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# The Silencing of the Peaceful Protestor: Is It Legitimate to Criminalise Environmental Defenders?

Tanvi Ajmera\*

\* LLM Candidate, Queen Mary University of London, UK

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## KEYWORDS

*environmental defenders, environmental protest, policing of protests*

## ABSTRACT

Environmental defenders remain highly vulnerable and under attack across the globe. This paper seeks to answer the question of whether it is legitimate to criminalise environmental defenders, and focuses predominantly on case studies arising from the Philippines and the United Kingdom. This paper is divided into five parts, and addresses (i) the act of protesting, (ii) debates surrounding the policing of protests, (iii) a consideration of the criminalisation of environmental defenders in the Philippines and (iv) the UK respectively, and (v) an inspection of what environmental protests, and the realities of its participants, might look like in the future. The paper ultimately concludes that criminalising environmental defenders is illegitimate and unacceptable, especially if their actions are deemed to be peaceful.



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## I. Introduction

Climate change is a realised global threat, evidenced by the obvious rise of “hotter temperatures, [the] warming [and] rising of oceans, [and] loss of species” globally.<sup>1</sup> Not only is it visibly detrimental to the environment, but the impacts of climate change have also transcended borders, and are being intensely felt by humans as well. This “human face of climate change” shows itself by “eroding human capital” which has a “disproportionate impact on poverty ... especially for the most vulnerable members of

society.”<sup>2</sup> This makes what once used to seem a faraway issue more personal. Despite these tragic realities, the validity of climate change is still argued and deliberated upon by many. Various individuals and organisations have, over the years, taken a stand to prove its validity and demonstrate its severity, arguing that humans must act with an urgency to solve the climate crisis.<sup>3</sup> These individuals and organisations are defined as “environmental defenders,” as they “strive to protect and promote human rights relating to the environment.”<sup>4</sup> They have channelled their

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<sup>1</sup> “Causes and Effects of Climate Change.” *United Nations Webpage*.

<sup>2</sup> Pangestu, Mari. “The Human Face of Climate Change.” *World Bank Blogs*, 7 Nov. 2022.

<sup>3</sup> Olzak, Susan, and Sarah Soule. “Cross-Cutting Influences of Environmental Protest and Legislation.” *Social Forces*, vol. 88, no. 1, 2009, pp. 201-225, at p. 203.

<sup>4</sup> “Who Are Environmental Defenders?” *United Nations Environment Programme Blog*.

sense of anger through the medium of protest against governments, corporations, and companies that question and deny climate change, or ones that continue to create harms for the environment by their action or inaction. Environmental protests have been viewed as one of “the most effective” and “indispensable tools for raising public awareness in the hope of affecting change.”<sup>5</sup> However, these defenders have been met with an “increasing [level of] stigmatization.”<sup>6</sup> This has unfortunately also resulted in increased levels of criminalisation towards them. These criminalisation mechanisms manifest themselves in the form of fines, imprisonment, or even physical brutality in various cases. These will be discussed further throughout the article. Environmental defenders, thus, “remain highly vulnerable and under attack across the globe.”<sup>7</sup>

This article will seek to answer the question of whether it is legitimate to criminalise environmental defenders. To narrow its broad scope, the article will predominantly be focused on the case studies arising from the Philippines and the United Kingdom. This paper will be divided into five parts, addressing the act of protest, the debates surrounding the policing of protests, a consideration of the criminalisation of environmental defenders in the Philippines and the UK respectively, and an examination of what environmental protests, and the realities of its participants, might look like in the future. By engaging with legal doctrines and case studies, this article will ultimately conclude that criminalising environmental

defenders is illegitimate and unacceptable, especially if their actions are deemed to be peaceful.

## II. The Act of Protest

Protest is said to be the “cornerstone of democracy” as well as a “fundamental liberty within [it]”<sup>8</sup> as it gives individuals an avenue “within which dissent and opposition may be expressed outside of the formal political structures.”<sup>9</sup> The influence of public opinion plays a crucial role in shaping and driving fundamental changes in policy.<sup>10</sup> Social movements arising from protest are imperative as they help to connect diverse groups of people, and larger gatherings provide space for individuals to exchange ideas, learn from one another, and take collective action on their common goals.<sup>11</sup> Protests are crucial, and sometimes the only way of “challenging established privileges and shaking the existing institutions.”<sup>12</sup>

Protests are also integral to the legitimacy of civil society, defined by philosopher Antonio Gramsci as “organizations which generate opinions and goals with which they seek not only to influence public opinions and policies within existing structures and rules, but sometimes also to alter the structures and rules themselves.”<sup>13</sup> The act of protest within this context has shaped public thought, and paved the way for revolutions historically. Contemporary activism utilises the act of protest to drive and foster change, which is evidenced through the momentum gained in the Feminist and the Black Lives Matter

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<sup>5</sup> Mijatović, Dunja. “Crackdowns on Peaceful Environmental Protests Should Stop and Give Way to More Social Dialogue.” *Council of Europe Commissioner for Human Rights: Human Rights Comments*, 2 June 2023.

<sup>6</sup> *ibid.*

<sup>7</sup> United Nations Environment Programme (n 4) *supra*.

<sup>8</sup> Gilmore, Joanna. “‘This is Not A Riot!’: Regulation of Public Protest and the Impact of the Human Rights Act 1998.” PhD Thesis, University of Manchester, 2019, at p. 35.

<sup>9</sup> Gilmore, Joanna, et al. *Keep Moving! Report on the Policing of the Barton Moss Community Protection Camp*. Centre for the Study of Crime, Criminalisation and Social Exclusion, Liverpool John Moores University, and Centre

for URban Research (CURB), University of York, 2016, at p. 11.

<sup>10</sup> Olzak and Soule (n 3) *supra*.

<sup>11</sup> Gerlach, Lisa. “The Structure of Social Movements: Environmental Activism and Its Opponents.” *Networks and Networks: The Future of Terror, Crime and Militancy*, edited by John Arquilla and David Ronfeldt, RAND Corporation, 2001, at p. 293.

<sup>12</sup> Mishra, Manisha. “Legitimate Protest in European Human Rights Law: A Critical Reconstruction.” *Cambridge Law Review*, vol. 7, no. 2, 2022, at p. 54.

<sup>13</sup> Ward, Thomas, and Philip Green. “Civil Society and State Crime.” *Social Justice / Global Options*, vol. 27, no. 4, 2000, at p. 79.

movements.<sup>14</sup> Therefore, protest and collective activism are paramount for ensuring that a society is democratic in its essence, and for the functioning of civil society. It is evident that “climate change has become a vector of political unrest” as it has significant influence and direct impact on individuals.<sup>15</sup> This ensures that climate change and environmental protests are a “point of intense social interest” which now catalyses and influences individual and collective action for accountability even further around the world.<sup>16</sup>

Environment-specific protests, particularly, have involved individuals joining “local protests against nuclear power plants, state-level protests against offshore oil-drilling and protests claiming support for national-level policies favouring protection of the environment in general,” to name a few.<sup>17</sup> An increased level of protest has also invariably led to an increased amount of resistance to it. The policing of protests has gained momentum over the years, particularly towards climate change protests, arguably because the environment is usually viewed as something arbitrary by states, who are often “unwilling to protect alternative (non-human) rights and rights claims.”<sup>18</sup> The idea of policing protests will be considered in the next Section.

### III. The Policing of Protests

The police and the state play a strategic role in influencing the future of protests and the consideration of democratic values. The police are at the forefront of criminal justice systems. Their statutory duties enable them to

arrest individuals that have broken the law, and ones that commit crimes and offenses, to effectively protect “public order and safety.”<sup>19</sup> The “modern, professional, bureaucratized police” came into existence as “the best means of supplying the higher level of order demanded.”<sup>20</sup> They must work efficiently to protect both the state and its citizens. Public authorities like the police are consequently “under the legal obligation to protect” protestors, as well, especially in the jurisdictions discussed within the scope of this article.<sup>21</sup> However, the order which they seek to establish in society has often come at the cost of these citizens’ right to free speech, assembly, and expression.<sup>22</sup>

The intensification of the policing of protests is justified and legitimised by a state’s sovereignty: the “legal justification” being that the police exist to “prevent serious disorder, damage to property, disruption to the life of the community and intimidation”<sup>23</sup> and are “empowered to place restrictions on static and moving protests where serious disorder, disruption, damage or intimidation is feared.”<sup>24</sup> These elements are often hard to define, however. There is no clear recognition of what is considered to be a ‘serious disorder’ or ‘disruption’ and ‘intimidation’. The lack of specificity around these elements might be said to be quite problematic, as it could influence officers to use these discrepancies to their advantage when making wrongful arrests, which could lead to a higher number of false imprisonments.

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<sup>14</sup> Cohen, Cathy, and Stephen Jackson. “Ask A Feminist: A Conversation with Cathy Cohen on Black Lives Matter, Feminism and Contemporary Activism.” *Signs Journal*, 2015.

<sup>15</sup> Brannen, Sherri, et al. “Root Causes of Unrest and Continued Increase in Global Uprisings: The Age of Mass Protests.” *Center for Strategic and International Studies (CSIS)*, 2020, p. 18.

<sup>16</sup> *ibid* at p. 20.

<sup>17</sup> Olzak and Soule (n 3) *supra*.

<sup>18</sup> Parker, Gavin. “Rights, the Environment and Part V of the Criminal Justice and Public Order Act 1994.” *Area*, vol. 31, no. 1, 1994, at p. 79.

<sup>19</sup> “The Role of a Police Officer.” *Bedfordshire Police Webpage*.

<sup>20</sup> Reiner, Robert. “Policing Protest: The Control of Mass Demonstrations in Western Democracies.” *Social Movements, Protest, and Contention*, edited by Donatella Della Porta and Hanspeter Reiter, University of Minnesota Press, 1998, at p. 38.

<sup>21</sup> Dunja (n 5) *supra*.

<sup>22</sup> *ibid*.

<sup>23</sup> Waddington, Patrick. “Coercion and Accommodation: Policing Public Order after the Public Order Act.” *British Journal of Sociology*, vol. 45, no. 3, 1994, at p. 372.

<sup>24</sup> “Take Back the Streets”: *Repression and Criminalization of Protest Around the World*. International Network of Civil Liberties Organizations, 2013, at p. 50.

There is now a ferocity with which protest and dissent is being silenced in both the Global North and South. International law instruments, like Principle 13 of the 1990 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, state that “law enforcement officials shall avoid the use of force, or where that is not practicable, shall restrict such force to the minimum extent necessary.”<sup>25</sup> However, in contemporary policing practices, as will be demonstrated through the case studies of the Philippines and the UK, these principles are rarely followed. The police are oftentimes unaware that “they operate within a liberal democracy in which their actions must be conspicuously ‘reasonable’ and not only strictly lawful.”<sup>26</sup> This heightens the intensity with which they operate, despite the fact that their role is to maintain order within society. This undermines the notion of democracy, as “any measures interfering with freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles—however shocking and unacceptable certain views or words used may appear to the authorities—do [it] a disservice ... and often even endanger it.”<sup>27</sup>

#### IV. The Criminalisation of Environmental Defenders in the Philippines

The criminalisation of environmental defenders through the intensification of the policing of protests is highly relevant in the Philippines. Comprising 7,641 islands, the Philippines is renowned for its natural environment, and its population is highly dependent on its surroundings.<sup>28</sup> Its geography makes it prone to various natural

disasters, and is said to be “the most vulnerable country in the world to climate impacts” as it is prone to severe natural events like “super cyclones.”<sup>29</sup> The nation’s air, plastic, and marine pollution and rising sea levels are caused largely by extractive fossil fuel and mining processes within its borders.<sup>30</sup> This significantly impacts Filipinos living below the poverty line, with the rise of “public health emergencies” as well as “water scarcity.”<sup>31</sup> Environmental defenders within the country are, thus, unwavering in their stance to protect their environment and lives. Although influential in garnering attention, protests conducted in the Philippines constantly receive severe backlash. The country is known as the “most dangerous country in Asia, and the third worst in the world, for land or environmental rights defenders.”<sup>32</sup> Acts like “harassment and digital attacks” are used to silence these defenders to “[prevent them] from speaking out.”<sup>33</sup> It was reported in September of 2023 that fifteen activists and community leaders went missing, two individuals “were abducted,” and eleven were killed in the year of 2022—all for their environmental advocacy.<sup>34</sup> These activists are almost always silenced in inhumane ways: killing them has been used as a strong tactic to “silence [them] and scare others away.”<sup>35</sup> This shows that “there is no possibility of civilized conversation” in a country whose language for environmental defenders is “brutality, repression, resistance,”<sup>36</sup> and oftentimes, death.

Filipino environmental defenders believe that extractive companies and businesses’ actions are “neo-colonial” and merely “based on the commodification and financialization of the

<sup>25</sup> “E4J University Module Series: Crime Prevention and Criminal Justice.” *United Nations Office on Drugs and Crime*.

<sup>26</sup> Waddington (n 23) *supra*.

<sup>27</sup> Dunja (n 5) *supra*.

<sup>28</sup> “Know Before You Go: The Philippines.” *National Geographic Webpage*.

<sup>29</sup> Fonbuena, Camille. “Philippines’ Youth Call for Systemic Change at Climate Protest.” *The Guardian*, 21 Sep. 2021.

<sup>30</sup> Raji, K. “4 Biggest Environmental Issues in the Philippines.” *Earth.Org Blog*, 21 Aug. 2023.

<sup>31</sup> “Climate Change Impacts.” *National Integrated Climate Change Database and Information Exchange System*.

<sup>32</sup> Fonbuena (n 29) *supra*.

<sup>33</sup> “Standing Firm: The Land and Environmental Defenders on the Frontlines of the Climate Crisis.” *Global Witness*, 2023.

<sup>34</sup> Aspinwall, Nick. “Disappearances ‘Speak to Dangers’ of Environmental Activism in Philippines.” *Al Jazeera*, 13 Sep. 2023.

<sup>35</sup> Hallam, Kevin. “Environmental Defenders: Murdered, Missing and At Risk.” *Socialist Lawyer*, no. 75, 2017, at p. 42.

<sup>36</sup> Ward and Green (n 13) *supra*.

environment.”<sup>37</sup> The current president, ‘Bongbong’ Marcos, “has backed large mining and renewable energy projects as a way to unlock the country’s economic potential” upon his rise to power, with various “land activists and Indigenous leaders” facing dangers behind the scenes.<sup>38</sup> This creates a convergence of interests between companies and businesses and the government, who now equally benefit from the financialization and the commodification of the environment in the Philippines. State and private neocolonialism are, therefore, similar and linked. Environmental defenders in the Philippines also faced severe penalties under previous president Rodrigo Duterte; approximately 105 peaceful protestors were killed during his term.<sup>39</sup> These protestors have retaliated, mainly claiming that they “are not criminals for wanting to protect places like Sibuyan,”<sup>40</sup> an island which is used for nickel mining. However, their advocacy falters in the face of powerful Filipino politicians who are hungry to witness economic development and progress in the country.

Historically, Greenpeace were labelled as an ‘eco-terrorist’ organization as they arguably posed a serious threat to state sovereignty given their intense protesting methods.<sup>41</sup> Their work in the Philippines as environmental defenders is also heavily prominent. Their “direct actions” usually require that protest participants “gain entry to private property,” which in various instances are “government buildings, headquarters, factories, [and] logging sites,” where certain acts are committed.<sup>42</sup> Although their members cause no physical harm, the aforementioned acts are criminal under Philippine law: “no matter how [peaceful] an activity is, nonviolent direct action always entails the violation of the Public Assembly Act (Batas

Pambansa Blg. 880) and the law against trespass to dwelling (Article 280 of the Revised Penal Code).”<sup>43</sup> The latter states that “any private person who shall enter the dwelling of another against the latter’s will shall be punished by *arresto mayor* and a fine not exceeding 1,000 pesos” which can be extended further if “violence or intimidation” is used, per the Revised Penal Code of the Philippines of 1930. The penalty of *arresto mayor* is also one of significance, as it is imposed in various instances “upon any person who in any meeting, association, or public place, shall make an outcry tending to incite rebellion or sedition or in such place shall display placards or emblems which provoke a disturbance of the public order.”<sup>44</sup> This demonstrates that the Penal Code and criminal system, coupled with public assembly and protest laws, are essentially built against the protection of protesters, and are designed instead to criminalise them further.

It is noteworthy that the Philippines is a part of the Association of South-East Asian Nations (ASEAN), whose Human Rights Declaration provides that “every person has a right to freedom of peaceful assembly.”<sup>45</sup> The Philippines is also a member of the United Nations, and is a signatory to the UN Declaration of Human Rights Defenders 1999, which “recognises the legitimacy of environmental defenders and underlines the obligation on states to protect them from abuse.”<sup>46</sup> Despite acknowledging these frameworks, grassroots realities demonstrate that the rights and freedoms of environmental defenders are close to non-existent within the country. International law is ineffective here, as “these non-binding international commitments do little to protect communities on the frontline.”<sup>47</sup> This suggests that, perhaps, in order to adequately protect

<sup>37</sup> Hallam (n 35) *supra*.

<sup>38</sup> Aspinwall (n 34) *supra*.

<sup>39</sup> Global Witness (n 33) *supra*.

<sup>40</sup> Aspinwall (n 34) *supra*.

<sup>41</sup> Dodd, Vikram, and Jamie Grierson. “Greenpeace Included with Neo-Nazis on UK Counter-Terror List.” *The Guardian*, 17 Jan. 2020.

<sup>42</sup> Alvarez, Marlon. “On Deviance and Loving Nature: A Case Study of the Ecological Activism of Greenpeace

Philippines.” *Philippine Sociological Review*, vol. 58, 2010, at p. 106.

<sup>43</sup> *ibid*.

<sup>44</sup> Republic Act No. 10951, August 29, 2017.

<sup>45</sup> “Philippines.” *Laws on the Right of Peaceful Assembly Worldwide Webpage*.

<sup>46</sup> Hallam (n 35) *supra*.

<sup>47</sup> *ibid*.

environmental defenders from being criminalised further, domestic protesting laws should be softened. In a country like the Philippines, however, where corruption is rampant and policies are highly political and contested, the potential of altering these laws seems minimal. Thus, considering the Philippines as a case study can demonstrate the significant ways in which environmental defenders are criminalised—always at the expense of their fundamental rights and freedoms.

## V. The Criminalisation of Environmental Defenders in the UK

The criminalisation of environmental defenders in the UK is less severe as compared to the Philippines, although new legislation has the potential to change its future. A country which was once commended for its democratic values and practices has now been labelled as “draconian”<sup>48</sup> given its newfound approach to criminalising dissent. This is demonstrated particularly in the realm of climate protests, considering the peaceful protests conducted by organisations like Extinction Rebellion (XR). These organisations’ methods of raising awareness about the urgency of the climate crisis has been seen as a threat, for which they can be reprimanded under the new Public Order Act 2023. This chapter will consider the protests of the aforementioned organisations, and ways in which they have been criminalised.

XR is an organisation of environmental defenders and advocates, who advocate for climate justice in a manner that is threefold. They demand that “1) governments tell the truth about the severity of the climate crisis and declare climate emergencies, 2) ... governments act now on this emergency and achieve net-zero carbon emissions by 2025, and 3) advocate for going beyond politics

through setting up citizen assemblies,” the latter of which is meant to empower citizens by themselves to “make decisions on climate and ecological issues.”<sup>49</sup> The mechanisms which XR employ for doing this are deemed to be peaceful. Their work is categorised as embodying acts that are “nonviolent civil disobedience” in their nature, although they have in the past dramatised “certain actions” about issues to “garner the maximum amount of publicity and attention, enabling them to raise awareness and force politicians into taking action.”<sup>50</sup> Their most notable incidents include two XR members gluing their hands to one of Picasso’s paintings in Australia,<sup>51</sup> and an XR member gluing his feet to a tennis stadium floor at the US open, which led to the delay of a match for 49 minutes.<sup>52</sup> XR and its members have been branded as “environmental fanatics” by many.<sup>53</sup> XR is successful in garnering momentum and raising awareness about the intensity of the climate crisis. Their strategy effectively engages the 3.5% Rule, which indicates that “nonviolent protests engaging around 3.5% of the population have historically been able to effect change.”<sup>54</sup> Given the publicity raised by their actions, it can be argued that they have been successful in achieving their aims, as they have inspired a movement which is transboundary and crosses jurisdictions.

The impacts and consequences of the protests led by XR have influenced the UK government to repurpose the country’s old Criminal Justice and Public Order Act 1994.<sup>55</sup> Scholars, when considering the 1994 Act, argued in the past that given its provisions, “‘innocent’ actions could be misconstrued by the police.”<sup>56</sup> This has influenced the new Public Order Act 2023, which mirrors the 1994 Act in this way, and has already been used to make arrests towards other environmental protesters and

<sup>48</sup> Adams, Martin. “Climate Protesters Criminalised, Not Deterred.” *The Ecologist*, 6 Jan. 2023.

<sup>49</sup> Arnold, Emma. “Extinction Rebellion and the Future City.” *Haste: The Slow Politics of Climate Urgency*, edited by Hanne Haarstad et al., UCL Press, 2023, at p. 39.

<sup>50</sup> Anderson, K. “What Is Extinction Rebellion (XR) and What Do They Do?” *Greenly*, 28 Apr. 2023.

<sup>51</sup> *ibid.*

<sup>52</sup> Pashankar, S. “Extinction Rebellion Quit ‘Disruption.’ Its Most Disruptive Tactics Live On.” *Bloomberg*, 14 Dec. 2023.

<sup>53</sup> “What Impact Have Extinction Rebellion Had?” *Climate Wise Webpage*.

<sup>54</sup> Pashankar (n 52) *supra*.

<sup>55</sup> Parker (n 18) *supra*.

<sup>56</sup> *ibid* at p. 78.

defenders.<sup>57</sup> The POA “includes orders that can ban named individuals from joining protests, and an expansion of police powers to stop and search people on the grounds they might be planning to commit a protest-related offense—including many newly created by the bill—as well as powers for ‘suspicionless’ searches.”<sup>58</sup> It has been argued to contain “draconian measures against climate activism, largely outside the public’s view.”<sup>59</sup> Even during its considerations during its passing at the House of Lords, the Bill was “criticized by peers for being ... ‘worrying’ and ‘open to serious objection and in some ways misconceived’.”<sup>60</sup> Many also argue that since the provisions contained under the POA are too broad and vague, there is an evident “clear lowering of the threshold for criminality,” which could lead to “an increase in arbitrary state use of new powers and offenses, to restrict and criminalize what would previously be ... the peaceful right to protest, or nonviolent direct action.”<sup>61</sup> The POA also operates alongside the Police, Crime, Sentencing and Courts Act 2022. The PCSCA has “significantly increased the power of the state to regulate protest and activism,” as well as giving the police “extensive new powers to ban non-violent protests” that they think are “too noisy or disruptive.”<sup>62</sup>

The legitimacy of both of these Acts is justifiable when considering the argument that a state must protect its sovereignty and citizens. In a world that is increasingly faced with opposition, a state establishing control over its borders and people is imperative. The anti-establishment nature of protesting, especially against government action, threatens that control, and raises internal and external threats to their governance. Arguably, then, “new laws and harsher

penalties are necessary to protect” against individuals that harm infrastructures, or through protests that are “increasingly disruptive.”<sup>63</sup> Despite this, however, a stronger argument lies in the consideration of individual human rights. The European Court of Human Rights recognises that although states do have an interest of protecting the “public safety” and prevent “disorder and crime” to ultimately support their sovereign values, they also must effectively strike a balance “in favour of those seeking to assert their right to protest, unless there is *strong evidence* for interfering with these rights.”<sup>64</sup> Creating limitations on an individual’s freedom of expression, thus, gives rise to issues under various Articles of the European Convention of Human Rights, mainly freedom of expression (Article 10) and freedom of assembly and association (Article 11). The need to protect the sovereignty of the state against the silencing of individuals who employ their rights to fight against the threat of climate change is trivial.

The introduction and implementation of both of the POA and the PCSCA in the UK has raised alarm bells at the international level, with the UN High Commissioner for Human Rights, Volker Türk, urging the “UK government to reverse this legislation as soon as feasible.”<sup>65</sup> Türk added that “as the world faces the triple planetary crises of climate change, loss of biodiversity and pollution, governments should be protecting and facilitating peaceful protests on such existential topics, not hindering and blocking them.”<sup>66</sup>

## VI. What is the Future of Environmental Protest (and its Participants)?

Considering the case studies of environmental defenders within the Philippines and the UK

<sup>57</sup> Gayle, Damien. “Met Uses New Anti-Protest Powers to Arrest Climate Protesters for First Time.” *The Guardian*, 30 Oct. 2023.

<sup>58</sup> Lakhani, Nina, et al. “How Criminalisation Is Being Used to Silence Climate Activists Across the World.” *The Guardian*, 12 Oct. 2023.

<sup>59</sup> Adams (n 48) *supra*.

<sup>60</sup> “UK: Deeply Draconian Public Order Bill Must Be Rejected by Lords - New Briefing.” *Amnesty International*, 2023.

<sup>61</sup> Evans, Charlie. “The Public Order Act 2023: Has Our Right to Protest Been Restricted?” *Saunders*, 18 July 2023.

<sup>62</sup> Lakhani et al. (n 58) *supra*.

<sup>63</sup> *ibid*.

<sup>64</sup> Gilmore et al. (n 9) *supra*.

<sup>65</sup> “UN Human Rights Chief Urges UK to Reverse ‘Deeply Troubling’ Public Order Bill.” *United Nations Human Rights Office of the High Commissioner*, 27 Apr. 2023.

<sup>66</sup> *ibid*.

suggests that the laws of both jurisdictions, as it stands, serves to criminalise them severely for actions that are almost always peaceful. This coincides with the views of John Cooper KC, who stated that “it is not so much a right to protest, rather than a fight to protest, because ... the law is weighted against the protestor.”<sup>67</sup> Therefore, domestic protest laws need amendment in order to ensure that the rights of the protestors, and the interests of the state, are equally protected. The ways in which this can be done is by altering policing practices to not be unduly or harsh, and equally by protestors finding ways to be less disruptive yet equally as effective in their practices.

It was argued that policing of protests is entering a new era in the UK starting 2011, embodying the characteristics of “consent, mutual collaboration, and an overarching respect for protesters’ human rights.”<sup>68</sup> This seems to be contradicted by the POA, however. Some academics have contended that “a growing awareness of human rights obligations among police officers does not necessarily translate into more democratic policing practices.”<sup>69</sup> In the UK, this was evident in anti-fracking protests, where individuals noticed that the arresting and criminalising decisions were “pre-planned and pre-emptive, rather than a genuine response to law breaking at the site.”<sup>70</sup> Policing practices must, therefore, be streamlined and softened even further. Officers must understand that protestors are “not criminals but citizens motivated by moral principles, exercising their democratic rights,” and they must allow them to protest peacefully.<sup>71</sup> Various academics have also advocated for “the development of reliable intelligence,” which can help the police identify and distinguish “between peaceful

and violent protesters,” and then act without “the indiscriminate use of force.”<sup>72</sup> Is imperative that everywhere around the world, there are “policy reforms aimed at making public order policing strategies more ‘human rights compliant.’”<sup>73</sup>

Not only does the criminalisation of environmental defenders bring forth questions of reforms for policing, it also raises significant questions for protestors and their actions. It has been argued that “the ‘ideal’ protestor can theoretically engage in a somewhat ‘offensive’ protest and still be protected but should be careful to not be ‘too offensive.’”<sup>74</sup> It has been contended that “in the case of all disturbances arising from some protest or other there is the underlying constitutional problem of determining how far the right of protest ought to be tolerated.”<sup>75</sup> There is a major difference between protesting in a peaceful manner, and “throwing clods of earth and firecrackers at policemen and their horses” and that demonstrators that use tactics like the latter “must not be expected to get off scot free.”<sup>76</sup> As individuals question society and its actors through the means of protest, it is “disrupt[ing] the world as we know it,”<sup>77</sup> and although this disruption is inevitable, it must not be too great.<sup>78</sup> Criminalisation practices targeting peaceful environmental activists and activism lack legitimacy when they suppress fundamental rights under the guise of maintaining order. The legitimacy of criminalising environmental defenders must be assessed not just through the lens of legal authority but also in terms of moral accountability and social justice. There needs to be a balance in ensuring that neither the protestor nor the police are too harmful or disruptive in their approaches.

<sup>67</sup> Cooper, John. “The Right to Protest?” *25 Bedford Row Blog*.

<sup>68</sup> Gilmore, Joanna, et al. “That Is Not Facilitating Peaceful Protest. That Is Dismantling the Protest’: Anti-Fracking Protesters’ Experiences of Dialogue Policing and Mass Arrest.” *Policing and Society*, vol. 29, no. 1, 2019, at p. 37.

<sup>69</sup> *ibid* at p. 38.

<sup>70</sup> *ibid* at p. 45.

<sup>71</sup> Gilmore et al. (n 9) *supra*.

<sup>72</sup> Gilmore (n 8) *supra*.

<sup>73</sup> Gilmore et al. (n 68) *supra*.

<sup>74</sup> Mishra (n 12) *supra*.

<sup>75</sup> Williams, David. “Protest and Public Order.” *Cambridge Law Journal*, vol. 28, no. 1, 1970, at p. 98.

<sup>76</sup> *ibid*.

<sup>77</sup> Mishra (n 12) *supra*.

<sup>78</sup> *ibid* at p. 46.



## VII. Conclusion

“Democracy is imperiled” when political expression is stifled.<sup>79</sup> It is imperative that, given the environmental realities the world is faced with today, individual expression, through protests, is not diminished even further. “There is a connection between environmental activism and how we imagine the future.”<sup>80</sup> If this connection is lost, then there is no string that could link us to a world which is better for humanity and mankind. This article considered the connections between climate change protests and the criminalisation of environmental defenders in the Philippines and the UK. Upon reflection, the article has demonstrated that in a world that increasingly needs to hear about, and act urgently to combat, the climate crisis, it is illegitimate to silence and criminalise environmental defenders. This is particularly relevant when their methods of protesting are peaceful. Legitimate governance should protect, not punish, those who seek to advocate for environmental and human survival. By criminalising peaceful protests, states erode public trust. Thus, the policing of protests must be curtailed, controlled and softened, and domestic protest laws softened. Going forward, it can only be hoped that protection of the environment and the urgency of addressing the threat of climate change are handled with paramount consideration.

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<sup>79</sup> Mishra (n 12) *supra*.

<sup>80</sup> Arnold (n 49) *supra*.