

Prologue

In defense of the agreements forged in democracy*

This report is being finalized at a pivotal juncture on the human rights front. A number of decisions, measures and events have adversely affected critical items on the human rights agenda and protection mechanisms in Argentina. We do not aim to provide a full assessment of the governing *Cambiamos* alliance's platform, but rather to underscore a troubling convergence of political and judicial actions and decisions that erode key aspects of the country's human rights system.

On Tuesday, August 1, 2017, dozens of members of the National Gendarmerie – one of Argentina's federal security institutions – illegally and violently entered the territory claimed by the *Pu Lof Mapuche* community in the town of Cushamen, province of Chubut. One day earlier, on July 31, 28-year-old Santiago Maldonado had taken part in a roadblock to demand the release of one of the community's leaders; the protest was broken up by the Gendarmerie under a court order to clear the road. A few hours later, a group of eight to ten people returned to the highway and were violently suppressed by the gendarmes. Eschewing protocol, the gendarmes wielded hatchets, fired rubber bullets and threw rocks. When the protesters withdrew to the community's territory, the agents pursued them and entered the grounds without court authorization. They later justified this by claiming that since the protesters were throwing rocks at them, they had to detain them. In the days prior to this repression, Pablo Noceti, the National Security Ministry's chief of staff, had said they would use the offense of *in flagrante delicto* to detain members of the community, with whom, he said, there was nothing to discuss. On that pretext, more than 50 gendarmes remained for five hours inside the territory. They pursued the young people involved in the roadblock, raided homes, burned family property and confiscated phones, work tools and books. The photos of these items were released to the press as if they were the personal arsenal of an insurgent movement. All of this was done without a court order.

This was not the first act of repression in the area. In January 2017, three bloody confrontations took place: one led by the Gendarmerie and two by the provincial police, which included the use of rubber and lead

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bullets, resulting in serious injuries and legal charges against members of the community. In those operations, the security forces used unidentified, private vehicles and some of their members wore hoods. Since 2016, the land conflict in this area had been identified by the federal government as one of the main national security risks – although it had no grounds or evidence for such a claim.

Santiago Maldonado was seen alive for the last time fleeing the gendarmes as they pursued him. In the days that followed his disappearance, the case moved to the center of the public agenda and drew national and international attention. He was missing for nearly three months. On October 17, in a search ordered by a new judge in charge of the investigation, a body was found in the Chubut river and later identified as Santiago Maldonado. The initial partial results of the autopsy reveal that it is less likely the body underwent direct aggression, such as bullet wounds. However, results from different studies are still pending, such as the precise reconstruction of the circumstances surrounding his death.

While the exact causes of death have yet to be clarified, there are some categorical facts: the national government response, led by the security force that intervened, and the initial investigation to find Santiago Maldonado and identify those responsible for his disappearance, were seriously lacking.

From the very first moment, the Maldonado family and human rights organizations urged the authorities to search for him and investigate whether the Gendarmerie had anything to do with his disappearance. The judicial system delayed keytime-sensitive decisions and measures, such as removing the Gendarmerie from the investigation. Weeks passed before crucial search efforts began in earnest. From the beginning, the government's response remained focused on two pillars, with few exceptions: publicly ruling out any involvement by the Gendarmerie and floating flimsy hypotheses about what might have occurred. Official statements in this sense were constant, unfounded, offensive, and a far cry from the serious nature of the events – starting with the Security Minister, who stated before the Senate that she would not “throw the gendarmes under the bus” in response to demands that certain agents be suspended preventively. Much later, a high-ranking representative of *Cambiamos* asserted, two months after his disappearance, that there was a “twenty percent chance that Santiago Maldonado is in Chile,” supposedly of his own volition and for political reasons. These and other statements seem to disregard the grave nature of the facts and have been very offensive to the family and to the general public mobilized by the case. We should point out, however, that the judiciary did take some measures that were significant to finding the body, after months of ineffectiveness.

The national government issued a blanket, corporative defense of the Gendarmerie. This meant that no information regarding the operation was

provided to the justice system for weeks and that no gendarme has even been sanctioned for illegal conduct, such as throwing rocks at protesters, making a bonfire of community members' belongings or lying about the operation in public and in administrative acts. The authorities' unconditional defense of the Gendarmerie contributed to agents' unwillingness to contradict the false and incomplete official versions asserted by their superiors. Instead of leading the investigation and providing the justice system with all possible information to help find Maldonado, the national government sided unconditionally with the security forces involved and led an aggressive strategy of disinformation, circulating on a daily basis hypotheses not found in the investigation's case files.

Thirteen days after Maldonado's body was found, President Mauricio Macri stated: "For me, a gendarme is just as innocent as any common citizen." Presenting the conflict in this way, as a dispute between individuals with equal rights and obligations, seeks to blur the state's differential responsibilities. These duties are, moreover, specific in the case of security officials whose mandate is to protect people and responsibly use the force they exercise as agents of the state. The entire conception of international human rights law is premised on this difference, which the head of state professes to disregard.

The official discourse legitimated the repression, presenting the community as a threat to the system and an internal enemy, a formula inscribed in the insistence on introducing "the issue of terrorism" as if it were a core problem in Argentina. Since taking office, this government has declared the Mapuche communities' land claims and the drug trafficking problem to be among the main threats to national security. This is key to one of *Cambiamos*' most entrenched stances: the country's re-entry into the global agenda of "new threats." This arises from its realignment with the United States and preferential relations with Israel, and it places national security and public order as principal assets to be protected. This has grave consequences for policy design and security force practices, since the effects are not limited to international relations but also impact the concept of domestic security. A central stance of the "new threats" agenda is to identify internal enemies that justify the militarization of interventions. This translates into a toughening of police repression, incorporating other criteria and/or weapons. Another element promoted by this agenda globally is authorization for the Armed Forces to act in domestic security matters (something expressly prohibited in Argentina), as occurs in countries like Mexico and Colombia, causing true tragedies when it comes to human rights. Indeed, since 2015, in different ways and at different times, some government spokespeople have raised doubts about the need to sustain the principle of separating domestic security from national defense.

Since 2015, the government has taken a very adverse stance in general with regard to social protest and public demonstrations as forms of expression and questioning of authorities. The Security Ministry has conveyed this through its “anti-roadblock protocol” and repressions that have caused serious injuries, especially in 2017. In a spiral of repression and criminalization, a march involving tens of thousands of people who flooded the Plaza de Mayo on September 1, 2017 to protest on behalf of Santiago Maldonado one month after his disappearance, culminated in serious acts of police violence in an operation marked by illegality, abuses, infiltration, arbitrary detentions and unfounded accusations. In the marches organized by the family every month since then, there have been repeated incidents of police abuse and repression. The national government made known a draft bill that includes severe penalties for anyone covering their face or bearing arms during a demonstration, which goes to show that such conduct does not constitute a crime at present, despite the insistent preaching from authorities, politicians and the media.

This restrictive position on social protest comes in a context of diversification of the groups that take to the streets to protest, and increased social conflict. The newest and most visible mobilization is the *Ni unamemos* women’s movement that has been at the forefront of massive marches, in which police violence and criminal prosecution have likewise been brought to bear. The increasing level of social conflict is associated with a deterioration of socioeconomic indicators, notable among which are the highest levels of unemployment and underemployment in the past ten years, a 7-point fall in salaried workers share of income, and a nearly 3-point increase in the income gap between the richest and poorest deciles. This data comes from both official sources as well as research centers, such as Cifra.

The arrival of the *Cambiamos* government ushered in, from the very beginning, a heavy transfer of income to the most powerful sectors. This was achieved through a currency devaluation, the elimination or reduction of export taxes – revenue that was partly offset by a drastic process of government borrowing – and a marked increase in residential utility rates, among other decisions that have had a heavy impact on the middle class and more vulnerable segments of society.

It was in this same spirit of transfer that the Audiovisual Communication Services Law was repealed by decree, opening the door to the creation and consolidation of large monopolies at the expense of other media, voices and content on a different scale. The level of media concentration is now greater than it was before the aforementioned media law was enacted. This is the backdrop to the increasing homogeneity heard in the prevailing discourse and in the agenda of public problems appearing in print, radio, television and digital media.

The implementation of social policy programs has been uneven: some were kept or expanded, while others have been considerably reduced in

scope. One example of drastic cuts in this sense is disability pensions: in a year and a half, 170,000 disability pensions have been terminated. This measure was adopted with no respect for the right to a defense and without prior notice. In many cases, the suspension was justified based on illegitimate criteria and in violation of the rights of persons with disabilities.

The Decree of Necessity and Urgency (DNU) issued on January 30, 2017, which modified Law 25.871 on Migration and Law 346 on Nationality, is yet another executive branch measure signaling a retraction of human rights protection. This decree – the necessity and urgency of which are not justifiable – modified the Migration Law, enacted in 2004 and specifically regulated in 2010, after decades of collective struggle to achieve a more democratic migration policy in Argentina. The new approach places persons coming from other countries under permanent suspicion, according to a new regulatory framework, whereby the array of conflicts that can potentially lead to deportation is very broad.

And the signs that put the core human rights agenda on alert are coming not only from the executive branches' discourse and actions at the national and provincial levels; there is a marked convergence on these adverse positions between government measures and judicial decisions.

There is a correlation between the repression of protest and the criminal prosecution of protesters and social leaders. This kinship between criteria and actions taken by political authorities and judicial sectors tends to limit collective action. Framing acts of social protest as criminal offenses not only seeks to limit the right to protest, but it is also instrumental to a broader persecution of social, political and union organizing. Many activists with broad representation and legitimacy are prosecuted for a variety of criminal offenses, some serious crimes with heavy sentences. The number of cases filed are sufficient to affect the organization and mobilization of these collective groups, both those who stand directly accused, as well as the intimidating effect such lawsuits have on other members.

The persecution of the Túpac Amaru neighborhood organization in Jujuy province is an extreme case of this logic of political-judicial criminalization. The organization's leader, Milagro Sala, was jailed for acts related to a social protest on January 16, 2016, although the string of charges against her, used to justify her prolonged pre-trial imprisonment, are much more broadly motivated. Her arbitrary detention set off an unprecedented process of social, political and judicial persecution of her organization. The spectrum of legal actions brought against Túpac Amaru – including judicial proceedings, legislative measures of persecution, public policy restrictions, use of police force, stigmatization and public discredit – demonstrates the convergence of actions brought to bear by the different branches of the provincial state.

On October 27, 2016, the UN Working Group on Arbitrary Detention determined that Sala's detention was arbitrary and called for her immediate release by the Argentine state. On July 28, 2017, the Inter-American Commission on Human Rights (IACHR) granted a precautionary measure on Sala's behalf and established that she could no longer remain in jail, as this posed grave risks to her life and personal integrity. The Commission ratified that the government had to comply immediately with the findings of the UN body from eight months earlier. It also underscored the Argentine state's failure to comply with its international obligation to release her. A full month after the IACHR's directive, Sala was transferred from the jail to house arrest, a measure that was later reversed; today, she continues to be deprived of her liberty in pre-trial detention in prison. Despite the decisions by these human rights protection mechanisms, as well as national and international pressure in the case, neither the provincial nor the national government has ended these practices of criminalization. Quite the contrary, they have expanded to include other members of the same organization in the province of Mendoza. Since February the Argentine Supreme Court has delayed ruling on two extraordinary appeals submitted by Milagro Sala's defense and has not even announced a timeframe for its decision, showing alarming disdain for such fundamental guarantees as the presumption of innocence and the principle of liberty during criminal proceedings.

Sala's case is emblematic of the weakening of international human rights law in Argentina and, in particular, of the international protection mechanisms. This was the spirit of the Supreme Court decision in the *Fontevicchia* case, which dealt with freedom of expression; the court announced that it did not consider the rulings of the Inter-American Court of Human Rights to be binding. This decision serves to weaken the judicial and international protections offered to victims of human rights violations, and it erodes the strength of international human rights law in Argentina and of the inter-American human rights protection system. The government did not adopt any measure to counteract or roll back this grave decision by the Supreme Court. Similarly, the Argentine state has forfeited the vanguard position it had earned under previous democratic governments in relation to strengthening the international human rights system, choosing to now align itself with the position held by the most questionable countries of the region, in a process that some have called "disengagement" or "decoupling", or directly the "*Brexit* of human rights" with regard to international protection mechanisms.

The Supreme Court justices who made that decision include two judges appointed by the government in spite of objections from multiple sectors, including CELS, precisely because of the regressive position they had taken on rights protection and the application of international human rights law. Other issues that raise doubts include their stance on the relationship between law, politics, the market and the state, and women's

rights. It bears mentioning that, while the procedure was later modified, these judges were originally appointed by decree by President Mauricio Macri, an appointment that was broadly rejected on the grounds that it was highly irregular and of questionable constitutionality. The position taken by these judges that international human rights law should not be binding in the local arena – which, as we have pointed out, is a virtuous tradition in existence before the constitutional reform of 1994 – was an early warning sign of the troubling decisions and measures on human rights that have come to pass since.

Another point of convergence between official rhetoric and judicial rulings was apparent in the Supreme Court's decision to shorten the prison sentence of a person convicted of crimes against humanity (Luis Muiña), in a very controversial application of the so-called "2 for 1" rule. The political conditions for this decision were created during the *Cambios* government when it introduced different opinions aimed at relativizing the notion and severity of state terrorism. This political position and the court decision were met with the broadest political and social response in recent years: the massive mobilizations of May 10, 2017 in rejection of the Supreme Court ruling on the *Muiña* case. That same day, Congress passed a law by practically unanimous vote – only one legislator voted against it – that contradicts the interpretation of the Supreme Court's majority ruling. This social, political and judicial turn of events solidified the national consensus against impunity for the crimes of the dictatorship, which is fundamental to Argentine democracy.

Counter to this consensus, one month after Santiago Maldonado's disappearance and as the question "Where is Santiago Maldonado?" was being asked by practically every social and political sector, Security Minister Patricia Bullrich, who oversees the Gendarmerie, tried to draw a parallel between present-day events that she identifies as threats and the political violence of the 1970s. When she was in a position to provide explanations regarding the disappearance and search for Maldonado, she stated: "As long as Argentina sticks to the narrative that the world was made of angels and demons, we will never be able to accept the truth, because the truth is that the demons weren't such demons nor the angels such angels." Her statement represents a leap backward, even in comparison to other officials in this government who have also made statements aimed at justifying or relativizing the grave nature of what happened during the last dictatorship. But no one before had gone so far as to question the "demonic" nature of the abhorrent acts committed during the dictatorship, solidly proven in Argentine courts and elsewhere, which now form part of the universal history of atrocities against humanity.

Her words take on even greater weight given her position as Security Minister, in that she is directly in charge of the institutions that were responsible for state terrorism. To find any claims of this caliber, we

would have to go back to the military discourse – far from what is generally considered acceptable in our democracy – to what dictatorship officials called the “fight against subversives.” These positions intersect with the weakening and/or dismantling of public policies that were essential to the executive branch’s sustaining and strengthening of trials for crimes against humanity in previous years and governments.

In a regional and international context that – political colors aside – is adverse to global agreements on human rights, the response by the Argentine government to Santiago Maldonado’s disappearance and death; the repression and discourse circulating about present threats and past events; judicial decisions that take aim at some of the pillars of Argentine democracy, such as the struggle against impunity for crimes against humanity and the commitment to international systems of protection – all of these put the core human rights agenda in Argentina on alert.

This situation demands the safeguarding and protection of human rights principles from the dynamics of overall political polarization. That is the best social and political tradition built in Argentina since the dictatorship’s end, and it is the basis for defending the agreements forged in democracy.