and administrative frameworks that permit this, there are other cases that we wish to include as they illustrate law enforcement practices that violate the human rights of vulnerable and/or marginalised populations:

Forced eviction to the Mapuche community of Lof Cushamen:

125. On January 11 of 2017 the Police of the Province of Chubut repressed the indigenous Mapuche community of Lof Cushamen in an operation that resulted in four community members gravely injured, with rubber bullet impacts to the face and the head. This happened after two other violent operations conducted by the Gendarmerie while executing a judicial eviction order in the community territory that has been in dispute for years with the international company Benetton.
126. The Chubut Police, under the directives imparted by the Chief of Infantry Javier Solorza, entered the territory and fired several gunshots with anti-riot ammunition at short range (less than 10 metres) directed to the upper body parts of the people present, amongst which there were small children. Fernando Eloy Jones Huala, Malvina Soledad Encina, Fausto Horacio Jones Huala and Emilio Sebastián Jones were injured, and Emilio Sebastián also received an injury to his skull that left him in the intensive care unit and permanently affected his capacity to hear and speak.
127. Members of the Mapuche community denounced the police intervention. Unlike many other police interventions, this case led to a judicial investigation that did find criminal responsibility in State agents. In 2021 the Criminal Court of Chubut confirmed a conviction of the local Chief of Infantry for abusing his authority. He was the only police officer that was charged because the officers responsible for the gunshots could not be properly identified.
128. This Court ruling is important because it flagged that this was an irrational and disproportionate armed attack that provoked damages and high risks to the life and the physical and mental integrity of the community members. The ruling also marked that police officers violated international use of force standards as well as provincial regulations. Among the aggravating circumstances the Court considered the physical and mental impacts in the community and the vulnerability of its members due to successive violent interventions by the State⁴².

Feminist Strike 8M

129. On March 8 2017, women and LGBTQI+ people held the first International Women's Strike. That day many activities and marches were held across the City of Buenos Aires to protest against inequality and gendered violence. When the main march was finalising and people were demobilising, some protestors remained in the streets. Around 8pm a disproportionate security operation was set in motion as a response to some small conflicts.
130. The Police of the City of Buenos Aires and the Federal Police responded with violent, disproportionate and unprofessional behaviour. The operation deployed tear gas against protestors and graphic reporters, a water cannon to disperse people who were still in the streets and rubber bullets were shot by officers behind a protective fence near the Metropolitan Cathedral.

⁴² See in spanish:

<https://www.cels.org.ar/web/2021/06/lof-cushamen-confirman-condena-al-jefe-de-infanteria-policial/>

131. Twenty protestors were detained in an arbitrary, violent and discriminatory manner, and criminal procedures were initiated against them on the basis of a false claim. Some of them were approached by unidentified police. The arrests were notably directed towards women and LGBTQI+ people and the level of violence clearly responded to their gender and sexual orientation. People detained remained in police stations until sunrise of the next day, some of them were subject to degrading searches. They did not receive an explanation for their arrests at any time until they were [released](#).
132. The violence to which they were subject is a form of gender-based political violence because the causes and the consequences of these actions have differential characteristics that respond to their gender identities and sexual orientations. At the same time, this sends a message that seeks to demobilise feminist activists and reproduce historical inequalities and gender-based stereotypes.
133. The criminal investigation for this case is still underway, but no police officer has been charged so far. The representation of the victims is carried out by CELS and the Plaintiff Office in the Public Ministry of Defense, who petitioned for testimony from the police chiefs in charge of the operation. These petitions are still under consideration by the Prosecutors office in charge of the case.

Lafken Winkul Mapu Community

134. In October 2022, the National Ministry of Security, through its Resolution 637/2022, created a Unified Command⁴³ between the four federal security forces to carry out the eviction of the Lafken Winkul Mapu community in the area of Villa Mascardi, province of Río Negro. The federal judge of Bariloche issued a search warrant to look for proof of a crime and in the same raid the police evicted the community from the territory. Besides this being an unjustified deployment of heavily armed security forces, that exceeded the typical “preventive measure”, seven women with their children and babies were detained. Two of them were still lactating and one had a very advanced pregnancy.
135. The women were degradingly searched and forcibly transported away from their families and their territory. Four of the detainees, without knowing what they were accused of or why they were being transported, were taken handcuffed to a plane bound to Buenos Aires -1700 kilometres away- and taken to Ezeiza Federal Prison as though they were maximum security risks. During their entire detention they were not allowed to speak to their lawyers; this was only authorised 12 hours after they entered the Federal Prison. After the claims and mobilisation of Mapuche political organisations and human rights organisations, three days later the women were taken back to Bariloche and held at Airport Security Police dependencies. Soon after, the charges against three of them were dismissed.
136. Currently, four women are still detained together with their children in pre-trial detention for claiming the territory that they live in. The Federal Court of Roca, Río Negro,

⁴³ The Unified Command of Security for the Villa Mascardi area was created for the coordination between security forces to carry out measures to prevent crime in the Villa Mascardi district of Bariloche, province of Río Negro.

confirmed the charges against them for usurpation and the pre-trial detentions of Betaiana Colhuan, Luciana Jaramillo, Romina Rosas and Celeste Huenumil. The Executive, in turn, called for a dialogue instance that held a first meeting in January of 2023 to promote articulations between the parties involved in the judicial [process](#) that seeks the eviction of the land.

Repression with less lethal weapons in sports events

137. On October 1, 2022, the deadliest football tragedy of the 21st century unfolded at Kanjuruhan Stadium in Malang, Indonesia, after police shot tear gas in a packed stadium. As a result, 135 fans were crushed in the ensuing chaos, among which 40 children, and over 500 supporters were injured.
138. In response to fans taking to the pitch after the game ended, police immediately began shooting chemical irritants at the field and then at the stands. More than 40 rounds of tear gas, flash bangs and flares were shot at fans within ten [minutes](#), creating mass panic and a rush towards the scant and narrow exits. The gates were only wide enough for two persons to exit at a time and some were [locked](#).
139. These events were largely reported by local and foreign media. In the outcry following the tragedy, a multidisciplinary investigation was ordered by President Joko Widodo. The team, composed of government officials, football and security experts, concluded that the tear gas –prohibited in sports venues under Indonesian police protocol– was indeed the main cause of deaths. The Malang chief of police was dismissed and an investigation was opened on scores of police officers. In its 124 page [report](#), the investigation team also asked for the resignation of the chairman and the executive board of PSSI, Indonesia’s football association.
140. Indonesian human rights NGO and INCLO member Commission for Disappeared Persons and Victims of Violence (KontraS) took part in the Civil Society Coalition Fact-Finding Team which led a parallel independent [inquiry](#) of the police intervention. They discovered another set of facts also pointing to the police’s responsibility in the tragedy but they also highlight the systematic nature of these human rights violations whose planning involved high-ranking officials who were not accountable under the government commissioned investigation. KontraS also discovered that witnesses had suffered intimidation on behalf of authorities after the events which are considered a means to deter survivors from telling their story.
141. Numerous witness accounts claim that authorities gave no verbal warning before shooting, first at the pitch and then at the stands. Firing chemical irritants into closed spaces or open spaces where there is no safe egress should be prohibited, as clearly stated in the 2020 [UN](#) Guidance on the Use of Less-Lethal Weapons in Law Enforcement and reiterated by FIFA guidelines. Following numerous football stadium tragedies across the globe in similar

circumstances, the international soccer federation has also regulated against the use of tear gas in international games, but has done little or nothing for this to be enforced locally.

142. A similar instance although at a smaller scale happened on October 6 of 2022, a football match was to be celebrated between the Gimnasia y Esgrima de La Plata and Boca Juniors local teams in Argentina. Due to problems in the entrance to the stadium, when the match began a series of riots occurred between fans of both teams and members of security forces in charge of the security for the event. The Police of the Province of Buenos Aires responded with a disproportionate use of tear gas and rubber bullets. As a result, César Regueiro (57 years old) died of a respiratory arrest while in an ambulance towards a local hospital. A cameraman received 3 rubber bullet impacts in the groin at a short distance (less than 10 metres) while he was recording the police intervention. Another 20 people were [hospitalised](#) as a result of an excessive use of less lethal weapons by police forces.
143. As a consequence of this episode, the Police of the Province of Buenos Aires issued a press release signed by the Police Commissioner and the Chiefs of the Operations Division and the Infantry prohibiting the use of tear gas launchers and hand grenades in sports events. It is worth noting that while there was a response to the seriousness of the incident, this was not followed by a Resolution by the Ministry nor by an official Police Internal Order. The judiciary of the province of Buenos Aires is investigating the officer in charge of the operation with the charge of damage by extreme recklessness resulting in death, and the officer responsible for the intervention with the charge of aggravated minor injuries. The Internal Affairs office of the provincial Security Ministry has initiated an administrative investigation on all the officers that intervened.

E. CONCLUSION

144. INCLO is thankful to the UN Special Rapporteur on the Freedom of Peaceful Assembly and Association for their consideration of this contribution and remains at its disposal for any further consultation that would benefit the preparation and drafting of the thematic report to be presented at the 53rd Session of the Human Rights Council.

ENDS.