This report offers a summary analysis of Human Rights investigations into the misuse of tear gas on peaceful and civilian protesters. The report covers member states of the Council of Europe that came under investigation in a sample of publicly available reports published between 2006 and 2016. It details key findings regarding human rights concerns, deaths and injuries related to tear gas, and the lack of adequate and transparent data recorded on police use of force.
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INTRODUCTION

Everyday, around the world, law enforcement officers use tear gas and other riot control weapons on civilians. Law enforcement officials and agencies (as state representatives) are obligated under international law to positively respect and protect human rights. In instances of peaceful protest and policing of assemblies, the rights to freedom of expression and of peaceful assembly; to life, liberty and security of person; and the right to be free from torture or other cruel, inhuman or degrading treatment or punishment are of particular importance. While the UN Basic Principles on the use of Force and Firearms provides guidelines for the use of these weapons, there is currently no effective legal oversight or international regulation of their manufacture, export, trade or use. This lack of oversight is a cause of humanitarian, legal and medical concern.

Although tear gas is termed a ‘less lethal’ weapon, misuse can lead to human rights violations, and increased likelihood of injuries and deaths. The misuse of tear gas includes: use in confined space, excessive amounts of tear gas, use when not necessary or proportionate, use against those with compromised health, use in confined spaces or any use amounting to ill-treatment. In order to achieve a better understanding of the frequency and types of human rights concerns raised by the misuse of tear gas, this report offers a brief summary analysis of a sample of recorded instances in Council of Europe member states between 2006-2016. In attempting to aggregate publicly available data, this report also sheds light on the lack of adequate and transparent record keeping in relation to police use of force statistics, as well as the injuries less lethal weapons cause.

METHODOLOGY

The objective of this research was to determine human rights concerns about the misuse of tear gas in peaceful protests, as well as to identify problems with the existing lack of data on police use of force.

In efforts to aggregate published figures on injuries and deaths caused during instances of tear gas misuse, a research team comprised of 4 undergraduate students and 3 postgraduate students worked under the leadership of 3 senior academics to source and compile existing data from Amnesty International and other human rights organisations' published reports.

Relevant reports were located via web-based searches using the online publication library of Amnesty International, as well as through advanced Google searching using in-site URL and keyword search queries. To be eligible for the sample, reports had to (i) focus on at least one Council of Europe member state; be about (ii) peaceful, civilian protests; and have been (ii) on incidents occurring between 2006-2016.

To ensure a diverse sample of reports could be gathered on Council of Europe member states, countries were divided into five research regions with 1-2 members of the research team assigned to each region. Where available, regions were assigned based on language proficiency and familiarity with national contexts:
Once an eligible report was identified, data was extracted by the researcher and recorded onto a spreadsheet. The spreadsheet was designed in consultation with the Omega Research Foundation. Data to record included: member country, source of report, title of report, report url, publication date, protest event, incident location, type of location, start and end date of incident, details about deaths and injuries, issue central to incident, whether human rights violations occurred, listed individuals involved, and weapons used.

Nearly all eligible reports were published by Amnesty International. This is largely due to their regional focus, dedicated investigations on policing, and ongoing collaboration with Omega Research Foundation who have a remit to investigate Europe’s role in the trade and use of policing equipment. This was also likely due to their prevalence on the web and ease of online searching in their library, making the data easier to access.

To supplement this sample of Human Rights reports, our research team also searched media reports to give context to incidents, compare incident coverage and investigate protests that may not have been examined by human rights organisations. This data was extracted and recorded using the same category codes listed above.

In this brief summary analysis we focus primarily on data obtained from human rights reports, discussing media reportage only to point out significant gaps and deficiencies in current data recording and use of force monitoring by Council of Europe member states.
KEY FINDINGS

Human Rights Concerns

1.1 Tear Gas Use in Partially Enclosed and Confined Spaces

Tear gas is designed and recommended for use in open areas, where there are clear and unobstructed escape routes to fresh air. However, in the majority of tear gas instances recorded in our sample, tear gas was deployed in partially enclosed or confined spaces.

Fig 1. The number of incidents that took place in contained areas compared to streets

Fig 2. Incident Locations in Human Rights Reports
Incident locations included cordoned off streets or squares, buildings and vehicles. The use of tear gas in confined and enclosed spaces increases the risks of serious injury through suffocation, panic leading to stampedes and related injuries. In addition, tear gas was used in areas congested with uninvolved bystanders and in places with particular vulnerable populations, such as residential neighbourhoods and schools.

1.2 Tear Gas and Force Escalation

Tear gas is often used in conjunction with direct physical force (baton strikes, punching, kicking, bodily restraint); in combination with other less lethal devices (i.e. water cannons and rubber bullets); or at times, with live ammunition. Accounts of when and how tear gas is used in force escalation are rarely recorded. When testimony does exist it is often difficult to corroborate, with police and eyewitness accounts conflicting. In our sample, when injuries were listed, it was often not specified what type of force caused the injury, or what sequence of force escalation took place. For example:

**There were several documented incidents of police officers using excessive force against peaceful demonstrators who were not offering any resistance. Video footage shows, for example, a police officer hitting a man who was lying on the ground and was not offering any resistance. It also shows two police officers hitting a demonstrator while on the ground and spraying what seem to be chemicals in his face.**

*(Amnesty International, SPAIN, EUR 01/022/2012, p5)*

**Amnesty International received reports of further incidents of police violence against students participating at a demonstration, in the evening of 13 November, against the University lockout and the police violence around the Law School earlier that day. According to the testimonies received, news reports and supporting audio-visual material, the attack took place at the end of the route of the student demonstration as the students had arrived at the Athens Polytechnic school on Stournari Street and forced open the locked gates in order to have a meeting about further actions over the lock-out. While many students managed to enter the university seeking protection, those who did not were reportedly subjected to police beatings and were sprayed with chemical irritants.*

*(Amnesty International, GREECE, EUR 25/009/2014, p3)*

Protocols and guidelines for appropriate, human rights compliant use of tear gas should be independently prepared, with peer review, and be publicly available. They should stipulate a set of parameters to enable a level of safe and consistent use including: the minimum safe distance it can be fired from at crowd; velocity and trajectory of projectiles; pressure and dosage of sprays. In practice such guidelines are often vaguely worded and equipment has not been sufficiently tested prior to deployment. In addition, as multiple officers may deploy multiple weapons at the same time, it can create situations where people are injured while trying to evacuate a space where tear gas is being dispersed.
Key Insights on Member Countries

2.1 Member States with High Tear Gas Use

In our sample, Turkey and Greece were the Council of Europe member countries with the highest recorded instances of tear gas use against peaceful protesters. In the reports we analysed that had recorded numbers for injuries, Turkey was estimated at over 4,800 and Greece at over 300. Other member states with more than one major report on excessive use or misuse of tear gas were Azerbaijan, Romania and Russia. There were detailed reports, including documentation of excessive force and resultant injuries on the M15 protests in Spain in 2011 (180 injuries from batons, tear gas, rubber bullets). There was also a report on the Ukrainian protests of 2013 that summarised ‘dozens’ of injuries, including an incident of tear gas use against a peaceful protester in a confined space.

The Turkish Medical Association reported that by 10 July [2013] there had been more than 8,000 injuries at the scene of demonstrations. As of the end of August, five people had died during the course of the protests. There is strong evidence linking three of these deaths to the abusive use of force by police (p9).

A significant proportion of persons injured at the scene of demonstrations received injuries through being struck by gas canisters, many of them fired at close range. The Human Rights Foundation of Turkey reported to Amnesty International that of the applications for rehabilitation made to their foundation, 60% were due to injuries caused by gas canisters, a far higher proportion than they are accustomed to dealing with after other protests (p20).

(Amnesty International, TURKEY, EUR 44/022/2013)

On 27 May 2011, Catalanian police intervened in Catalonia Square, Barcelona, to disperse demonstrators belonging to the 15M movement … Official figures report that 84 protestors and 37 police officers were injured. One lawyer who assisted affected demonstrators told Amnesty International that a total of 180 people had suffered injury, but only some 50 of them had obtained medical reports. Injuries from batons, tear gas, rubber bullets.

(Amnesty International, SPAIN, EUR 41/001/2014, p. 55)
Local authorities in Odessa, on the Black Sea coast, applied to a court to ban a demonstration on Primorsky Boulevard that had attracted 2,000 people on Saturday 23 November [2013]. The court sitting at 4am on 24 November supported the ban, and the remaining demonstrators were violently dispersed by the police. Oleksiy Chorny, the leader of the opposition party, Democratic Alliance in Odessa, was beaten by police officers, sprayed with tear gas in a confined space and then sentenced to five days of administrative detention for allegedly shouting anti-government and anticonstitutional slogans. (Amnesty International, UKRAINE, EUR 50/020/2013, p6).

### 2.2 Austerity is the Leading Protest Issue

In nearly a third of our sample, 32%, protests in member states were against austerity measures. While some of these incidents involved both peaceful and agitated protesters, human rights reports documented both excessive use of force and indiscriminate use of force by police against demonstrators.

**Fig. 3 Reasons for Protest in Member Countries**
Data Deficit on Tear Gas Use

3.1 Lack of Accurate Figures on Death and Injuries

Quantitative Data on tear gas injuries and deaths is very difficult to find. Where recorded, data in our sample rarely differentiated between injuries caused by different types of weapons. Data was often unspecific, using words like ‘numerous’ or ‘several’ rather than exact or estimated figures. This data deficit is primarily due to:

   I. Records not being kept of people seeking treatment for injuries.
   II. Records of injuries not specifying types of weapons that caused injury or what different injuries were caused.
   III. People not going for treatment when injured, often due to fear of police surveillance or arrest at hospitals or clinics.

3.2 Record Keeping

Turkey has both a very high use of tear gas against peaceful protesters, as well as better recording of data than other countries in Council of Europe. This is due largely to local initiatives, including active field hospitals during demonstration, as well as to larger organisations that have put resources and staff toward recording and monitoring use of force injuries and deaths.

In addition to Amnesty International, Human Rights Watch and Physicians for Human Rights reports on Occupy Gezi and related peaceful protests in Turkey, national organisations including the Turkish Medical Association (TMA), the Human Rights Foundation of Turkey (HRFT), the Human Rights Association, the Istanbul Progressive Lawyers Association, the Contemporary Lawyers Association, and the Turkish Bar Association have recorded data on injuries and deaths related to tear gas. These efforts respond to the lack of any official police or government record keeping. They could provide models for other member states that currently do little or no recording of police use of force data, relating to tear gas and other less lethal weapons.

3.3 Regional Biases in Recorded Data

Reliable NGO and Intergovernmental reports tend to be focused on Eastern and Mediterranean Europe even though usage occurs in Northern Europe, particularly in Belgium, France and Germany. This contributes to a data deficit on Northern Europe. While there were no investigations on these countries in our sample of human rights reports, our media queries turned up 16 major incidences of mass tear gassing against civilian demonstrators between 2009 and 2016 in these three countries, documenting over 150 injuries from tear gas.
### Table 2 — Media Reports on Belgium, France and Germany

<table>
<thead>
<tr>
<th>Member State</th>
<th>Media Source</th>
<th>Civilian Protest</th>
<th>Start Date</th>
<th>Injuries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>RT.com</td>
<td>Milky day: Farmers dump thousands of litres of milk on Brussels police, European Parliament</td>
<td>26/11/2012</td>
<td>ND</td>
</tr>
<tr>
<td>Belgium</td>
<td>RT.com</td>
<td>Brussels: Police disperse protesters with tear gas, water cannon</td>
<td>4/4/2014</td>
<td>27</td>
</tr>
<tr>
<td>Belgium</td>
<td>The Guardian</td>
<td>Brussels protests end in violence</td>
<td>6/11/2014</td>
<td>50</td>
</tr>
<tr>
<td>Belgium</td>
<td>Vice News</td>
<td>Nationwide Strikes Over Austerity Cuts Brings Belgium to a Standstill</td>
<td>15/12/2014</td>
<td>ND</td>
</tr>
<tr>
<td>France</td>
<td>La Liberation</td>
<td>Samedi, flash-balls et gaz lacrymo ont été utilisés contre les opposants aux projets de Notre-Dame-des-Landes et Sivens, à l’issue de manifestations qui ont dégénéré.</td>
<td>1/11/2014</td>
<td>8</td>
</tr>
<tr>
<td>France</td>
<td>Vice News</td>
<td>Protester Killed After Clash With Riot Police at Disputed Dam Site in France</td>
<td>25/10/2014</td>
<td>17</td>
</tr>
<tr>
<td>France</td>
<td>Huffington Post</td>
<td>French Taxi Protest: Police Fire Tear Gas To Clear Anti-Uber Protesters From Paris Motorways</td>
<td>26/1/2016</td>
<td>ND</td>
</tr>
<tr>
<td>France</td>
<td>Aljazeera</td>
<td>French police fire tear gas to disperse climate protest</td>
<td>30/11/2015</td>
<td>ND</td>
</tr>
<tr>
<td>France</td>
<td>Huffington Post</td>
<td>Police, Protesters Clash At NATO Summit In France</td>
<td>2/5/2015</td>
<td>ND</td>
</tr>
<tr>
<td>France</td>
<td>Huffington Post.fr, Le Figaro</td>
<td>Manif pour tous: des gaz lacrymogéniques tires, Des gaz lacrymogènes tirés sur des opposants au mariage gay</td>
<td>24/03/2013</td>
<td>ND</td>
</tr>
<tr>
<td>Germany</td>
<td>Die Welt</td>
<td>Nach der Eskalation wird nun verbal gekämpft</td>
<td>30/9/2010</td>
<td>116-400</td>
</tr>
<tr>
<td>Germany</td>
<td>Frankfurter Allgemeine Zeitung</td>
<td>Kritik und Verständnis für Gewalt</td>
<td>18/3/20/15</td>
<td>128</td>
</tr>
<tr>
<td>Germany</td>
<td>N-TV</td>
<td>Polizei löst Kölner Pegida-Demo auf</td>
<td>9/1/2016</td>
<td>ND</td>
</tr>
<tr>
<td>Germany</td>
<td>Frankfurter Neue Presse</td>
<td>Nach Flüchtlings-Demo: Polizei räumt besetztes Haus</td>
<td>9/12/2015</td>
<td>ND</td>
</tr>
<tr>
<td>Germany</td>
<td>RT.com</td>
<td>Germany: Police fire tear gas at Berlin metro station</td>
<td>5-1-14</td>
<td>ND</td>
</tr>
</tbody>
</table>
RECOMMENDATIONS

Based on our brief summary analysis, and broader research into the use of tear gas, we make the following recommendations for Council of Europe member states:

R1: We recommend that national governments introduce Use of Force monitoring and ensure that law enforcement officials accurately and transparently document all incidents of use of force involving tear gas and any other less lethal weapons, and make this data publicly available.

R2: Member states should consult the Amnesty International Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the OSCE/ODIHR Venice Commission Guidelines On Freedom Of Peaceful Assembly; the recommendations therein should be adopted, and legally implemented, by all Council of Europe member states. This includes guidance against the use of tear gas in confined spaces and near residential buildings and hospitals.

R3: Effective measures should be taken to ensure that police forces, at all times, comply with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

R4: More research is needed into the role that tear gas plays in the escalation of force. In particular, we suggest that more forensic analysis of audiovisual scenes of protest should be conducted, alongside the scrutiny of testimony and medical records, to determine how its use can lead or contribute to injuries and deaths.

R5: Medical staff should be adequately trained and equipped for injury care, recording, and reporting at sites of civilian protest.

R6: Governments should protect health facilities from interference from police officials during protest and guarantee impartial treatment. Government sanctions or laws that make street medic care illegal should be repealed. Field medics often provide the only source of care available during protests, as well as the only source of recorded data on injuries.

R7: Independent, peer-reviewed clinical and epidemiological studies need to be funded to investigate the long-term health effects of tear gas, as well as the effects of repeated or excessive exposure. As Physicians for Human Rights and Medical Associations around the world have warned, the ongoing, excessive use of tear gas in member states poses serious health concerns.

R8: All tear gas devices should be tested and assessed prior to deployment by an independent body, with medical, human rights and policing expertise. Standards for their manufacture and technical specifications for their operation should be promulgated and enforced across all member states.

R9: To ensure that all tear gas devices are adequately controlled member states should take appropriate legislative, administrative, judicial and other measures to control the production, trade, export, import and use of equipment that disseminates riot control agents; and should prohibit the production, trade, export, import and use of any equipment or methods of deployment that have no practical use other than for the purpose of torture or other cruel, inhuman or degrading treatment or punishment.