

20 November 2012

To
Commander Yossi Pariente
Jerusalem District Police Chief
Israel Police

**Re: Misconduct of Jerusalem District Police during Demonstrations against
Operation Pillar of Defense**

Dear Sir,

We appeal to you in light of evidence we have received of misconduct by Jerusalem District Police personnel last week, during two demonstrations opposing Operation Pillar of Defense in Gaza.

Demonstration in Paris Square, Jerusalem – 15 November 2012

1. On Thursday 15 November 2012 at approximately 7:00PM, a spontaneous demonstration began in Paris Square at the intersection of Ramban and King George streets. The protest was in response to Operation Pillar of Defense, which had begun the previous day. Demonstrators called for a stop to the fighting in Gaza and against unnecessary bloodshed, with some 150 people participating. The participants initially congregated at Paris Square and after about an hour they decided to march down the sidewalks of King George St. toward the Ben Yehuda pedestrian mall. There was no attempt on their part to block the street or interrupt the flow of traffic. Police, on the scene from the beginning of the demonstration, accompanied the protestors as they proceeded toward Ben Yehuda. About halfway, the police instructed the demonstrators to turn back in the direction of Paris Square because of the fear that violence between the demonstrators and a hostile crowd at Ben Yehuda St. might erupt. The demonstrators heeded police instructions and turned back toward Paris Square, still accompanied by the police.
2. Police were present from the very beginning of the demonstration, observed the proceedings and chose not to intervene. It was a quiet demonstration, with no disturbances or hint of disorderly conduct. On the contrary, the demonstrators obeyed police instructions, even when asked to end their march and return to Paris Square.
3. In questioning several of the demonstrators, among them employees of The Association for Civil Rights in Israel, I discovered that when they

returned to Paris Square, the demonstration had come to an end. Participants had stopped chanting slogans, and several had left the square. One of the protestors made an announcement to those still present that another demonstration would be held in a few days. Participants began to collect their belongings, placards and signs. Under these circumstances, it was clear that within a short period all the demonstrators would be leaving to go home.

4. Despite this, the police bafflingly chose not to wait for the demonstrators to leave voluntarily. They turned toward those still present and ordered them to disperse immediately, claiming that they were holding an illegal demonstration. The attempts of one of the organizers to speak with the police commander, in order to gain reasonable time for the demonstrators to voluntarily leave the area (thus avoiding possible friction and violence between the two sides,) ended in failure. In response to his request, the organizer was ordered to present his ID card to the police commander, who claimed that the demonstration had spun out of control. Several of the participants explained to the police that they were now just sitting in the square, and that they had no intention of continuing to demonstrate. Others explained that the demonstration had already concluded, and they asked for the opportunity to allow participants to leave on their own. The police paid no attention to these requests and started to forcibly push people out of the square, arresting several participants who refused to immediately vacate the area.
5. We acknowledge that when the demonstrators initiated their march, which was not scheduled in advance, the protest did in fact turn into an illegal demonstration, at which point the police authority to declare it as such and demand its dispersal came into effect. Nevertheless, according to the directive of the State Attorney General, if it is possible to avoid criminal disorderly conduct and the threat of disturbance of public order while allowing a demonstration to take place within the context of law, it is preferable to do so over the dispersal of the assembly or the arrest of its participants (Directive of the Attorney General 3.1200 regarding the Freedom of Demonstration, Paragraph 22, p. 13.) The police appear to have been following that directive when they refrained from dispersing the demonstration as it turned into a march toward Ben Yehuda St., and instead asked the participants to return to Paris Square. Demonstrators obeyed police instructions, thus eliminating any possible threat of disturbing the peace. Under these circumstances, and considering the fact that by the time they returned to the square the demonstration had ended, the police's dispersal order at this point was entirely unnecessary.
6. Even if we assume that the dispersal order was appropriate, there is no justification for the subsequent conduct of the police. Under Article 155 of the Israeli Penal Code, the continued assembly of participants after a demonstration has been declared illegal and a dispersal order has been

given, only becomes a criminal offense after “reasonable time has elapsed following the declaration and order.” From videotaped footage filmed by protestors, it is clear that the police did not leave a reasonable amount of time for the demonstrators to vacate the site, rather they began dispersing those present with unreasonable force and began making arrests only minutes after giving the dispersal order. Five protestors were arrested. Under these circumstances, it is impossible to say that the protestors were guilty of continued illegal assembly after ordered to disperse, and thus there was no legal basis for their arrest. Below is a link to one of the videos depicting the events at the end of the demonstration:

<https://www.youtube.com/watch?v=PXehTgVV3gU>

7. From eyewitness testimony we have received, the dispersal of the demonstration was carried out with unreasonable force. To the best of our knowledge, at least one of the arrests was carried out with unreasonable force beyond necessity, when one of the police officers decided to punch a demonstrator in the eye after he was already under arrest. A female demonstrator was removed from the site by an officer, who physically pushed her hard to the ground. The following video documents this event:
<https://www.youtube.com/watch?v=p5oVgcpzxdI>
8. The use of force against demonstrators, even in the case of disturbances and riots, must be reasonable and proportionate, and limited to achieving the purpose for which force was utilized (Police Procedure 90.221.012 Section 3.d.1. “Police Handling of Disturbances in Demonstrations”). According to the evidence provided to us, the police made use of disproportionate force against some of the protestors under circumstances that did not justify such force, in direct contradiction of the above directive.
9. The manner in which this demonstration was dispersed, coupled with the arrest of several protestors and the use of unreasonable force against them, constitutes a violation of demonstrators’ right to freedom of speech and human liberty. The result of such a violation, beyond the injury to the specific protestors, is to create a chilling effect that will deter future protestors from exercising their rights, thus severely harming the public discourse.
10. To prevent the recurrence of incidents of this sort, we request that you talk with your district police officers and stress that the authority to order a demonstration’s dispersal must only be used when the event represents a clear and present danger to public safety. And after such a dispersal order is given, the police must allow a reasonable amount of time for demonstrators to obey instructions to voluntarily vacate the area. In light of the current attitudes toward freedom of demonstration, we ask you to instruct district police officers to exercise restraint when utilizing force and arresting demonstrators during the dispersal of illegal demonstrations; moreover, such measures should only be used when other less severe

measures have been tried and failed. Regarding the arrests described above, we ask that you take action to ensure that any criminal files opened against said demonstrators be closed as soon as possible. The speedy closure of these files, which were opened without cause, is essential for preventing further injury to arrested protestors, and to prevent a chilling effect on free speech.

Demonstration in Paris Square – 17 November 2012

11. On Saturday night, 17 November 2012, another demonstration against Operation Pillar of Defense was held with between 20-30 protesters participating. The protesters gathered in Paris Square, chanted slogans against the continued operation, and banged on some drums. Angry citizens began to gather up against them, denouncing the protesters, swearing, spitting on them and physically shoving them. After a few minutes, two police officers arrived on the scene and separated between the sides. The police took aside two of the protesters and requested that they stop their drumming because it was in violation of the law. After a discussion with the protesters, the police withdrew their request. In the meantime, a large crowd of counter-demonstrators gathered and began shouting, shoving, cursing, and spitting on demonstrators while the police looked on and did not see fit to intervene. Some of the counter-demonstrators stood between the protesters and the street, waving huge Israeli flags and thus blocking sight of the protesters and their signs from traffic and passersby. One of the protesters asked the police why they were not intervening, as it was clear that the counter-demonstrators were trying to interfere with their protest and their public visibility. The police replied that they were currently weighing what they could do.
12. After several long minutes during which their harassment continued, the demonstrators reluctantly decided to leave the center of the square in order to avoid increasing friction with the counter-demonstrators. They continued their protest on the far edge of the square, on the opposite side of the crosswalk, even though it was a less visible location. Despite this, the counter-demonstrators continued to harass them and pursue them in their new location. Only at this point did the police force decide to intervene and prevent any further confrontation. The protesters continued in their alternate location, while the counter-demonstrators took their efforts to the center of Paris Square, effectively blocking the view of the protesters.
13. This failure of the police – who stood by idly and did nothing to prevent the continued harassment of protesters, to the extent that the hostile counter-demonstrators were able to push out the protesters from the square – is

an abrogation of their obligation to protect both a lawful demonstration and its participants from a hostile crowd.

14. The intentional harassment of a protest by counter-demonstrators, whether motivated by their political worldview or by their mere desire to intimidate and bully, seriously harms freedom of speech – the very basis of democracy. The police must do everything in their power to prevent such disruptions. This is all the more true when the demonstrators are protesting against consensus opinions and when others are trying to silence their voices, as was the case here. The police's ineffectual response to the harassment of the hostile crowd raises fears among participants in legitimate protests that they will have to fend off hostile opponents without any protection from the police – the same force charged with defending their right to demonstrate. This in turn will lead to a severe chilling effect on freedom of speech and freedom of dissent, and will cause the public to lose faith in the police.
15. Directive 3.1200 of the Attorney General regarding freedom of demonstration states that whenever a legal assembly gathers, the police must act to protect it from those who seek to disrupt it, using the powers at their disposal for such missions. Regarding this, the Israel Supreme Court has ruled that: “A lawful assembly does not become illegal merely because it entails the possibility that others opposed to the assembly might attempt to violate public order... and certainly in such a case, public security forces are charged with preventing those people from disrupting the assembly by disturbing public order. (**HCJ 100/51 Dershowitz v. Attorney General**, PD 6, 278, 280.)
16. Enabling a hostile crowd to interfere in a demonstration, under the circumstances described above, violates the exercise of the basic right to demonstrate, and represents the reward and encouragement of violence. Security forces must do everything in their ability to avoid such a result (see also **HCJ 4712/96 Meretz faction v. Jerusalem District Commander**, PD 50(2), 822, 833; **HCJ 153/83 Levy v. Southern District Commissioner**, PD 38(2) 393.)
17. In light of the above, we ask that you reacquaint district police with the existing regulations regarding police handling of demonstrations and protests. Specifically in Jerusalem, where demonstrations take place across the entire spectrum of public opinion, you must ensure that every policeman and policewoman understands these regulations in detail and acknowledges that they are not a dead letter. We further request that you make inquiries among the officers involved in the two demonstrations mentioned above, in order to prevent the recurrence of such incidents. Last, we would like to restate our request in Paragraph 10 above: That you take immediate action to close any criminal files opened against demonstrators arrested on the 15th of November.

18. We would appreciate your earliest possible response.

Sincerely,

Adv. Sharona Eliahu Chai

Cc:

Commissioner Yohanan Danino, Chief of the Israel Police
Superintendent Shaul Gordon, Legal Counsel of the Israel Police
Adv. Leah Tsemel