

THE RIGHT TO PROTEST – BEYOND JUST STOP OIL

Liberal Democrat **Irina von Wiese**, a lawyer and civil rights activist, says the new government must reverse the creeping erosion of human rights in recent legislation and restore the right to protest in the UK.

In late 2019, as vice-chair of the European Parliament's Subcommittee for Human Rights, I listened via shaky video link to the testimony of two young pro-democracy protesters in Hong Kong. In defiance of threats by Beijing-controlled authorities that they would 'face a future of unknown retaliation', they had approached the subcommittee because they had an important message for Europe: they would keep demonstrating against extradition laws foreshadowing the end of democracy in Hong Kong.

These demonstrations had been going on for months and brought much of the city to a standstill. Despite having no clear leadership, protesters were highly organised. Frontline activists used laser pointers to distract the police, sprayed paint on surveillance cameras and unfurled umbrellas to conceal the identities of protesters. Their inspiration, they said, was the 2014 Ukrainian Revolution in Maidan Square.

The *South China Morning Post*, then owned by Alibaba, depicted a different scenario: protesters engaging in violent riots ranging from 'vandalism' to brick-throwing. By October 2019, reports emerged of mainland Chinese-linked shops, underground and train stations set on fire and petrol bombs hurled at police. Accusations of violence were followed by counteraccusations of police forces using *agents provocateurs* and image manipulation to discredit protesters. An unknown number of demonstrators, bystanders and police were injured; conflicting reports of deaths on both sides were never verified. Throughout these months, the West – including my own committee – stood by the protesters.

The outbreak of the Covid pandemic brought an end to mass protests. The Chinese Communist Party imposed a national security law in Hong Kong, the remaining protest was crushed and its proponents silenced – many arrested and many driven into exile. One of our witnesses was jailed, the other fled to the UK. Democracy, including the right to protest, was abolished in Hong Kong.

Around the same time, climate demonstrations were held across London and the world, their activists of a similar demographic to Hong Kong's protesters. Inspired by Greta Thunberg's one-girl-protest in Stockholm, organisations such as XR attracted young people all over the world. Like Hong Kong, media attention required a level of disruption. This included damage to property, disruption of public and private transport,

and disturbance of daily life for many who felt unjustly affected. Media stunts and flashmobs, the occupation of major intersections and protesters glued to buildings ensured attention, inspiration, outrage and backlash. Thousands of children – including my daughter – left their classrooms on Fridays to assemble in prominent public places with ‘Climate Rights Are Human Rights’ placards.

No doubt: they were loud.

Loud enough for the UK government to embark on a remarkable clampdown on the right to protest. This time the West did not stand by the protesters.

The right to peaceful protest forms part of the fundamental human rights of Freedom of Assembly and Freedom of Expression, enshrined in the Universal Declaration of Human Rights, the European Convention on Human Rights and the UK Human Rights Act 1998. Freedom of peaceful assembly includes the right to hold meetings, sit-ins, strikes, rallies, events or protests. It is a vehicle for the exercise of many other rights – for example, to enable action against racial or religious discrimination. Everyone has the right to protest and to organise protests – and authorities are obliged to allow and facilitate such protests as long as they are peaceful.

The right to protest finds its limits in the collective and individual rights of others – the right to life and physical integrity, to peaceful enjoyment of property and public spaces. Where rights collide, we find basic, fairly intuitive rules to deal with such clashes: we weigh rights against each other and assess the justification of restrictions against the principle of proportionality. It works for other rights, and in most liberal democracies has worked reasonably well for the right to protest.

Not so in the UK.

Following the Climate and Black Lives Matter demonstrations across British cities, the government passed two pieces of legislation which, combined, have the effect of seriously eroding the right to protest. Both were rushed through parliament against objections of lawyers, civil society organisations and the House of Lords.

First, the [Police, Crime, Sentencing & Courts Act 2022](#) brought sweeping changes to the way the police can restrict the right to protest. It massively expanded the powers of senior police officers – including the most senior officer on the ground at any moment – to impose restrictions on protests. This opened a large window of police discretion and reduced the ability to scrutinise decisions that can end a protest entirely. All that is needed for a protest to be restricted or shut down (if necessary, by force) is that the officer ‘reasonably believes’ the protest may cause ‘serious disruption to the life of the community’. The definition of what qualifies as ‘serious’ disruption to the life of the community was expanded by the PCSC Act but remains deliberately vague. Incidences where protests cause ‘harassment, intimidation, alarm or distress’ to people in the area are quoted, but there is little certainty and consistency in how these impacts are measured or verified. Explicitly included in the list of disruptive events is generating noise, e.g. if it has a ‘relevant impact on people in the area’. This impact assessment is largely subjective and may depend on whether the ‘people in the area’ agree with the cause of the protest or not. Arguably, generating noise is a key part of what makes a protest effective, and causes supported by more people are likely to lead to more participants and more noise. It is not difficult to imagine a scenario where demonstrations are outlawed exactly *because* they are effective.

The new rules have a significant chilling effect on would-be protesters. Criminalisation without clear rules mainly deters legal, peaceful protest. First-time protesters, children and other vulnerable groups are less likely to take to the street if they think they may inadvertently break the law or be arrested. Before the Policing Act, it was a criminal offence if protesters *knowingly* failed to comply with the conditions imposed on a protest. Under the Policing Act, it now suffices that protesters 'ought to know' that a certain condition has been imposed. This uncertainty has the effect of deterring those would-be protesters who are most likely to be peaceful.

When, despite these legislative efforts, it became apparent that activists were not deterred, the government launched the second round of its clampdown on the right to protest: the introduction of so-called 'Serious Disruption Prevention Orders' under the 2023 Public Order Act and subsequent regulations. This latest set of restrictions was explicitly directed at environmental protest by organisations such as Extinction Rebellion, Just Stop Oil and Insulate Britain who have become highly organised and effective at staging large scale events. Police were given powers to shut down protests due to 'serious disruption' even *before* any such disruption takes place. Any such assessment would be speculative and difficult to challenge.

The 2023 Regulations also lowered the threshold for what constitutes 'serious disruption to the life of the community'. It now includes any protest that may, 'by way of physical obstruction' hinder in a way that is 'more than minor', day-to-day activities (including journeys). In theory, any action which leads to a disruption of public transport or access to buildings because of protest marches or encampments is caught, even if nobody comes to harm. What is 'minor' and what is 'more than minor' remains in the eye of the (police officer) beholder. Affected members of the public are more likely to raise objections if they disagree with or don't care much about the cause, while sympathetic bystanders, unsurprisingly, are more willing to put up with the disruption. When the cause changes – eg when a counterdemonstration is staged – the roles are inverted. An objective assessment becomes almost impossible. It is perhaps no surprise that the High Court has recently ruled that these regulations were unlawful – but they remain in force while the government appeals.

Demonstrations against the war in Gaza, including encampments at UK universities, have re-ignited the debate around the limitations of the right to peaceful protest, serious disruption and what is considered as not peaceful. Police forces have been accused of being heavy handed against protesters – or of not doing enough to protect others. They find themselves trapped by legislation too vague to be relied on and too confusing to give clear guidance. Protesters, on the other hand, are subject to inconsistent, unpredictable measures, criminalisation and arrest, while incidences of real intimidation and violence go unpunished.

Within two years, the UK government has eroded the right to protest to a degree that renders it ineffective.

The ECHR, in defining the right to peaceful assembly, clearly states that 'peaceful' does not mean 'non-disruptive', but 'stands in contradistinction to (an assembly) characterised by widespread and serious violence'. It clarifies that 'mere pushing and shoving or disruption of vehicular or pedestrian movement or daily activities do not amount to violence'. The balance is clear: the right to protest is limited only by the protection of others from *widespread and serious violence*, not from 'more than minor'

disruption of their daily activities. The UK government is bound by these definitions. Any attempt to change them sets it on a collision course with international law and the UK Human Rights Act.

When democracy was threatened in Hong Kong, people took to the streets in their thousands, and the images of their fight were beamed around the globe. The disruption they caused was balanced against the cause of their pursuit – the aim of saving democracy. The ends justified the means – particularly when the means did not affect our own daily lives. When, closer to home, UK voters were delayed by climate protesters (many too young to vote), the government took swift action to clamp down on disruption. This double standard misunderstands the universal nature of human rights, which for good reason are defined by international conventions.

Whether we happen to agree or disagree with the cause does not change the fundamental freedom of peaceful assembly, nor its limitations.

Irrespective of the cause, protest enables the expression of opinion, the defence of liberal democracy and the affirmation of civil society against abuses of power. Without it, we lose the ability to speak truth to power, whatever the power to come.

The upcoming general elections provide us with a chance to put the UK back on track and reverse the creeping erosion of democracy we witnessed over the past two years. A new UK government will need to affirm Britain's commitment to international obligations, including the ECHR, and should take urgent action to scrap the protest-related provisions in the Police Act 2022, the Public Order Act 2023 and the relevant Regulations.

The views expressed in this essay are the author's own and not those of Amnesty International UK