



AMNESTY BRIEFING ON THE POLICING OF COP26

Amnesty briefing on policing of protest at COP26

The Conference of the Parties (COP) 26 was held in Glasgow from 31st October – 14th November 2021. Amnesty International were represented on Police Scotland’s Independent Advisory Group on COP26 (IAG) which reports to the Scottish Police Authority (SPA). This briefing covers issues and recommendations relating to the policing of protest at COP26 but also aspects of governance and oversight.

Amnesty has documented the global trend of escalating crack downs on peaceful assembly and freedom of expression¹– rights which form the legal protections for peaceful protest. The UK is no exception to this trend as evidenced by the Police, Crime, Courts and Sentencing Act 2022 and the forthcoming Public Order Bill which represents an enormous and unprecedented extension of Policing powers in England and Wales.

Within this socio-political context Amnesty welcomed Police Scotland’s stated intention to take a human rights based approach (HRBA) to policing and facilitating protest during COP26. This briefing draws on experience and information gathered from the IAG, civil society, protest monitors and media reports in an attempt to critically assess the claim of an HRBA to policing of COP with the aim of contributing to ongoing improvements to human rights based policing. Recommendations are highlighted and summarised at the end of the briefing.

Part 1: Legal framework

The rights to peaceful protest are fundamental universal rights enshrined in international and domestic human rights law. The state and its agencies have a positive obligation to protect the rights of peaceful protest and can only restrict them in certain limited circumstances, with a high threshold justification applied to any restrictions or curtailments that might be imposed. These rights are expressed for example, in Article 21 of the International Covenant on Civil and Political Rights and Article 11 of the European Convention on Human Rights (ECHR).

Article 11 ECHR

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not

¹ <https://www.amnesty.org/en/documents/pol10/3202/2021/en/>

prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

Useful further reading and resources on the legal framework surrounding the Right to Protest can be found below:

- The Scottish Human Rights Commission produced a comprehensive briefing on the right to assembly for the IAG on Coronavirus powers².
- The Human Rights Council has produced a detailed and helpful General Comment 37 which reaffirms the state’s obligation to protect and facilitate spontaneous and coordinated peaceful assembly.³
- Netpol (Network for Police Monitoring) has produced a Charter for Freedom of Assembly which operationalises General Comment 37 from the Human Rights Council.⁴
- The Organisation for Security and Co-operation in Europe (OSCE) and its Office for Democratic Institutions and Human Rights (ODIHR) have created a number of useful guidelines and reports on the freedom of peaceful assembly.⁵ The UK government invited OSCE monitors to COP26 and we look forward to their report later on this year.

Justice is a devolved matter to the Scottish Parliament and Police Scotland is governed by separate Scottish legislation. The relevant legal framework for protests in Scotland includes; Civic Government (Scotland) Act 1982, Public Order Act 1986, Criminal Procedure (Scotland) Act 1995, Police and Fire Reform (Scotland) Act 2012, Criminal Justice (Scotland) Act 2016, Scottish Biometrics Commissioner Act 2020, the European Convention on Human Rights as it is incorporated in the Scotland Act 1998 and the Human Rights Act 1998.

Oversight and Monitoring

Oversight and independent scrutiny is a vital part of human rights based policing. So, it is essential to ensure independent and transparent oversight of all bodies involved with peaceful assemblies, including through timely access to effective remedies (e.g. judicial and quasi-judicial remedies, Scottish Police Authority (SPA), Her Majesty’s Inspectorate of Constabulary in Scotland (HMICS), UK National Preventative Mechanism, NGOs and national human rights institutions) before, during and after assemblies.

An Independent Advisory Group (IAG) on COP26 was set up at the end of 2020 and met regularly throughout 2021 and more regularly prior and during COP26. This group was set up by Police Scotland and included lawyers, academics, UN Security Team, Glasgow City Council, SPA, Children and Young People’s Commissioner Scotland representative, Amnesty and an observer from the COP26 Coalition (an NGO network). Later this also included the protest monitoring Team from the Organization for Security and Co-operation in Europe’s (OSCE) Office for Democratic Institutions and Human Rights (ODIHR).

² Scottish Human Rights Commission; The Right to Freedom of Peaceful Assembly: Article 11 of the European Convention on Human Rights (ECHR) https://www.scottishhumanrights.com/media/2101/article-11_right-to-freedom-of-assembly-iag.pdf

³ <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GCArticle21.aspx>

⁴ NETPOL – Charter for Freedom of Assembly Rights: <https://netpol.org/charter/>

⁵ OSCE, ‘Guidelines on Peaceful Assembly’ Online manual: <https://www.osce.org/odihr/73405>

It is positive for a police force to take this proactive action to bring human rights expertise into their planning and deployment phase. The IAG was regularly updated on planning, training and Police Scotland's planned approach to policing of COP26.

It is, however, important to distinguish the role of this group from statutory based scrutiny and oversight. An IAG is by definition advisory and not a scrutiny body and it was not always clear how the advisory architecture surrounding Police Scotland interacts with the scrutiny architecture. It is important that these roles are clear and distinct so that there is no confusion for the public or other stakeholders. It is also important that issues that arise in IAGs can be referred to the relevant scrutiny body where they arise. As well as these formal structures, there was on the ground monitoring being carried out by NGOs such as Netpol and a multi-disciplinary academic research project⁶.

Amnesty recommends PS IAGs have clear mechanisms for referring issues to the appropriate scrutiny body to investigate and report publicly. Advisory Groups are not and must not be seen as a substitute for robust statutory regulation and scrutiny of the police. Their role must be explicit and defined with all investigations of the police carried out by scrutiny bodies with the requisite legal powers.

Part 2: Issues relating to specific groups of activists

COP26 happened against the backdrop of multiple examples of heavy-handed policing of climate protests – including court action against police forces; high profile protests as part of the Black Lives Matter movement, and demonstrations in reaction to the murder of Sarah Everard by a serving police officer. Public debate was also framed around the Police, Crime Sentencing and Courts Bill (now Act) at Westminster which seeks to bring in sweeping restrictions on the right to peaceful protest.

Women, people of colour, children and young people, disabled people, those under immigration control, and those with multiple intersecting characteristics can face additional barriers in accessing the right to protest – and the international human right framework places a duty on police to consider what steps can be taken to facilitate participation for all. The commitment made by Police Scotland to a 'human rights based approach' further requires assessment by police of how they can facilitate peaceful protest on the basis of non-discrimination.

Recent high profile examples have shown how heavy handed policing can disproportionately impact certain groups. Policing of climate protests in London drew criticism for the disproportionate use of Section 14 which banned all Extinction Rebellion protests anywhere in London after 9pm back in October 2019⁷. At the same climate camp, disabled activists were subjected to "degrading and humiliating" treatment by the police according to the Metropolitan Police's own disability independent advisory group which submitted a formal complaint⁸. Over the lockdown period the policing of a number of protests - including those organised by Black Lives Matter and a vigil for Sarah Everard, a woman kidnapped and

⁶ Protest research project conducted by a research team from the Universities of East Anglia, Edinburgh and St. Andrews: <https://cop26research.wp.st-andrews.ac.uk/>

⁷ <https://www.amnesty.org.uk/press-releases/extinction-rebellion-blanket-ban-chilling-and-unlawful>

⁸ <https://www.theguardian.com/uk-news/2019/oct/29/met-treatment-of-disabled-xr-activists-branded-degrading-and-humiliating>

murdered by a serving police officer - was widely criticised for the use of police horses, “kettling”⁹ and excessive use of force¹⁰.

In political and policy terms - COP26 took place against the backdrop of the Policing, Crime, Sentencing and Courts Bill (now Act) which was introduced at Westminster and proposed to give police in England and Wales sweeping powers including to shut down peaceful protest. Many protest groups, including many climate protestors, were involved in campaigning against the Bill.

Within this context, Amnesty International advised the Independent Advisory Group on COP26 that activists with different protected characteristics and ideological positions may have differing views or approaches to the police that could shape how and if they choose to engage with officers. It was important to stress that a reluctance or refusal to engage with the police is not illegal or evidence of criminal intent.

For example, activists involved in climate campaigning may have direct experience of or be aware of activists being referred to the Prevent Strategy as “environmental extremists”. Activists who are people of colour may have had many adverse interactions with the police, experienced police violence or believe that they will be more likely to experience it. Many women will be very aware of the policing of the Sarah Everard vigil and the violent scenes reported.

Furthermore, the high number of “mutual aid” officers from police forces across the UK in Scotland during COP raised legitimate concerns among civil society and activists regarding how a HRBA would be delivered in line with commitments from Police Scotland.

Children and young people

The United Nations Convention on the Rights of the Child (UNCRC) contains many of the relevant ECHR rights for children under the age of 18 such as rights to freedoms of expression, (Article 13); thought, conscience and religion (Art 14); association and peaceful assembly (Art 15) and privacy (Article 16). The UNCRC differs from Article 15 only to the extent that it qualifies the rights to association and peaceful assembly “in conformity with the law” for the protection of rights and “necessary in a democratic society”. Authorities need to apply special considerations of age and evolving capacities, risks of harm or conflict and competing rights of parents exist when it comes to the enjoyment of these rights by children.

Amnesty has received many examples of children and young people being penalised by schools for their participation in climate protests, particularly the Fridays for Future protests. Again, Police Scotland have a duty to protect the right to protest for children and young people, by facilitating protest and protecting the safety of children.

It was evident that the Children’s March on Friday 6th November 2021, during the COP26 Summit, was lightly policed and passed without incident, although a number of alleged incidents of disproportionate and heavy handed policing were reported in Glasgow on the same date.¹¹

⁹ <https://www.amnesty.org.uk/press-releases/amnesty-raises-concerns-policing-black-lives-matters-protests>

¹⁰ <https://www.amnesty.org.uk/press-releases/uk-mets-action-clapham-sharp-reminder-mps-resist-temptation-give-police-more-powers>

¹¹ NETPOL, ‘Respect or Repression’, p.5: <https://netpol.org/respect-or-repression-report-web-version/>

Part 3: Areas of human rights concern relating to COP26

Response to Direct Action

Potential disruption including peaceful direct action (or civil disobedience) is not an automatic excuse for denying protection of rights to protest. Civil disobedience can constitute a form of assembly, and when carried out in a non-violent manner, should be protected under the rights framework.

- Direct action tactics were used as a form of protest around COP26 and Police Scotland's approach was to prioritise the minimisation of disruption. This approach does not necessarily represent an HRBA. Law enforcement authorities including the police should consider the different elements of a protest on a case-by-case basis, including its intent (for example, to protest or express political or social dissent, to get the attention of the general public and contribute to the political debate) and its overall impact (causing of temporary harm as opposed to permanent negative consequences for the general public). Amnesty would question whether this balance was achieved by Police Scotland. For example, Police Scotland's commitment to deal 'swiftly and robustly' with protestors who blocked main traffic routes is not an approach automatically proportionate and rights based.
- It is always the case, that some activists will protest with the specific aim of being arrested. This can involve premeditated violation of a law which unduly restricts expression of particular beliefs, a law that prohibits the exercise of a human right or that is in conflict with international human rights law and standards. In these instances, Amnesty is clear that authorities should not prosecute those involved in such non violent protest, and Police Scotland has a duty to consider how to manage such arrests in a safe and proportionate way.
- **Statements and video evidence gathered by protest observers for Netpol suggest that excessive force was likely used on several occasions to remove protestors taking peaceful direct action.**¹²

Going forward Amnesty recommends that Netpol's charter for freedom of assembly rights be endorsed by PS, and that the force reviews and reflects upon the evidence that suggests the right to peaceful assembly through direct action was not always upheld during COP26.

"Kettling" vs Containment

The term "kettling" when used in relation to policing is popularly understood to mean confining a crowd to an area by police officers surrounding the group and not allowing members of the crowd in or out of the "kettle". The term is metaphorical as it relates to a kettle boiling, the confined area is the kettle and the verb to confine the area is referred to as "kettling".

It is noteworthy that the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association uses the terms 'containment' and 'kettling' interchangeably and has repeatedly voiced concerns in relation to the tactic having a powerful chilling effect on protestors seeking to exercise their peaceful assembly and expression rights.¹³

¹² Netpol 'Respect or Repression' p.53: <https://netpol.org/respect-or-repression-report-web-version/>

¹³ Human Rights Council, 2017, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United Kingdom of Great Britain and Northern Ireland:

Police Scotland categorically state that they do not use “kettling” as a tactic but instead use containment. This is also a method of confining a crowd to a specific area and in our analysis is not a different tactic to kettling but simply different language. The term kettling has a lot of negative connotations that Police Scotland does not want to associate with its approach. The worst examples of kettling internationally include police in the USA confining BLM protestors into a space in order to inflict violence on them. In the UK, many controversial examples of kettling by the Metropolitan police have been reported. In June 2020 Met officers contained Black Lives Matter protestors for 6 hours without access to food or water, photographing individuals before allowing them to leave in the early hours of the morning.

Examples like this highlight a number of human rights issues and abuses that can result from this tactic, and there is an urgent need for the human rights impacts of kettling/containment by Police Scotland to be properly scrutinised. Containment is a strategy that can result in interference with basic human rights and its use against protestors, or any crowd, needs to meet the human rights test of legality, proportionality, necessity and time-limits.

While there is a Standard Operating Procedure on Public Order, information has been removed as exempt under the Freedom of Information (Scotland) Act 2002, section 20; Prejudice to effective conduct of public affairs and Section 35; Law Enforcement, and therefore Amnesty cannot provide an analysis of whether PS’s use of kettling/containment upholds human rights standards.

Amnesty recommends PS rescind any aforementioned restrictions on disclosure of this information and provide at the earliest opportunity relevant information on the use of Kettling/containment in order to allow adequate scrutiny of this highly controversial tactic in relation to a HRBA to policing protest.

Stop and Search

There were many reports of misuse of Stop and Search powers by police during COP26 as well as proper procedures not being followed. Activists reported experiencing intimidation in their interactions with officers, including protestors being told that they couldn’t be given a receipt for the Stop and Search because the officers “had run out”. It should be noted Stop and Search raises a number of serious concerns, notably its impact on disproportionate use against specific communities and its role in perpetuating racism within policing. As a tactic, police led reviews have concluded it has very little impact in reducing crime, is often misused by police officers and is more likely to be counterproductive than beneficial. Changes have been made to Stop and Search in Scotland followed by a damning HMCIS report and IAG also Chaired by John Scott QC¹⁴.

Police powers to stop and search, as well as to arrest and detain, should be with a view to prevent and detect crime – based on a reasonable suspicion that a person is likely to be involved in a criminal offence or of carrying an item related to such a criminal offence. Suspicion should be based on the behaviour of a specific person, a condition which continues to apply in the context of an assembly. Using stop and search or arrest of people only based on their peaceful participation in an assembly is a violation of Article 21 – particularly if there is no justification in light of the conditions set out in article 21 to restrict or prohibit an assembly.

Amnesty was concerned by reports of police misusing their powers in individual interactions with protestors. Protestors reported being given no explanation of why they were targeted for

https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Documents/A_HRC_35_28_Add.1_AEV.docx

¹⁴ Stop and Search in Scotland: <https://www.gov.scot/news/stop-and-search/>

search, nor provided with written receipts. In some instances, officers allegedly refused to provide receipts for stop and search unless activists provide personal contact details – an action which would be unlawful¹⁵.

We understand that Police Scotland were keen to engage with protestors ahead of and during COP26. Indeed a refusal by the police to enter into dialogue has had disastrous effects in the past, for example in the case of the Sarah Everard vigil where a refusal to engage with organisers created an unsafe situation for protestors and police. However, there were widespread reports of protestors feeling intimidated by police officers engaging with them, being followed by officers and being surrounded when gathered in groups but not protesting. Whether intimidation was the intent or not, there is a risk that this police behaviour has a chilling effect on protest and leads to negative interactions between the police and protestors. This seems at odds with the stated intent of encouraging and protecting the rights to peaceful protest.

Amnesty recommends PS review its engagement strategy in light of negative perceptions of police and policing actions by individuals and PS obligations under relevant international human rights law to refrain from actions that may have a “chilling effect” on individuals wishing to exercise their rights to freedom of assembly, association and expression, including to protest peacefully.

Surveillance and use of police technology

Choosing to take part in a public assembly is not an invitation to surveillance and denial of privacy. Reports of disproportionately high numbers of officers deployed to protests and the intrusive filming of campaigners during COP26 do not represent an HRBA to policing and contrive to create an atmosphere of fear and intimidation. Key to police engagement with protestors is trust, and the use of surveillance of protestors and denial of privacy will fundamentally undermine that trust and likely introduce a “chilling effect”

Surveillance equipment and technology that Amnesty International would consider contrary to a HRBA to policing of protest include:

- Use of IMSI-catchers, known as “Stringray” devices, which collect mobile data including location data, text messages and calls, in a locality and are believed to be used by police forces in England and Wales.
- Facial recognition technology is used by many police forces in England and Wales (where there is currently court action over its use). This is not used by Police Scotland, which most protestors will not know and should be communicated. Amnesty remains opposed to use of facial recognition in law enforcement.

If this surveillance is not being used, or only been used in specific, targeted and legal circumstances, then this should be clearly communicated. It is often difficult to use surveillance technology in a targeted way at a mass protest and rules around the retention and storage of data must comply with the highest standards of data protection and human rights standards.

The Independent Advisory Group on emerging technologies in policing will be reporting on the process and procedures regarding surveillance equipment, and Amnesty will continue to oppose any attempt to introduce the use of facial recognition technology by the police in Scotland. We hope that new systems for emerging tech will

¹⁵ These acts were referenced in an open letter to the First Minister by COP26 Coalition: <https://cop26coalition.org/open-letter-to-nicola-sturgeon-on-policing-at-cop26-2/>

include strong human rights safeguards and that Police Scotland will commit to further transparency and accountability for equipment that risks.

Summary of recommendations

1. Police Scotland's Independent Advisory Groups should have clear mechanisms for referring issues to the appropriate scrutiny body to investigate and report publicly. Advisory Groups are not and must not be seen as a substitute for robust statutory regulation and scrutiny of the police. Their role must be explicit and defined with all investigations of the police carried out by scrutiny bodies with the requisite legal powers.
2. That Police Scotland adopt the NETPOL Charter for Freedom of Assembly which operationalises General Comment 37 from the Human Rights Council.¹⁶
3. That there are investigations into all reports of excessive force, intimidation of protesters, misuse or inappropriate Stop and Search procedure, use of kettling/containment and a review of arrests connected to COP26. A full evaluation with lessons learned will demonstrate what went well as well as where there can be improvements.
4. All current restrictions on the provision of information should be removed and a full human rights analysis should be made of the use of kettling/containment by an independent expert.
5. Police Scotland should review its approach to communicating with protestors, including communications prior to COP26 as well as during, both directly with organisers and protest group representatives but also media output and public comments.
6. The Independent Advisory group on Emerging Police Technology will be reporting on the process and procedures regarding surveillance equipment, and Amnesty will continue to oppose any attempt to introduce the use of facial recognition technology by the police in Scotland. We hope that new systems for emerging tech will include strong human rights safeguards and that Police Scotland will commit to further transparency and accountability for equipment that risks human rights breaches.

¹⁶ NETPOL – Charter for Freedom of Assembly Rights: <https://netpol.org/charter/>

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