Ligue des droits et libertés

Alternative Report of the Ligue des droits et libertés du Québec

to the independent experts of the UN Human Rights Committee

in response to Canada's Sixth Periodic State Report on its commitments under the International Covenant on Civil and Political Rights (ICCPR) (2006–2015) CCPR/C/CAN/6 and the Human Rights Committee's List of Issues in response to CCPR/C/CAN/Q/6

June 5, 2015

Introduction

1. Founded in 1963, the Ligue des droits et libertés of Quebec is an independent, non-partisan and non-profit organisation which works to defend and promote the universal, indivisible and interdependent character of the rights recognized in the *International Bill of Human Rights*. The Ligue des droits et libertés is a member of the International Federation for Human Rights (FIDH).

2. The LDL wishes to bring to the attention of the expert members of the UN Human Rights Committee (HRC) its observations and recommendations on certain specific points in Canada's report[1] and the HRC's *List of issues*[2] drafted for the Committee's 114th Session (June 29–July 24, 2015), particularly those concerning mistreatment and excessive use of force during the 2012 student protests, as well as **Question 11** (on use of energy weapons) and **Question 18** (concerning unlawful restrictions imposed on the right of peaceful assembly).

3. The LDL is particularly concerned by the repression of protest movements in recent years, notably in Ontario at the 2010 G20 Summit, and in Quebec. In order to better substantiate our claims with concrete examples, our analysis and observations will focus on the most violently repressed protests between 2006 and 2015.

1. General and historical background

4. Over the last two decades we have seen a widespread tendency in Canada toward criminalization of dissent and repression of social protest demonstrations. The LDL has repeatedly spoken out against this trend, as have other Canadian and international organizations, including the International Federation for Human Rights (FIDH) and the Clinique internationale de défense des droits humains (International Clinic for the Defense of Human Rights – CIDDHU). More specifically, many of the policing strategies implemented by the police forces during demonstrations have also been criticized: surveillance and infiltration of groups prior to events, actions carried out by *agents provocateurs* during demonstrations, mass and preventive arrests, use of gases and other chemical weapons, and unacceptable detention conditions for people arrested.

5. Because these policing strategies jeopardize the exercise of freedom of expression, the right of peaceful assembly and freedom of association, violate the integrity of the individual, and result in arbitrary arrests and unlawful detention, a number of international organizations, including the HRC, the Committee Against Torture (CAT), the Inter-American Commission on Human Rights (IACHR), the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the High Commissioner for Human Rights, have on multiple occasions since 2005

[1] http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fCAN%2f6&Lang=en
[2] http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/225/95/PDF/G1422595.pdf?OpenElement

expressed their concerns and made recommendations to the government of Canada calling for the situation to be rectified.

6. In 2005, amid persistent allegations, the CAT recommended that "the State party should conduct a public and independent study and a policy review of the crowd control methods, in particular the use of chemical, irritant, incapacitating and mechanical weapons."[3]

7. A year later, the HRC expressed concern "about information that the police, in particular in Montreal, have resorted to large-scale arrests of demonstrators." Canada's response, that arrests were justified in law and therefore not arbitrary, led the Committee to observe that "arbitrary detention can also occur when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by the Covenant, in particular under articles 19 and 21." Among other things, the Committee requested information on the enforcement of Section 63 of the *Criminal Code of Canada* on unlawful assembly, and recommended that the State investigate the practices of Montreal police forces and ensure "that the right of persons to peacefully participate in social protests is respected, and ensure that only those committing criminal offences during demonstrations are arrested."[4]

8. In 2012, the CAT reiterated its concerns about excessive use of force by peace officers, crowd control methods, and inhumane detention conditions, specifically in the temporary detention centre at the Toronto G20 Summit in June 2010. The Committee stressed the need for the State to "strengthen its efforts to ensure that all allegations of ill-treatment and excessive use of force by the police are promptly and impartially investigated by an independent body and those responsible for such violation are prosecuted."[5]

9. In October 2010, when the LDL submitted its joint report with CIDDHU and FIDH, IACHR expressed serious concerns about the events at the G20 Summit and the investigations and procedures that need to be conducted to safeguard the human rights of those subjected to police repression.[6] The Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, also denounced the kettling and mass arrests observed at the summit.[7]

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[3] UN, Committee Against Torture, 31st session. Conclusions and recommendations of the Committee against Torture: Canada. 07/07/2005. CAT/C/CR/34/CAN, 5. h).

[4] UN, Human Rights Committee, 85th session, Consideration of reports submitted by States Parties under Article 40 of the Covenant – Concluding Observations of the Human Rights Committee – Canada, CCPR/C/CAN/5

[5] UN, Committee Against Torture, Consideration of reports submitted by States Parties under Article 19 of the Convention, Concluding Observations of the Human Rights Committee – Canada, June 25, 2012, CAT/C/CAN/CO/6, para. 22.

[6] See the Commission's questions, and Canada's responses. at the link below (French only): http://liguedesdroits.ca/assets/files/publications/analyses/Reponse%20Canada%202011%20fevrier.pdf

[7] Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, MainaKiai, HRC GA, 20th Sess., UN Doc.A/HR/C/20/27 (2012), para. 37.

10. Despite the large number and consistency of these observations, the government of Canada and the authorities involved have not followed up on them. No real public inquiry with the power to force political leaders and police officers to testify has been conducted in order to achieve the following objectives:

    - Examine the roles and responsibilities of authorities in the planning and coordination of various policing strategies
    - Investigate the use of plastic bullets and other crowd control weapons
    - Identify human rights violations
    - Ensure the victims of violations receive adequate redress

The ultimate aim would be to put an end to both the impunity enjoyed by police officers and unlawful and mass arrests.[8]

11. Concerns about legislative provisions deemed contrary to the right to protest have also been raised by the High Commissioner for Human Rights, Navi Pillay, while the Special Rapporteur Maina Kiai has criticized Quebec, along with Russia, Jordan, Belarus and Ethiopia, for "particularly harsh"[9] anti-protest laws. The governments of Quebec and Canada have rejected such criticism, calling on authorities to focus on other states with more serious human rights situations.[10]

12. Several sources, including experts in Canadian law, have expressed concern that that the governments of Canada and Quebec have opened the door to authoritarianism, and even a police state, by enacting emergency laws to quell legitimate protests.[11]

13. Examples of such legislation include Bill C-51, *Anti-terrorism Act*, *2015*, which would give the police new powers to monitor, suppress and imprison those engaged in social protest and protest activities. Given that other Canadian civil society organizations, including the International Civil Liberties Monitoring Group (ICLMG), plan to address the HRC on this issue, the LDL will not discuss the matter further here; we do, however, wish to express our support for the ICLMG's representations.

[8] The Quebec government did create a commission of inquiry to investigate the 2012 student protests (Commission spéciale d'examen des événements du printemps 2012), on May 8, 2013, but this commission lacked the true investigative powers of a true public inquiry: participation was on a voluntary basis, participants could choose to testify in camera and the commission's mandate was not to determine whether violations had occurred, ascertain who was responsible, or provide compensation for victims.

[9] http://ici.radio-canada.ca/nouvelles/Politique/2012/06/18/003-loi-78-onu.shtml

[10] http://www.lapresse.ca/actualites/politique/politique-canadienne/201206/18/01-4536136-loi-78-quebec-et-ottawa-critiquent-la-haute-commissaire-de-lonu.php

[11] http://www.ledevoir.com/societe/actualites-en-societe/439801/repression-policiere-2-3-manif

2. Concrete examples of repression of social protest in Canada and Quebec, 2006–2015

A. G20 Summit protests, June 2010

14. On June 26 and 27, 2010, thousands protested the G20 Summit in the streets of Toronto. Below we have summarized the key findings of the LDL report, submitted to IACHR[12] in October 2010.

15. Over the two days of protest, 1,140 people were arrested and detained[13], a number then unprecedented in Canadian history. The police are on record as stating that it was a state of "martial law," that rights were suspended during the G20, and that they did not want to see protesters on the site the next day. Our observations found that 72% of arrests were for "apprehended breach of peace" under Section 31 of the *Criminal Code of Canada*. These individuals were then detained for up to 24 hours before being released without charge. Criminal charges were brought against only 28% of all people arrested. Five years later, of the 1140 people arrested, only 55—less than 5%[14]—have pleaded guilty to or been found guilty of criminal offences.

16. Those arrested were transferred to and detained in a temporary holding facility specially built for the event, for periods of 24 to 60 hours. Up to 30 people were crammed into wire cages measuring seven by four meters, which were brightly lit day and night, where they were handcuffed and had limited access to food and water (one insubstantial sandwich and glass of water every 8 hours). Detainees had to relieve themselves in a doorless chemical toilet, in full view of the police. Despite the very cold temperature in the cages, in most cases detainees were not provided warm clothing or blankets, and had to sleep on the cold concrete floor. All detainees were subjected to a compulsory strip search after several hours in detention, which in some cases was observed by police officers of the opposite sex. Access to medication was denied people with health problems such as diabetes, asthma and mental health issues.

17. Many detainees were denied access to a lawyer for the entire detainment period, while others had to wait more than 24 hours. French-speaking detainees had to consult unilingual English-speaking lawyers. Some detainees appeared before a judge after 50 or 60 hours of detention and were released on very strict conditions, such as a prohibition against taking part in demonstrations or against expressing political views in the media or on the Internet.

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[12] http://www.ciddhu.uqam.ca/documents/rapport_G20_anglais.pdf

[13] Mass arrests took place during the peaceful protests (June 26 : mass arrests of the Esplanade and Queen/Spadina) and the day after these (June 27 : arrest of a hundred people who were sleeping in the gym at University of Toronto)

[14] As of June 20th 2014, 40 people completed the process of "direct accountability" and 12 people have been "peace bonds", which are alternative mechanisms that do not assume the guilt of individuals. Charges against 207 persons have been dropped, suspended or withdrawn by the Crown. Only two people are still facing charges. See: http://www.attorneygeneral.jus.gov.on.ca/english/g20_case_update.asp.

B. 2012 Quebec student strike

18. Between February and September 2012, Quebec experienced the longest and largest student strike in the province's history. The strike against university tuition hikes was supported by up to 300,000 students from Quebec colleges and universities. Hundreds of demonstrations were held during this time, sometimes several a day. The turnout was as high as 200,000. The demonstrators faced police brutality and repression. A record number of arrests were made, criminal charges laid and tickets issued. All of these matters are discussed in the report produced by the LDL, the Association des juristes progressistes (Association of Progressive Jurists - AJP) and the legal committee of the Association pour une solidarité syndicale étudiante (Association for Student-Union Solidarity - ASSÉ).[15]

19. In May 2012, at the height of the protests, the provincial government enacted passed Bill 78, *An Act to enable students to receive instruction from the postsecondary institutions they attend*,[16] which limited the right to strike and to demonstrate. In addition, many municipalities passed local anti-demonstration by-laws.

20. The LDL recorded 3,509 arrests between February 16 and September 3, 2012, including 31 mass arrests. These mass arrests were made at peaceful gatherings during which there were occasional isolated incidents. Surrounded and given no opportunity to disperse, the demonstrators were held from three to six hours, frisked and handcuffed before being issued, for the most part, a ticket for having broken a municipal by-law or the *Highway Safety Code* (section 500 or 500.1). Where individual arrests were made, journalists, individuals filming the police and activists known for their frequent participation in demonstrations were specifically targeted. Witnesses report that people arrested were not read their rights, the right to counsel was ignored, they were refused access to drinking water, and so forth.

21. Detainees reported being subjected to insulting, condescending, derogatory, contemptuous and threatening remarks by the police, which humiliated them and violated their dignity. In addition to experiencing psychological and socio-emotional problems arising from their interactions with the police, many individuals reported that they were now afraid to demonstrate and had lost confidence in the police, government institutions and the rule of law.

[15] http://liguedesdroits.ca/wp-content/fichiers/repression-report-2012-final-web.pdf

[16] http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2012C12A.PDF

C. 2015 student strike

22. The student strike against austerity measures and oil development, which began on March 21, 2015, was supported by close to 130,000 students. Hundreds of demonstrations, actions, vigils, occupations and picketings took place. Between March and May 2015, 815 individuals were arrested during mass arrests. In many other cases, the police used tear gas to break up demonstrations.

D. Demonstrations by targeted protest groups in Montreal

23. In Montreal, demonstrations organized by targeted protest groups have faced systematic repression for years. The most blatant examples involved the Collectif opposé à la brutalité policière (Collective Opposed to Police Brutality - COBP) and the Convergence des luttes anticapitalistes (Anti-Capitalist Convergence - CLAC). In most cases, the people detained were issued tickets under by-law P6 or section 500.1 of the *Highway Safety Code*. A number of criminal charges were also laid.

24. CLAC's mission is "to communicate anti-capitalist discourse by organizing campaigns and demonstrations," including the May Day anti-capitalist demonstration which has been an annual event since 2010. In 2011 and 2012, the police used a variety of dispersal tactics and chemical weapons to prevent the demonstrators from reaching their destination. From 2012 to 2015, the Service de police de la Ville de Montréal (Montreal Police Department - SPVM) used mass arrests to cut short this annual event. In 2013, 447 demonstrators were surrounded by the police and detained for several hours before being issued tickets. In 2014, the demonstration had been underway for only a few minutes when 132 individuals were corralled at three different locations. In 2015, tear gas was used to supress the demonstration in minutes, and 84 individuals were arrested, the majority during two kettling operations.

25. Every year since 1997, on March 15, the COBP has organized a demonstration as part of the International Day Against Police Brutality. From 2003 to 2005, the SPVM allowed the demonstration to go ahead. However, the police have harshly supressed the demonstration and carried out mass arrests in nine of the ten demonstrations held since 2006. Between 30 and 250 individuals were arrested each year. In most of these cases of mass arrests, most if not all of the tickets were eventually cancelled years later. Challenges to the tickets issued in 2011 and 2015 are still in progress.

26. Starting in 2008k the SPVM began applying a variety of strategies to deter demonstrators and reduce the size of demonstrations. These strategies include closing subway stations near meeting points (2009, 2010), searching those carrying backpacks (2008, 2009, 2010), distributing tracts asking citizens not to participate in the demonstrations (2012), declaring the protest illegal a few days ahead of the event (2014 and 2015) and calling in reinforcements from other police forces, including the Sûreté du Québec.

3. Violations of rights and freedoms in the context of social protest

A. Mass arrests (Articles 9, 19, 21 and 22 of the International Covenant on Civil and Political Rights – ICCPR)

27. Mass arrests at peaceful demonstrations not only violate freedom of expression but also the right to liberty and security of person. As can be seen from the examples above, those arrests were made without reasonable grounds and with the sole purpose of preventing the demonstrations and discouraging participation. In fact, in the vast majority of cases, most of those arrested were found not guilty, or the case ended with a stay of proceedings or a withdrawal of charges. This suggests that the mass arrests were purely preventive, arbitrary and illegal. As noted above, less than 5% of those arrested during the G20 Summit in Toronto have been convicted of a criminal offense. Three years after the 2012 student strike, it is estimated that 83% of the tickets issued to people detained under By-law P6 were eventually withdrawn by the Crown.

28. The legality of mass kettling arrests has also been reviewed by the European Court, which found that it could only be justified if rendered unavoidable by circumstances beyond the control of the authorities and necessary to avert a real risk of serious injury or damage. However, this police tactic should in no way be used to stop, stifle or discourage protest.[17]

29. Furthermore, in Observation 35, the HRC stated that an arrest is arbitrary if it was made to punish someone for legitimately exercising the rights and freedoms protected by the ICCPR, including the freedoms of opinion, expression, assembly, association, etc.[18]

30. Participation in peaceful demonstrations is a form of expression that enjoys constitutional protection under sections 2(b) and 2(c) of the Canadian *Charter of Rights and Freedoms* and quasi-constitutional protection under section 3 of the Quebec *Charter of Human Rights and Freedoms*.

31. The LDL believes that, during the G20 Summit, the 2012 Student Spring, the 2015 student strike and protests by certain targeted protest groups, the police failed to fulfill their duty to protect freedom of expression and the right of peaceful assembly and, rather, violated those rights by preventing people from attending or approaching a political event and verbally and physically expressing their opinions. Moreover, it should be noted that, in the medium and long term, these measures have a deterrent effect on those involved, who will think twice before participating in other demonstrations or continuing with their political activities.

[17] Case Austin and Others (United Kingdom) (2012), nos. 39692, 40713 and 41008, paras. 59 and 68.
[18] General Observation No. 35, Article 9, liberty and security of person, CCPR/C/GC/35, para. 17.

Recommendation 1

That the HRC urge Canada to prohibit police forces from using kettling to stop, stifle or discourage demonstrations.

Recommendation 2

That the HRC urge Canada to invite the Special Rapporteur on the right of peaceful assembly and freedom of association to examine the exercise of freedom of expression, peaceful assembly and association in Canada and Quebec and make recommendations that will definitively resolve the identified problems.

B. Abusive detention conditions and failure to respect legal safeguards (Articles 7, 9, 10, 19, 21 and 22 of the ICCPR)

32. The detention conditions of the individuals arrested at the G20 Summit in Toronto and during the mass arrests in Quebec in recent decades raise serious questions regarding both respect for legal safeguards in the treatment of detainees and for the right to protection against abusive detention conditions.

33. Violations of legal safeguards: failure to inform those arrested of the reasons they are being detained and of their rights, failure to give detainees access to legal counsel prior to questioning, and holding detainees for up to 40 hours before they appear before a judge. Furthermore, it should be borne in mind that anyone deprived of his or her liberty must be treated humanely and with respect for the inherent dignity of the human person. Being held in cold, overcrowded cages, being poorly fed, having to beg for drinking water, being forced to sleep on a concrete floor without a blanket under 24-hour lighting, being subjected to strip searches and being handcuffed for days on end demonstrates a flagrant lack of humanity on the part of the authorities. Taken together, these abuses qualify as cruel and unusual treatment and are contrary to the *Standard Minimum Rules for the Treatment of Prisoners*, recognized by Canada in 1975.[19]

34. Similarly, the testimony of those arrested during the 2012 student strike paint a fairly uniform picture of the detention conditions applied following the mass arrests: detainees were handcuffed without access to water or toilets for anywhere from three to six hours, they were questioned and photographed, their personal effects were searched, and the sole reason given for these actions was that they had breached a simple by-law. These actions must be interpreted in light of the fact that, in Canadian

[19] UN High Commissioner for Human Rights, *Standard Minimum Rules for the Treatment of Prisoners*, Resolution of the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, August 30, 1955: http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx

law, the powers of arrest for breaches of municipal by-laws are more limited than for criminal offenses. Detention should be the exception since these kinds of offences are normally punishable with a ticket.[20] The authorities also overstepped their powers when they photographed the individuals they had arrested, which they are allowed to do only in the case of criminal offenses.[21]

35. Taken together, these facts demonstrate an intent to subject detainees to exemplary and collective punishment, to humiliate them and to dissuade them from attending future demonstrations.

Recommendation 3

That the HRC urge Canada to hold a public inquiry into the abusive detention conditions experienced by demonstrators rounded up during mass arrests and into the legality of the arrests themselves.

C. Dangerous weapons used for crowd control (Articles 6, 7, 9, 19, 21 and 22 of the ICCPR)

36. The HRC rightly asked Canada questions concerning excessive use of force by police during demonstrations, in particular during the 2012 Quebec student strike (*List of Issues*, 11). It should be borne in mind that in 2005 and 2012, the CAT asked Canada to review and reassess its crowd control methods and the use of chemical, irritant, incapacitating and mechanical weapons. This recommendation was not followed, and those "less lethal" weapons were used to supress demonstrations at the G20, the 2012 and 2015 student protests and demonstrations by targeted protest groups in Montreal.

37. The "less lethal weapons" most commonly used during demonstrations are chemical weapons (pepper spray and tear gas) and intermediate-impact projectile weapons (plastic or rubber bullets, stun grenades). Clouds of pepper spray or gas have been the daily lot of demonstrators since 2012 and the guidelines on training in the use of chemical weapons for crowd control have not been made public. Many instances of excessive and unwarranted use of pepper spray and tear gas have been reported since 2012, including the much-publicized actions by Officer 728 on May 20, 2012 in Montreal.[22]

38. The Arwen (Anti-Riot Weapon Enfield) launcher, openly carried by one or more members of the tactical squad during demonstrations, can hold five 37 mm calibre projectiles, including hard plastic bullets and tear gas canisters. These projectiles can be fired in under four seconds at over 250 km/h. In spite of their "less lethal" designation, since 2012 a number of concrete examples have shown that these

[20] Québec (Ville) c. Gagnon, 2009 CanLII 70620 (QC CM), para. 57
[21] Article 2 *Identification of Criminals Act* (R.S.C. 1985) c. 1-1)
[22] View video: https://www.youtube.com/watch?v=2xjtE-2BDW8

weapons can cause serious injury or death.[23] Just recently, an anti-austerity demonstrator in Quebec City was seriously wounded when hit in the mouth with a tear gas canister fired at close range from an Arwen launcher.[24] The evidence also indicates that the injuries suffered by demonstrators during a protest held in Victoriaville on May 4, 2012, including the loss of an eye, loss of teeth and head injury, were caused by rubber bullets. On March 7, 2012, while sitting on the ground playing a harmonica, a student was hit in the face with a stun grenade and lost the sight of one eye.

39. The Toronto Police Department bought sound canons just before the G20 Summit in Toronto, and the SPVM followed suit in 2014. The SPVM has also purchased a tactical armoured vehicle. Despite promises by the SPVM not to use these tools during demonstrations, this military arsenal is extremely worrisome.

Recommendation 4

That the HRC urge Canada to stop using chemical weapons and intermediate-impact projectile weapons such as plastic or rubber bullets during crowd control operations.

D. Political profiling of demonstrators (Articles 2, 19, 21, 22 and 26 of the ICCPR)

40. Political profiling is understood to mean actions by the authorities towards an individual or group of individuals, for reasons of safety, security or public protection, where that action is based on factors such as opinion, convictions, allegiance or political activity, without any true cause or reason for suspicion, and has the effect of subjecting those individuals to differential treatment.[25] The examples of the G20 in Toronto, the protest movements in Montreal and the student strikes show the different faces of police discrimination based on political conviction, real or perceived.

41. At the G20 in Toronto, mass arrests appear to have been carried out not after any wrongdoing but on the basis of police officers' subjective perceptions, individuals' attire, their appearance, possession of an anarchist book, having a lawyer's phone number written on an arm or membership in a student association. Demonstrators were arrested not for what they had done but for what they appeared to be.

42. In Montreal, political profiling by the police was directed mainly against extreme left groups prior to 2012. Demonstrations against police brutality organized by the COBP

[23] http://www.lemonde.fr/planete/article/2015/01/14/mort-de-remi-fraisse-le-gendarme-qui-a-lance-la-grenade-en-garde-a-vue_4555811_3244.html

[24] http://ici.radio-canada.ca/regions/quebec/2015/04/08/005-mise-en-demeure-naomie-tremblay-trudeau-blessure-lemaire.shtml

[25] Francis Dupuis-Déri, "Guet des mouvements marginaux – Profilage politique à Montréal," *Le Devoir*, July 18, 2011: http://www.ledevoir.com/politique/montreal/327600/guet-des-mouvements-marginaux-profilage-politique-a-montreal

have been systematically repressed since 2006, and the May Day marches organized by the CLAC have suffered the same fate since 2011. In the same year, it became known that a new squad had been created within the SPVM as part of the Organized Crime Division, the "Guet des activités et des mouvements marginaux et anarchistes" (monitoring of the activities of marginal and anarchist groups). The creation of this squad, which is tantamount to a "political police," illustrates the confusion between violence and ideological conviction that is often at the root of political profiling.

43. During the 2012 student strike, political figures made a similar conflation in order to lump student demonstrators toether with criminals. Then-culture minister Christine St-Pierre said: "The red square [symbol of the student strike] means bullying, violence." After the passage of Bill 78 and the adoption of anti-demonstration by-laws in Quebec, the requirement for demonstrators to disclose their route was used as a pretext to repress demonstrations by student, environmental, anticapitalist and anti-police brutality groups. At the same time, between 60 and 70 demonstrations that did not provide their route were allowed to take place in Montreal in 2013 and 2014 without any police intervention, while 16 demonstrations that did not provide their route were harshly repressed in 2013 and 7 in 2014 (by means of individual or mass arrests, or crowd dispersal tactics). Police forces are enforcing the law selectively, repressing certain demonstrations according to the political cause at issue or the identity of the organizers.

Recommendation 5

That the HRC urge Canada and the appropriate political and police authorities to:

- **Publicly acknowledge the existence of political discrimination and political profiling;**
- **Make continuing training on discrimination and political profiling mandatory for any police officer involved in managing demonstrations or making decisions about managing demonstrations;**
- **Issue a publicly apology for the repression and discrimination practiced at some demonstrations.**

E. Impunity for police and political authorities (Article 2 of the ICCPR: effective remedy provision)

44. In view of the scale and gravity of the rights violations described above, victims of violations would like to obtain redress, to be sure, but first and foremost most want the violations to end: they want to be able to exercise their civil liberties without fear of repression.

45. A number of class action lawsuits have been filed seeking compensation for the violations of rights and freedoms at the G20 in Toronto and at demonstrations in Montreal. However, these lawsuits will take many years to work their way through the courts and can only give the arrested persons monetary compensation. In these cases, the Court has no jurisdiction to order that rights violations cease in the future.

46. The results of the police ethics process have been dubious. The case of the only police officer to face disciplinary action following the G20 in Toronto has yet to be heard. Sixty-two of the 228 complaints filed in 2012 and 2013 in Quebec have been wrapped up by the Police Ethics Commissioner. Fewer than 39% of the cases were investigated. As of May 5, 2015, police officers had been summoned to appear before the Ethics Committee in only 9% of the complaints. Officers who were sanctioned received at most a few days suspension without pay. Moreover, the complaints process does not allow for any review of the conduct of police forces from a systemic point of view.

47. Some groups of victims[26] have also filed complaints with the Commission des droits de la personne et des droits de la jeunesse (human rights and youth rights commission - CDPDJ). The CDPDJ will therefore be called upon to rule on the existence of political profiling, which would be a step forward. However, we note the extreme slowness of CDPDJ investigations, particularly in this file which is of considerable public concern, since the violated rights go to the very heart of democratic life.[27] And here too the complaints process does not allow for any examination of the conduct of police forces from a systemic point of view, nor of the involvement of political leaders in the decisions on strategies to repress demonstrations.

48. There is no body in Quebec independent of political and police authorities that has the power to initiate an investigation of this type and to sanction the persons responsible for rights violations. To curb police impunity, such a mechanism would be essential.

Recommendation 6

That the HRC urge Canada and the provinces, including Quebec, to create a body independent of government and police forces endowed with:

- **full investigative powers, including the power to force the political and police leadership to testify, in order to examine the roles and responsibilities of each in planning and coordinating the police forces' various intervention strategies;**
- **the power to determine whether rights have been violated and to provide appropriate compensation for victims of rights violations;**
- **the power to initiate systemic investigations into police practices, such as instances of brutality at demonstrations and the use of weapons in crowd control operations.**

[26] Three complaints have been filed by the LDL, its Quebec City chapter and the Réseau québécois des groupes écologistes.

[27] See analysis by Willie Osterweil: http://america.aljazeera.com/opinions/2015/5/countries-across-world-are-revoking-freedom-of-assembly.html

F. Arbitrary use of legislative and regulatory measures (Articles 2, 19, 21,22 and 26 of the ICCPR)

49. A number of legislative and regulatory provisions confer upon police excessive power to intervene: to arrest or issue a warning, to trigger legal proceedings or issue a ticket.[28] The vaguer, more imprecise and overly broad in scope the standards are, the greater the discretion left to the police, creating a significant potential for arbitrary decisions based on moral, political or emotional considerations. It has been shown that this discretionary power allows the police to use harassing tactics against certain groups, which are targeted on the basis of the demonstrators' skin colour, appearance, age, status, geographic location or political convictions.

50. In the specific cases discussed above, it has been clearly demonstrated that the various municipal by-laws,[29] the Quebec *Highway Safety Code* (sections 500 and 500.1) and the *Criminal Code* (section 31) were selectively enforced by police forces at demonstrations. Moreover, the vast majority of arrests were unrelated to any wrongdoing. Witness accounts and the fact that a very large proportion of the arrests resulted in very few guilty verdicts show that the true objective of the police was not to stop dangerous conduct in order to protect public security but rather to suppress social protest and intimidate by all possible means, including arbitrary enforcement of municipal by-laws or other norms, people who were exercising their freedom of expression and broadcasting an apparently unwelcome message.

Recommendation 7

That the HRC urge Canada, including all of its police forces, to stop using section 31 of the *Criminal Code* in the context of demonstrations.

Recommendation 8

That the HRC urge Québec to prohibit police forces from using sections 500 and 500.1 of the *Highway Safety Code* and municipal by-laws in the context of demonstrations.

G. Adoption of acts and regulations designed to limit the exercise of freedom of expression, the right of peaceful assembly and freedom of association (Articles 19, 21 and 22 of the ICCPR)

[28] For an analysis of the exercise of discretion by police in five Canadian cities and three U.S. cities, see Brian Allen Grosman, *Police Command: Discretion & Decision*, Toronto: Macmillan of Canada.

[29] Such as: (1) Ontario Regulation 233/10, adopted under the *Public Works Protection Act.* See *Caught in the Act*, an Investigation into the Ministry of Community Safety and Correctional Services' conduct in relation to Ontario Regulation 233/10 under the *Public Works Protection Act* conducted by Ontario Ombudsman André Marin, December 2010:
https://ombudsman.on.ca/Files/sitemedia/Documents/Investigations/SORT%20Investigations/G20final-EN-web.pdf
(2) Peace and order by-laws in Montreal, Quebec City and Gatineau. See http://liguedesdroits.ca/wp-content/fichiers/repression-report-2012-final-web.pdf

51. At the height of the student protests in the spring of 2012 and in anticipation of demonstrations at the G20 in Toronto in June 2010, political authorities (municipal and provincial) used their legislative powers to limit the right to demonstrate and to give the police powers that proved to be wholly arbitrary.

52. In *Caught in the Act*, his report on the Ministry of Community Safety and Correctional Services' conduct in relation to Ontario Regulation 233/10 under the *Public Works Protection Act*, released in December 2010, Ontario Ombudsman André Marin concluded that the Ministry "promoted a regulation that 'appears to be contrary to law' and not 'in accordance with the provisions of any Act'." The Ombudsman went on to state that "it was also unreasonable to support the adoption of that regulation, given that it conferred unnecessary and constitutionally suspect police powers in the volatile and confrontational context of inevitable public protest. Moreover, the Ministry…unreasonably and unjustly failed, in advance of its enactment, to ensure both proper consultation with stakeholders and that the citizens of this province were aware of the highly exceptional police authority that had been conferred."[30]

53. In Quebec, the government passed *An Act to enable students to receive instruction from the postsecondary institutions they attend* (Bill 78), which had the effect of shutting down application of the student associations' strike mandates[31] and contained harsh sanctions against demonstrations. This Act, which has now been repealed, drew widespread criticism from, among others, the Barreau du Québec (Quebec bar)[32] and the CDPDJ, which argued that it was an unwarranted infringement on freedom of expression, the right of peaceful assembly, freedom of association and freedom of conscience, which are protected under the *Charter of Human Rights and Freedoms*.[33]

54. At the same time, some cities, including Montreal (by-law P6) and Quebec City, amended their peace and order by-laws. Many municipalities required that a permit be obtained before a demonstration could be held, without precisely defining the authority empowered to deliver the permit or specifying the conditions for obtaining such a permit. The vague and imprecise wording leaves police with entirely discretionary and indeed arbitrary powers.

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[30] https://ombudsman.on.ca/Files/sitemedia/Documents/Investigations/SORT%20Investigations/G20final-EN-web.pdf

[31] *An Act to enable students to receive instruction from the postsecondary institutions they attend*, SQ 2012, c. 12

[32] Barreau du Québec, press release, May 18, 2012: "the Barreau du Québec has serious concerns about this Bill. 'I believe that this Bill, if passed, will violate citizens' constitutional and fundamental rights," said Louis Masson, Ad. E., President of the Barreau du Québec. "The scope of these limits on fundamental freedoms is not justified by the government's objectives."

[33] Commission des droits de la personne et des droits de la jeunesse, *Commentaires sur la Loi permettant aux étudiants de recevoir l'enseignement dispensé par les établissements de niveau postsecondaire qu'ils fréquentent*, July 17, 2012, p. 48.

55. Other by-laws are more precise and contain excessive requirements. For example, the town of Granby requires permit applicants to provide the following information: family name, given name and date of birth; address and telephone number of the applicant and of the person responsible for the event; date and description of the planned event, planned program of activities, plans showing the layout or route, number of participants expected, target audience, reason for the event, detailed description of planned security measures, methods used to inform people affected by the event, a formal undertaking by the applicant to clean uup the site after the event, and a copy of a $1 million civil liability insurance policy.

56. The town of Gatineau may well have the most repressive by-law. To obtain a permit, an applicant must undertake to keep to the date, timetable and route specified in the authorization, comply with the other conditions stipulated by the police chief, not use a loudspeaker or megaphone unless expressly authorized to do so, pick up all signs, flags, banners and other publicity materials after the participants have dispersed, follow all instructions from peace officers before and during the authorized activity, install and maintain in good order the required signage, accept liability for any damage caused to municipal property, utilities or private property during the event, and hold $1 million liability insurance.

57. In Montreal, the *By-law concerning the prevention of breaches of the peace, public order and safety, and the use of public property* (P6), which makes illegal assembly an offence, was originally adopted in 1969. Major amendments were introduced in May 2012. As a result, the exact location and route of an assembly, parade or other gathering must now be disclosed to the authorities prior to the event and it is forbidden to wear a mask at a demonstration. The fine is now a minimum $500 for a first offence.

58. In Quebec City, the *Règlement sur la paix et le bon ordre* (by-law concerning peace and order) was also amended in June 2012 at a special session of city council. A demonstration is now illegal if the police department was not informed of the time, place and route of the demonstration, or if the announced route is not followed. It is also forbidden to be in a park or present at a gathering on public property between 11 p.m. and 5 a.m.

59. The legitimacy and constitutional validity of these restrictive by-laws are widely disputed on the grounds that they constitute an unjustified infringement of the right to demonstrate, freedom of expression and freedom of association.

Recommendation 9

That the HRC urge municipalities to repeal by-laws limiting the right to demonstrate.

4. Summary of recommendations

Recommendation 1

That the HRC urge Canada to prohibit police forces from using kettling to stop, stifle or discourage demonstrations.

Recommendation 2

That the HRC urge Canada to invite the Special Rapporteur on the right of peaceful assembly and freedom of association to examine the exercise of freedom of expression, peaceful assembly and association in Canada and Quebec and make recommendations that will definitively resolve the identified problems.

Recommendation 3

That the HRC urge Canada to hold a public inquiry into the abusive detention conditions experienced by demonstrators rounded up during mass arrests and into the legality of the arrests themselves.

Recommendation 4

That the HRC urge Canada to stop using chemical weapons and intermediate-impact projectile weapons such as plastic or rubber bullets during crowd control operations.

Recommendation 5

That the HRC urge Canada and the appropriate political and police authorities to:

- **Publicly acknowledge the existence of political discrimination and political profiling;**
- **Make continuing training on discrimination and political profiling mandatory for any police officer involved in managing demonstrations or making decisions about managing demonstrations;**
- **Issue a publicly apology for the repression and discrimination practiced at some demonstrations.**

Recommendation 6

That the HRC urge Canada and the provinces, including Quebec, to create a body independent of government and police forces endowed with:

- **full investigative powers, including the power to force the political and police leadership to testify, in order to examine the roles and responsibilities of each in planning and coordinating the police forces' various intervention strategies;**

- **the power to determine whether rights have been violated and to provide appropriate compensation for victims of rights violations;**
- **the power to initiate systemic investigations into police practices, such as instances of brutality at demonstrations and the use of weapons in crowd control operations.**

Recommendation 7

That the HRC urge Canada, including all of its police forces, to stop using section 31 of the *Criminal Code* in the context of demonstrations.

Recommendation 8

That the HRC urge Québec to prohibit police forces from using sections 500 and 500.1 of the *Highway Safety Code* and municipal by-laws in the context of demonstrations.

Recommendation 9

That the HRC urge municipalities to repeal by-laws limiting the right to demonstrate.