

“CLIMATE OF TOTAL INSECURITY”

ARBITRARY ARRESTS OF PEACEFUL PROTESTERS IN PARIS ON 12 DECEMBER 2020

On 29 September 2020, Amnesty International published a report showing how, in France, since the end of 2018, thousands of peaceful protesters have been arrested, prosecuted and sometimes convicted under laws that are overly vague or are contrary to international law¹.

These practices constitute violations of the right to freedom of peaceful assembly as they prevent those arrested from participating in demonstrations and may deter them from protesting in future. They can also constitute violations of the right to liberty and security.

This document is part of an examination of how criminal law is used against peaceful protesters in France. Based on an analysis of dozens of cases of arrests during a demonstration in Paris on 12 December 2020, it raises the alert about situations of arbitrary deprivation of liberty. It recalls Amnesty International’s recommendations regarding French practices and laws, and the need for them to comply with international human rights law, particularly the requirements relating to protecting the right to protest.

1. CONTEXT AND METHODOLOGY

On 12 December 2020, several thousand people demonstrated in France² against the proposed “Global Security” law and the bill to “reinforce republican principles”. In Paris, a route had been announced for the demonstration, starting at Place du Châtelet and ending at Place de la République (boulevard Sébastopol – boulevard Saint Denis – boulevard Saint Martin), from 1:30 pm to 6 pm. It had been authorised by the police headquarters. Between 5,000 and 10,000 people³ took part in the march.

According to the testimonies we have gathered and media reports, the demonstrators did not cause any significant damage or violence; nonetheless, law enforcement officers repeatedly charged at the procession⁴.

After the demonstration, the Minister of the Interior announced that 142 people had been arrested⁵. Of those 142 people, 124 were cases of pre-charge detention, including 19 minors. Almost 40% of those held in pre-charge detention (49) were released without charge. More than three-quarters of the arrests (76.6%) did not lead to a prosecution (49 people were released without charge and 46 were given cautions)⁶.

¹ <https://www.amnesty.org/en/documents/eur21/1791/2020/en/>

² According to the Ministry of the Interior, there were 26,000 protesters nationwide; according to the organisers, the figure was 60,000.

³ 5,000 according to the Ministry of the Interior; 10,000 according to the organisers.

⁴ https://actu.fr/ile-de-france/paris_75056/videos-marche-des-libertes-a-paris-face-au-black-bloc-la-police-attaque-dans-la-manifestation_38085530.html https://www.lemonde.fr/societe/article/2020/12/12/manifestation-sous-tension-a-paris-contre-la-proposition-de-loi-securite-globale_6063178_3224.html

<https://www.mediapart.fr/journal/france/030121/comment-les-forces-de-l-ordre-ont-sabote-la-manifestation-du-12-decembre-2020>

⁵ <https://twitter.com/GDarmanin/status/1337818637797879808>

⁶ <https://www.mediapart.fr/journal/france/030121/comment-les-forces-de-l-ordre-ont-sabote-la-manifestation-du-12-decembre-2020>

If we add those who, without being placed in pre-charge detention, were arrested and deprived of their liberty, sometimes for several hours, no legal action was taken against almost 80% of those detained (79.6%)⁷.

It is usual for some of those arrested or held in pre-charge detention to not ultimately face prosecution, since the time in custody can be used to investigate the case further. However, in the context of using criminal law against peaceful protesters, these extremely high rates raise legitimate concerns about the risk that arbitrary arrests and other human rights violations took place.

Based on interviews with protesters arrested in Paris, their families and lawyers⁸, and thanks to the documents they provided (medical certificates, videos, court documents, etc.), we were able to gather information about 35 cases, including 34 protesters who were held in pre-charge detention and one case of deprivation of liberty for almost five hours. We conducted detailed interviews with 11 people (eight protesters or journalists who were arrested and three relatives of arrested protesters) in relation to nine cases (eight protesters who were held in pre-charge detention, three of whom were minors and two journalists, and one protester who was deprived of their liberty). We also interviewed four lawyers who provided us with information about 26 other people who were placed in pre-charge detention (including court documents). In addition, we used media sources and official communications from the Ministry of Justice and the police headquarters. The public prosecutor of Paris did not respond to our requests for clarifications about the nature of the criminal offences that prompted the 124 pre-charge detentions, despite our repeated attempts (two emails on 5 and 11 January 2021 and two follow-up phone calls).

Nonetheless, the information gathered shows that in all the cases we have documented, the protesters were detained in the absence of evidence establishing reasonable suspicion that they had committed a crime, hence the detentions appear to have been arbitrary. Laws contrary to international law may also have been used to justify the arrest of some protesters. In addition, other practices during the arrests and pre-charge detentions raise concerns about whether the French authorities respected the protesters' human rights.

2. LEGAL FRAMEWORK: THE RIGHT TO LIBERTY AND THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY

The right to liberty is protected by international human rights law⁹. A person may only be legally deprived of their liberty under specific circumstances. The European Convention on Human Rights (ECHR), for instance, authorises a person's arrest when there is reasonable suspicion that they have committed a crime. In the context of a pandemic like Covid-19, the choice of detaining someone must also be examined in terms of the necessity and proportionality of that measure, taking into account the increased risk of contamination in places of detention.

Being detained without a valid reason constitutes an arbitrary detention and a violation of the right to liberty.

According to the Working Group on Arbitrary Detention – the United Nations group of experts that investigates cases of arbitrary deprivation of liberty around the world – deprivation of liberty is arbitrary if the law under which an individual is arrested is worded vaguely, if its scope is excessively broad¹⁰, or if it contravenes other fundamental rights such as the right to freedom of expression, the right of assembly or the right to freedom of religion or belief¹¹.

⁷ The fact that legal proceedings are brought against someone does not mean that they are guilty of the offences with which they are charged, but as the majority of the cases are still underway, we do not have specific data on the outcome of the prosecutions.

⁸ Amnesty International talked to nine protesters and relatives of protesters (eight cases) in detailed interviews and with four lawyers who assisted those in pre-charge detention following the demonstrations of 12 December.

⁹ Article 3 of the Universal Declaration of Human Rights; Article 9 of the *International Covenant on Civil and Political Rights*; Article 5 of the European Convention on Human Rights.

¹⁰ Human Rights Committee: Concluding observations, Ethiopia, doc. ONU CCPR/C/ETH/CO/1, 2011, § 15.

¹¹ Working Group on Arbitrary Detention: Opinion No. 25/2004, Al Faleh and others v. Saudi Arabia, doc. UN E/CN.4/2006/7/Add.1, pp. 16-20, § 13-20; Report, doc. UN E/CN.4/2001/14, 2000, § 93-94. African Commission: Article 19 v. Eritrea, § 93-108. Human Rights Committee: Concluding observations, Canada, doc. UN CCPR/C/CAN/CO/5, 2005, § 20, Uzbekistan, doc. UN CCPR/CO/83/UZB, 2005, § 22; see Jung and others v. Republic of Korea, doc. UN CCPR/C/98/D/1593-1603/2007, 2010, § 7.4.

Mass arrests, including in the context of peaceful protests, present a greater risk of being arbitrary under international standards¹².

States have the obligation to protect the right to protest (the right to freedom of peaceful assembly), which is a corollary of the right to freedom of expression; indeed, they must ensure that every person's right to peacefully participate in social protests is respected and that only those who have committed criminal offences during such demonstrations are arrested.

3. MAIN CONCLUSIONS

The information gathered illustrates a number of problematic trends, which indicate that the human rights violations documented in the report "Arrested for protest"¹³ are continuing.

- **DETENTIONS BASED ON VAGUE LAWS AND WITHOUT EVIDENCE ESTABLISHING REASONABLE SUSPICION THAT A CRIME WAS GOING TO BE COMMITTED**

Of the 34 cases of pre-charge detention that we documented, at least 25 were accused of the criminal offence of participating in a group with a view to preparing acts of violence (Article 222-14-2 of the Criminal Code). The lawyers' testimonies confirm that this offence has been widely used to place protesters in pre-charge detention, even when the authorities have insufficient evidence to reasonably believe that those people had participated in the preparation of group acts of violence.

Testimonies and videos posted on social media¹⁴ show arrests that took place during charges by law enforcement officers, without an audible dispersal order, and without any sign of significant unrest in the demonstration.

"He told me afterwards what had happened. He was dancing in the procession, there was some percussion, and then he felt himself being pushed. At first he thought it was other protesters. It was actually the police. He was hit with a baton; he had a bruise on his leg, which was seen by the custody doctor [...] His girlfriend called me and said that he was at the police station in the 15th arrondissement. When I first contacted them, I wasn't allowed to talk to L. Yet, he's a minor and we're his parents. We had no idea what was going on. They called me back later in the evening and told me he wasn't going to be released. They still didn't let me talk to him; they refused to put him on the phone. They told me that he was part of a 'violent gang', 'a group of individuals who intended to cause trouble'." (Lara, 46 years old, artist, mother of L, 16 years old, who spent approximately 20 hours in pre-charge detention. Case closed with no further action.)

Of the 34 cases of pre-charge detention that we have documented, only two of them appear to be linked to the possession of objects that might constitute grounds to suspect participation in a violent group. However, those objects (diving goggles, gloves and a motorcycle helmet) do not establish reasonable suspicion that the individuals in question would have committed a criminal offence or that they were involved in the preparation of a criminal offence. In the other cases, there is nothing to indicate that there were objects on which to base suspicions.

Therefore, it seems that for all the other cases (32 pre-charge detentions and one deprivation of liberty for almost five hours), the arrest and placement in pre-charge detention was not prompted by the possession of objects.

In six of the eight pre-charge detentions for which we conducted interviews, the police officers asked for the passcodes for the mobile phones of those being held; in one case, they appear to have decided not to access the phone after requesting the code, while in two cases the person refused to give their code. The three minors agreed to

¹² <https://www.amnesty.org/download/Documents/8000/pol300022014en.pdf>, p. 34 and Human Rights Committee: Concluding observations, Canada, doc. UN CCPR/C/CAN/CO/5, 2005, § 20

¹³ <https://www.amnesty.org/en/documents/eur21/1791/2020/en/>

¹⁴ https://www.youtube.com/watch?time_continue=2&v=LgG0cEaUAAw&feature=emb_title

their phones being searched, but in one case it was not working. Regarding the other two cases, we do not know whether the law enforcement officers sought to access the detainees' mobile phones.

"They didn't ask for my phone passcode. On Sunday, at around 10 or 11 in the morning, someone came and took my photo and my fingerprints; she also wanted to take my DNA, but I refused. Had I known, I would have refused the photos and fingerprints, too." (Stéphane¹⁵, 40 years old, 19 hours in pre-charge detention. Case closed with no further action.)

"When I was in the cell, a judicial police officer came with a little notebook to ask us for our phone passcodes. We refused. They didn't ask again." (Loïc, 27 years old, member of the organisation ATTAC, approximately 24 hours in pre-charge detention. Case closed with no further action.)

Protesters and journalists covering the protest spent 19 to 48 hours in pre-charge detention after being arrested at a demonstration where there was no significant unrest, without having been accused of being in possession of dangerous objects and sometimes even without the authorities seeking to establish whether they had passed on messages inciting violence. The very low number of prosecutions following these pre-charge detentions would suggest that the arrests were not based on sufficient evidence.

Indeed, the pre-charge detentions do not seem to have been justified by any valid reasons, hence they appear to have been arbitrary detentions. Those detentions prevented the protesters from exercising their right to freedom of peaceful assembly. The lack of precision of Article 222-14-2 of the Criminal Code concerning the offence of participating in a group with a view to preparing acts of violence¹⁶ contributes to the authorities using it in a way that unduly restricts human rights. The law should clearly and precisely indicate which acts are prosecutable. Only a specific contribution by a person to planning or perpetrating violence in collaboration with others should be criminalised.

- **DETENTIONS BASED ON FRENCH LAWS THAT DO NOT COMPLY WITH THE REQUIREMENTS OF INTERNATIONAL LAW**

WEARING FACE COVERINGS

Even though the criminal offence of wearing a face covering does not seem to have been invoked many times to justify the arrests of 12 December 2020, three witnesses have reported that the wearing of face coverings was cited to them as grounds for their arrest or pre-charge detention: *"I asked why I was being arrested, and I was told: 'face covering'. I was astonished - in the middle of the Covid crisis!"* (Loïc, 27 years old, member of the organisation ATTAC, approximately 24 hours in pre-charge detention. Case closed with no further action.)

In France, since 10 April 2019, fully or partially concealing one's face without good reason in the context of a protest that disturbs public order, or is likely to do so, has been a criminal offence that is punishable with a prison sentence of up to one year and a fine of €15,000 (Article 431-9-1 of the Criminal Code).

This general prohibition, which does not require a clear, direct link between the people concealing their faces and the disturbance of public order, is a disproportionate restriction of freedom of expression and the right to demonstrate. According to international human rights law, banning the wearing of face coverings at a demonstration could only be legal if the person in question engages in an act of violence or clearly demonstrates their imminent intention to do so.

Furthermore, in a context where the authorities have made it mandatory to wear a face mask in public spaces in order to fight the Covid-19 pandemic, a law against the wearing of face coverings contradicts that rule, and can therefore no longer be enforced.

¹⁵ His name has been changed.

¹⁶ Article 222-14-2 of the Criminal Code: "The fact of a person knowingly participating in a group, even if formed temporarily, with a view to preparing acts of deliberate violence against persons or destruction or damaging of property, as characterised by one or more material facts, is punished by one year's imprisonment and a fine of €15,000."

CONTEMPT

“A police officer pinned her to the ground, then picked her up and pinned her against a wall. He accused her of spitting; she said she hadn’t spat; he said she had... Afterwards, she remembered having spat her chewing gum onto the ground when they were charging, but she didn’t remember in that moment. And that’s what she’s accused of in the police caution: spitting in a manner that undermines the dignity of a public official... There’s nothing about the circumstances: where she spat, when, on what... There’s nothing.” (B, local councillor, mother of a 17-year-old who was arrested and held in pre-charge detention for approximately 24 hours.)

Among the cases we have had access to, at least three protesters were accused of contempt, together with one journalist.

French legislation offers only a vague definition of the criminal offence of contempt. Any written text, image or spoken word that undermines the dignity of or due respect for a public official constitutes contempt, even though under international human rights law no form of expression, with the exception of advocacy of hatred constituting incitement to discrimination, hostility or violence, must be prohibited, even if it involves shocking, offensive or disturbing language.

The definition of contempt in French law is too broad and does not meet the criteria for advocacy of hatred or incitement to violence. It leads to arrests and prosecutions for acts that should not be subject to criminal sanctions. Cases of contempt often rely on the word of a police officer against that of the defendant, which makes them difficult to contest. Following the demonstration of 12 December, a minor was given a police caution for contempt as she was accused of having spat at a police officer. She admits having spat out her chewing gum, but not at anyone:

“It’s really a question of allegations. It’s her word against the word of the institution, without the institution taking the trouble to prove what it’s claiming.” (B, local councillor, mother of a 17-year-old who was arrested and held in pre-charge detention for approximately 24 hours.)

REFUSAL TO COMPLY WITH A DISPERSAL ORDER (UNLAWFUL ASSEMBLY)

Some witnesses have reported being reproached for refusing to disperse after having being ordered to do so by law enforcement officers, which seems to correspond to the criminal offence of participation in an unlawful assembly (*attroupement*, Article 431-3 of the Criminal Code). It is possible that in some cases there was confusion between unlawful assembly and the criminal offence of participating in a group with a view to preparing acts of violence, including on the part of the law enforcement officers making the arrests.

None of the videos to which we have had access make it possible to establish whether dispersal orders were given before the charges by the police during the demonstration. None of the people interviewed heard a dispersal order. Furthermore, there was no unrest or generalised violence that would have justified dispersal. The mere risk of unrest should not be grounds to break up a peaceful assembly. Law enforcement officials should only use dispersal when faced with compelling reasons, such as cases of generalised violence committed within the context of the event¹⁷.

The notion of unlawful assembly is too vaguely defined in French legislation, as it includes not only public gatherings that disturb public order, but also those that are likely to do so. Being penalised for participating in a gathering which is classed as an unlawful assembly without having engaged in acts of violence constitutes a disproportionate restriction on the right to freedom of peaceful assembly.

When this offence is applied to third parties who are not protesters, whose role is to document police practices during dispersal (human rights observers or journalists), it represents a disproportionate infringement of the freedom to inform. On 12 December, one journalist reports having been held in pre-charge detention on the grounds of refusing to disperse, among other offences: *“I was accused of concealing my face, refusing to comply with a dispersal order and participating in an unlawful assembly with a view to committing violence. They took my statement; I said I was a reporter and was on assignment.”* (Adrien AdcaZz, 24 years old, reporter, approximately 34 hours in pre-charge detention. Case closed with no further action.)

¹⁷ See Amnesty International, *Use of force. Guidelines for implementation of the UN Basic Principles on the Use of Force and Firearms by law enforcement officials*, section 7.2.

• OTHER CONCERNING PRACTICES

BY REPRESENTATIVES OF THE PUBLIC PROSECUTOR

Of the 124 people placed in pre-charge detention, 46 were given cautions, which can be issued by a judicial police officer or by a representative of the public prosecutor. Since the law of 23 March 2019 came into force¹⁸, a representative of the prosecutor may also issue a ban on entering a certain geographical area for a period of up to six months¹⁹.

In practice, enabling the public prosecution service to order a restriction on the right to free movement in the context of a caution is tantamount to imposing a sentence, without trial, that might restrict the right to freedom of peaceful assembly (if protests mainly take place in the town where the person is no longer permitted to go) or limit people's work options if their professional activity is linked to that place. The imposition of additional caution conditions is particularly problematic given that the courts have no control over such measures and the people affected cannot appeal them.

Of the 34 cases of pre-charge detention linked to the demonstrations of 12 December that we have managed to document, there were at least five incidences of cautions issued together with restrictions on free movement. In one case that we know of, the representative of the public prosecutor included in the caution a blanket ban on attending demonstrations, which amounts to a ban on protesting, which is not explicitly provided for by the French Code of Criminal Procedure.

In at least four cases, the people were placed in pre-charge detention for the "offence of participating in a group with a view to preparing acts of violence", a charge that was later dropped. However, they were then cautioned for refusing to give their mobile telephone passcodes, an action that was not linked to the procedure initiated against them, despite the fact that the procedure was ultimately closed.

In the absence of other evidence establishing reasonable suspicion that they had participated in the preparation of violence, the collecting of information contained on their phones was not justified and the fact that they were penalised for refusing to grant access constitutes a disproportionate restriction of their right to privacy and smacks of intimidation, especially as the charges of participating in a group with a view to preparing acts of violence were dropped.

BY LAW ENFORCEMENT OFFICERS

In at least six of the nine detailed testimonies gathered, the people who had been arrested said they had been restrained with plastic ties and, in one case, later handcuffed to a bench when they arrived at the police station. They all state that they did not behave violently during the arrest, nor did they try to escape. The circumstances of those arrests (very compact police presence, putting the detainees in vans and then taking them to police stations) made attempts to escape unlikely. In three of the nine cases that we documented through interviews, videos of the arrests are available and show that the detainees put up no resistance.

"I was caught up in a big charge that knocked about 15 of us to the ground. [...] When we fell down, our only concern was to get the people back up so they wouldn't be trampled on, and that's really all that happened. The law enforcement officers were behaving as if we were adversaries, although there was no offensive on our part. They hit us with their batons when we were on the ground; some people were dragged along the floor... [...] When she dragged me, I said 'I'm not resisting' but she said 'you resisted before'. When we were on the ground, we stood up, but that's all." (Stéphane²⁰, 40 years old, 19 hours in pre-charge detention. Case closed with no further action.)

"At that moment, I was handcuffed, just because I had raised my voice because my flag was being stolen. It felt humiliating; I knew very well that it wasn't justified. I wasn't trying to escape, I wasn't dangerous. It was a horrible

¹⁸ LAW NO. 2019-222 OF 23 MARCH 2019 ON PLANNING 2018-2022 AND JUSTICE SYSTEM REFORM:

<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000038261631/>

¹⁹ https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000042193474/2020-08-01

²⁰ His name has been changed.

experience.” (Alexis, 30 years old, arrested then released without further action after almost five hours of deprivation of liberty.)

The witness accounts seem to indicate that handcuffing is routine.

“The police officer writing the arrest report [...] Then they bound my hands with plastic ties and made me sit on the ground with six other people, next to a police van.” Loïc, 27 years old, member of the organisation ATTAC, approximately 24 hours in pre-charge detention. Case closed with no further action.)

“At first, I didn't really understand what was happening, so I didn't say much; I didn't really realise what was going on. Then my hands were bound with plastic ties.” (Julien²¹, 16 years old, student, approximately 20 hours in pre-charge detention. Case closed with no further action.)

“I told them I was a reporter; they replied that I could explain myself at the police station. I wasn't really given any reasons. There must have been eight of us, including two minors. They put plastic ties on me.” (Adrien AdcaZz, 24 years old, reporter, approximately 34 hours in pre-charge detention. Case closed with no further action.)

According to the principles of international law regarding the use of force, means of restraint must never be used as a routine measure. Like for any use of force, the application of means of restraint must be justified by the concrete circumstances of the situation and must be both necessary and proportionate. The use of means of restraint is intended to prevent a person from causing physical harm to a law enforcement officer or third party, hurting themselves or escaping²².

Although French law is consistent with these principles and only authorises the application of handcuffs or physical restraints “when the apprehended person is considered either a danger to others or themselves, or likely to attempt to escape” (Article R434-17 of the National Security Law), the testimonies gathered reveal that these rules are not systematically respected by law enforcement officers. Restricting the movement of people who present neither a threat nor a risk of escape constitutes an illegal use of force under both international law and French law.

The lack of communication with the people arrested, including regarding the grounds for their arrest, is also concerning. Communication and dialogue are important elements of a policing strategy that aims to avoid the use of force. Several witnesses have said that the gendarmes or police officers making the arrests did not state the reasons and that some of the people arrested still do not understand why they were detained, despite having been subjected to deprivations of liberty lasting several hours. Any person who is arrested or placed in detention must be immediately informed of the reasons for which they are being deprived of their liberty²³.

In four of the nine detailed testimonies gathered, the people held in pre-charge detention said that they had difficulty or were unable to access the lawyer of their choice. In one case, the police reportedly did not contact the chosen lawyer as they did not have his telephone number. In one case, a duty lawyer was brought for a detainee who had actually requested a specific lawyer. In another case (a minor in pre-charge detention), a duty lawyer was called without the parents being consulted. In yet another case (also a minor), a duty lawyer was called even though the father had indicated that he wanted his own lawyer to be called.

“Afterwards, I met with a duty lawyer. My dad had told them to contact our lawyer, but I didn't know, so I had the duty lawyer.” (Julien²⁴, 16 years old, student, approximately 20 hours in pre-charge detention. Case closed with no further action.)

“They told me I could call a lawyer, a doctor, a relative. I asked to call all three, but I didn't have the number of my lawyer. They said ‘I'm not a telephone directory’, and if I didn't have the number I could make do with a duty

²¹ His name has been changed.

²² “Use of force”, Amnesty International.

²³ ICCPR, Article 9(2) “Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”

²⁴ His name has been changed.

lawyer.” (Mélanie, 40 years old, social worker, 48 hours in pre-charge detention. Her case was referred to the court and she was cautioned for refusing to give a DNA sample or her telephone passcode.)

“The next day we went to the police station at about 2 pm and it was not until we were on our way that we got any news of him, that I was able to talk to him. It was while he was being questioned [...] He was with a duty lawyer. No one had asked me if we had a lawyer, otherwise I would have asked a friend of mine who is a lawyer to come and support him. But we weren’t given the option of doing that.” (Lara, 46 years old, artist, mother of L, 16 years old, who spent approximately 20 hours in pre-charge detention. Case closed with no further action.)

While we do not have sufficient data to ascertain whether this problem is systematic, these alerts call for vigilance. Under international law, the accused must have the right to choose who represents them, as it is crucial for there to be trust between the accused and the lawyer. The difficulties reported by the witnesses that Amnesty International has talked to might be explained by organisational problems or excessive workloads at the police stations due to the large numbers of arrests made during the demonstration, but being denied the right to choose one’s lawyer is a violation of international law and France must ensure that its administrative bodies have the necessary means to respect human rights.

Finally, at least two witnesses met by Amnesty recounted how law enforcement officers made sure their actions were not filmed, by covering or switching off their cameras.

“They saw that I had a GoPro camera on my backpack, which was filming. At one point, a BRAV [Brigade for the Suppression of Violent Action] officer put my scarf over it to cover the lens, but the sound was still on. Then they turned it off.” (Alexis, 30 years old, arrested then released without further action after almost five hours of deprivation of liberty.)

“They took the battery out of my camera so that it couldn’t continue filming; they put everything in my bag” (Adrien AdcaZz, 24 years old, reporter, approximately 34 hours in pre-charge detention. Case closed with no further action.)

Citizens have the right to film the actions of law enforcement officials; it is a way of documenting unlawful conduct or possible human rights violations. One reporter told us that his equipment (mobile phone and cameras) was confiscated and, even though his case was closed with no further action, almost a month after the demonstration, he had still not been able to get it back. He finally retrieved it on 18 January, but the memory cards had been destroyed and were unreadable²⁵. He told us that he had filmed police violence during the demonstration and the disappearance of those images could constitute an obstruction of the freedom to inform.

BY THE MINISTER OF THE INTERIOR

On 12 December 2020, while the demonstration was taking place, the Minister of the Interior posted seven tweets or retweets and at least three Facebook posts to communicate and comment on the arrests, implying that “rioters” or “black blocks” were being detained²⁶, even though the arrests were still taking place and nearly 80% of them did not ultimately lead to prosecutions.

This kind of attitude at the highest level of the law enforcement hierarchy, when arrests are still taking place and investigations have not yet been conducted, and without concrete information that there was evidence establishing reasonable suspicion that those arrested were guilty of a crime, is contrary to the impartiality expected of the public

²⁵ <https://twitter.com/alancelin/status/1351234667169665044>. Adrien AdcaZz also sent us photos of the damaged memory cards.

²⁶ <https://twitter.com/GDarmanin/status/1337818637797879808>
<https://twitter.com/alaingriset/status/1337808626317205506?s=20>
<https://twitter.com/GDarmanin/status/1337806722623295492?s=20>
<https://twitter.com/GDarmanin/status/1337773433996840962?s=20>
<https://twitter.com/prefpolice/status/1337765558717198337?s=20>
<https://twitter.com/GDarmanin/status/1337747063975665665?s=20>
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<https://www.facebook.com/gerald.darmanin/posts/1499297600270690>
<https://www.facebook.com/gerald.darmanin/posts/1499208640279586>
<https://www.facebook.com/gerald.darmanin/posts/1499139803619803>

authority in charge of conducting investigations. Such behaviour is likely to encourage the repetition of arbitrary arrests and detentions of protesters rather than guaranteeing respect for the right to freedom of peaceful assembly.

Like the law enforcement agencies, the Minister of the Interior has a duty to protect and enable the exercise of the right to freedom of peaceful assembly.

• IMPACTS ON PROTESTERS

Spending 24 to 48 hours in pre-charge detention can have psychological impacts. Not understanding the reasons for the arrest can also generate anxiety.

“In retrospect, I would say that it releases a big rush of adrenaline. Personally, I was observing everything, I was listening to everything, I was trying to understand what fate awaited me... You don't know what charges are against you; it's distressing. You don't know what's going to happen. I was in an exhausting state of tension.” (Stéphane²⁷, 40 years old, 19 hours in pre-charge detention. Case closed with no further action.)

The experience of being searched is often described as stressful.

“Then there's the search. That's the most stressed moment. There were two of them; the room was tiny and had no windows. That's when you feel most vulnerable; you tell yourself that anything could happen. They take your things, then you feel stressed, afraid that they'll come to the wrong conclusions...” (Loïc, 27 years old, member of the organisation ATTAC, approximately 24 hours in pre-charge detention. Case closed with no further action.)

In the cells, those held in pre-charge detention do not know what time it is and, in many cases, have no daylight, which makes them lose their sense of time.

“The next day, I asked for information pretty much every two hours; I started to get a bit impatient; I didn't know how time was passing; I didn't know if it was morning or evening. I was wondering what was going on. The more I asked, the less they came. So I stopped asking. Then, at one point, they came and got us all; they put us in some rooms and told us that our pre-charge detentions were being extended.” (Adrien AdcaZz, 24 years old, reporter, approximately 34 hours in pre-charge detention. Case closed with no further action.)

The fear of missing work and how one's employer or family will react also contribute to the uneasiness of those held in pre-charge detention, compounded by the lack of sleep and not understanding the procedures.

“On Monday, no hearing. They stopped talking to me and I didn't talk to them. I was in a cell alone. It felt like a very long time. You think about everything. After a while, you become paranoid; you wonder whether the protest had actually been authorised, whether there might have been a mistake. You wonder whether you have support, how my parents are going to take it. You think about your family, your job, how your colleagues are going to react...” (Mélanie, 40 years old, social worker, 48 hours in pre-charge detention. Her case was referred to the court and she was cautioned for refusing to give a DNA sample or her telephone passcode.)

“In the morning I was given some biscuits and fruit juice. Then all I did was wait. I didn't really know what time it was. After a while, someone came to get me and I was taken to a room to have photos taken of me. Photos were taken of distinctive marks like my scars. My DNA and fingerprints were taken, and they asked me my height. I don't think they asked if I was alright.” (Julien²⁸, 16 years old, student, approximately 20 hours in pre-charge detention. Case closed with no further action.)

The impacts vary depending on the individual, but going through these types of situations can discourage people from protesting again, thus undermining their right to freedom of peaceful assembly.

²⁷ His name has been changed.

²⁸ His name has been changed.

“It’s not something that gives energy to mobilisations. Spending a night in pre-charge detention has an energetic impact.” (Stéphane²⁹, 40 years old, 19 hours in pre-charge detention. Case closed with no further action.)

“When I was released, I was gutted because I didn’t have my camera or my footage, which meant I wasn’t going to be able to make my report, and I didn’t have my phone either, so I couldn’t let people know.” (Adrien AdcaZz, 24 years old, reporter, approximately 34 hours in pre-charge detention. Case closed with no further action.)

RECOMMENDATIONS

In light of the information gathered, it would seem that the use of criminal law to make arrests and hold people in pre-charge detention during the demonstration of 12 December raises the same concerns regarding respecting the right to freedom of peaceful assembly as Amnesty International previously documented in the “Arrested for protest” report published in September 2020. To put an end to those practices, Amnesty International makes the following recommendations:

TO THE MINISTRY OF THE INTERIOR:

- Issue clear instructions to law enforcement officials emphasising that subjecting an individual to pre-charge detention is permissible only in circumstances where there is a reasonable suspicion of their involvement in a criminal offence and detention is both necessary and proportionate. Individuals who are placed in pre-charge detention should be promptly informed of the reasons for their detention. The length of pre-charge detention should be limited to what is strictly necessary. Under no circumstance should a person be placed in pre-charge detention for the purpose of preventing the exercise of their right to freedom of peaceful assembly. The use of physical restraints must be limited to cases where individuals pose a danger to themselves or others, or where there is a risk of escape. Access to a lawyer chosen by the person held in pre-charge detention must be guaranteed.
- The authorities must not make public statements expressing opinions about the existence of crimes or offences while the demonstration and arrests are still taking place, to avoid giving a perception of bias concerning the investigation to be conducted.

TO THE FRENCH PARLIAMENT:

- Amend the provision that criminalises participation in a group with a view to committing acts of violence (Article 212-14-2 of the Criminal Code) to ensure legal clarity; in particular, the specific conduct that constitutes a criminal offence under this provision should be clarified.
- Ensure that contempt of public officials is treated as a purely civil matter and not as a criminal offence.
- Amend the law prohibiting the wearing face coverings (Article 431.9.1 of the Criminal Code) to reduce its scope and ensure that only individuals who engage in actual acts of violence, or from whom violent acts are demonstrably imminent, can be criminally liable if they cover their faces to avoid identification and law enforcement.
- Repeal the provision that allows prosecutors to impose restrictions on freedom of movement in the context of a caution (Article 41.1-7 of the Code of Criminal Procedure).

²⁹ His name has been changed.