

LATIN AMERICAN STATE RESPONSES TO SOCIAL PROTEST



A photograph capturing a moment of social protest. In the foreground, a large, billowing cloud of bright red smoke or gas dominates the view. In the background, a line of riot police is visible, wearing helmets and carrying shields. The shields feature the word "CHOQU" in yellow lettering. The scene is set outdoors, with a building and a sign partially visible in the upper left corner.

**Latin American
State Responses
to Social Protest**

Centro de Estudios Legales
y Sociales - CELS

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introduction

In Mexico City on November 20, 2014, tens of thousands stood by the families of the 43 students from Ayotzinapa who were forcibly disappeared. When night fell, numerous police contingents arrived. The streetlights were out. The subway entrances were closed. There was no way to leave the Plaza de la Constitución without facing security forces.

“What you doing here, assholes? Go home!” a policeman yelled. Other officers armed with batons surrounded the protesters, forming a wall of shields and beating them. The repression left dozens injured and under arrest.

Chilean students demanding free, quality public education. Farming strikes in Colombia. Mexican teachers against the education reform. Labor protests in Argentina. Demonstrations against mining exploitations in Peru and for land access in Paraguay. Opposition rallies in Venezuela. Protest marches in Brazil over the public financing of the World Cup. These are just a few of the multitudinous social protests that have occurred across Latin America in recent years, in which different groups or communities have laid out their demands.

Although Latin America has experienced processes of economic growth and significant improvements to the living standards of a broad spectrum of social sectors, states have responded disproportionately to the tensions and conflicts arising from the contradictions in their economic development models, which have not managed to substantially reduce social inequality. In the majority of these countries, the streets are the stage for putting the spotlight on demands for access to basic

goods and services and decent labor conditions; to express conflicts tied to environmental policy and political demands; to seek justice and redress for human rights violations; or to demand better living standards in light of problems that continue to go unresolved, such as violence against women.

Social protest is a fundamental right for defending other rights. Many of today’s demands for rights and liberties are the consequence of past struggles and triumphs achieved in the streets. Nevertheless, Latin American states continue to repeat practices to restrict protests, stop them or criminalize them. This publication documents and analyzes these state responses in eight countries of the region through collaborative work done by ten human rights organizations in Argentina, Brazil, Chile, Colombia, Mexico, Paraguay, Peru and Venezuela.

The characteristics common to all countries analyzed include violent state responses, the criminalization of militants and activists, public policies that seek to limit or restrict protests and demonstrations, and the impunity of human rights violations, with different degrees of severity. This regional survey shows historical patterns that persist – including the abusive use of force and criminalization – and new trends, such as regulations to limit protests. In the same period, some experiences show the will to develop democratic mechanisms for managing conflicts; however, in many cases these mechanisms have been met with difficulties, preventing them from becoming public policy with any continuity.

In many countries, social protests – in particular those that involve blocking traffic – have caused strong negative reactions. In these cases, the magnitude and repetition of these conflicts are not seen as emanating from the problems affecting the social groups leading the protests, but rather as an excessive use of the right to protest in public. From this perspective, the state is called upon to limit and control demonstrations. In their most extreme versions, these conceptions encourage violent state intervention that treats social protest as an issue of safety and public order, and not a matter of rights.

State responses that aim to restrict protest through regulations, criminalization and the use of force have a negative effect on democratic life. A respectful stance on human rights standards requires that the state establish regulations to guarantee the right to protest. It is therefore important that the international system of human rights protection define the contents and scope of these positive state obligations.

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CELS- Centro de Estudios Legales y Sociales, Argentina.

chapter 1

Legal and administrative restrictions



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Legal and administrative restrictions

In many Latin American countries, laws, bills, regulations and judicial interpretations aimed at regulating or limiting the right to protest have multiplied.

Brazil is a paradigmatic case. In 2013, when mass protests flooded the streets of its main cities, more than a dozen legislative initiatives were presented in Congress and the state and municipal legislatures. Something similar occurred in Mexico when, in the face of the large number of demonstrations protesting the disappearance of the students from Ayotzinapa in 2014, numerous local and federal laws sought to control the protest movement. Although broad social sectors reacted in opposition to these initiatives, six new laws were passed between May 2014 and late 2015. In Argentina, various bills also sought to regulate demonstrations in 2014; at that time, none of the proposals gained sufficient consensus among legislators to make it to the congressional floor, but the intention remains on the political agenda.

In recent years, courts all over Latin America have tended to interpret existing laws with a restrictive approach to the rights inherent in protests and have applied them with more intensity.

These new rules, resolutions and judicial decisions are characterized by the imposition of more bureaucratic and administrative restrictions, such as the requirement for prior notification, the creation of new criminal offenses and increased sentences. Furthermore, in the most extreme cases, intervention by the Armed Forces is authorized, suspending the application of judicial guarantees in the name of protecting public order.

Criminalization of actions and conduct

Many of the regulations approved in recent years intensify the sanctioning of actions or conduct related to protests. This group of reforms involves issues such as: prohibiting actions in protests that are not prohibited in other contexts; increasing penalties for infractions or

crimes that are frequently associated with protests, such as roadblocks or property occupation; and creating aggravating factors for crimes, such as property damage, when committed in the context of protest.

These regulatory reforms are principally focused on street and roadblocks. In Venezuela, a reform to the Criminal Code in 2005 made cutting off streets and roads by protesters illegal. In Colombia, this was classified as a crime under the “Citizen Safety Law” in 2011; in September 2013, the Colombian defense minister presented a bill to expand these criminal offenses.

Recent measures include the prohibition against conduct that was not previously considered a crime, such as wearing masks, and aggravating sentences when such crimes are committed in the context of a rally. In Brazil, the bill to define the crime of vandalism sought to considerably increase the penalty for damage to public and private property when it occurs in the context of public demonstrations. And while wearing masks is not a crime, in the states of Rio de Janeiro and São Paulo, it was prohibited during protests and demonstrations.

In addition to inducing increased criminalization of protest actions, this type of standard is intended to have an inhibiting effect: they aim to restrict a priori by announcing potential repressive consequences and thus discourage participation.

Prior notification

Requiring organizers to provide prior notification to local authorities of the place, date and time of a protest effectively works as a limitation.

This requirement is often justified by presenting it as a path to greater protection for the right to protest. However, prior notification often ends up functioning as a covert requirement for authorization. In these cases, the procedure for notification grants the authorities the power to impose dates, times and authorized places for

protests and set the conditions for carrying them out. In some cases, it also gives them the power to prohibit demonstrations and authorize the use of police force to disperse them, if it considers the organizers have failed to meet the conditions. This type of restriction does not respect the right to protest without the need for state authorization set forth by different international human rights protection organizations¹; in many cases, these regulations also violate national constitutions.

In Mexico, in the Federal District (Mexico City) and Veracruz, recent local laws require notification to authorities, without considering the possibility of spontaneous rallies. In Peru and Chile, standards have been in place for several years that establish procedures which, in practice, are systems for prior authorization. In Colombia, the recently approved National Police Code establishes the requirement to give prior notification in writing of the date, time and route of the rally, signed by at least three people.

In the favelas of Rio de Janeiro, Brazil, where military forces have been permanently installed, the situation is particularly acute. In 2007, the State Security Secretariat placed a mechanism for prior authorization in the hands of police authorities, not only in relation to protests, but also for events of other natures taking place in public spaces, such as cultural activities. In Venezuela, in 2014 the Supreme Court issued a ruling in which it considered that the protection of the right to freely moving transit could justify the use of force in demonstrations that have not been authorized.

Regulations have also come into force prohibiting protests in certain zones, such as close to public buildings or in the central areas of cities, as has

occurred in Lima and Arequipa, Peru. In Venezuela, since 2002 the National Security Law established “security zones” where demonstrations are prohibited. In Paraguay, a 1997 law limits the hours in which protests can be held in Asunción; prohibits gatherings of more than 50 people and public demonstrations in front of the government palace or police and military headquarters; and establishes that demonstrations cannot block bridges, train tracks, roads or public paths. In practice, the hourly restrictions are not applied, but those regarding location are.

Cutting off streets or roads as a form of protest is very entrenched throughout Latin America. In different countries, there have been attempts to restrict this practice by prioritizing traffic circulation over demonstrators’ right to protest. In Mexico, Federal District law limits the use of certain routes, without clarifying which ones, and the law in the state of Quintana Roo stipulates that only half of the lanes can be used for protests. These types of regulations are usually used to justify violent dispersal and repression of social protests. In Brazil, in January 2016 during a march by the Pase Libre Movement in São Paulo, protesters refused to follow the route set by police. When they tried to take a different one, the police repressed the protest, closing all escape routes. As a result, dozens were injured. The secretary of security for the state of São Paulo defended the repression based on the argument that, according to the Constitution, protesters are obligated to notify authorities of the march route.

¹ IACHR, Annual Report 2015, Chapter IV A, “Use of Force”, paragraph 65; UN Human Rights Council, “Joint Report by the Special Rapporteurs on the Rights to Freedom of Peaceful Assembly and Association and on Extrajudicial, Summary or Arbitrary Executions”, A/HRC/31/66 of 2016, paragraph 21



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Intervention by the Armed Forces

In some countries, laws have been approved lately that purport to avoid “grave threats to public order,” but often arise as reactions by the state to social protests. In the most extreme cases, these regulations authorize participation by the Armed Forces in domestic security operations, which ultimately leads to a more militarized state response.

This is the case in Brazil. Even though the country’s Constitution does provide for intervention by the Armed Forces to guarantee public order, the wording does not clarify the circumstances in which this would be permitted. By way of decrees, this role by the Armed Forces has been authorized for a wide range of situations involving internal security, such as the “pacification” of shantytowns and peripheral areas and during mega sports events, especially for demonstrations and protests occurring in those contexts.

In Venezuela, the Ministry of Defense passed a resolution in January 2015 empowering all components of the Bolivarian National Armed Forces to carry out actions to control public order in demonstrations.

In Peru, a 2010 legislative decree granted the Armed Forces the power to support police forces and consider mobilized social groups as “hostile”; it further provided that unlawful acts of repression shall be investigated in the military justice system. In Paraguay, a legislative reform in 2013 allowed the president of the republic to engage the Armed Forces in “cases of threat or violent actions against legitimately established authorities that impede the free exercise of their constitutional and legal duties,” an abstract description that could enable its application during protests. In Brazil, the use of the Armed Forces was extensive during the large international soccer events it hosted in 2013 and 2014, and the Olympics in 2016.

In the entire region, however, participation by the Armed Forces seems to be more frequent in rural or peripheral areas and informal settlements. In the shantytowns of Rio de Janeiro, military presence in operations carried out in the context of demonstrations is the consequence of the policy of permanent military occupation to “combat” drug trafficking. In Peru, in a protest in Cajamarca in 2012 over a mega mining project, a combined operation between the police and Armed Forces ended in five firearms-related deaths. In Colombia, although the Constitution differentiates police from military duties, the context of armed conflict was used to justify the participation of the Armed Forces in protests, in particular when the executive branch

accused protesters of being “motivated” or “infiltrated” by the guerrillas.

This military presence contributes to increased levels of violence in the state response to protest, given the fact that the Armed Forces are not trained in the graduated use of force. On June 24, 2013, an operation in response to a demonstration in the Maré favela in Rio de Janeiro lasted 24 hours. Residents were stopped from entering or leaving the neighborhood; there were tear gas bombs, rubber and real bullets fired. Ten people died as a result.

Anti-terrorism laws

“Anti-terrorism” laws or reforms to the different types of criminal offenses referring to terrorism, which suspend procedural guarantees or establish broad criminal categories, have expanded in many countries of the region. The broadness and vagueness of these criminal offenses enables them to be used to criminalize conflicts. In general, definitions are adopted that involve actions that make them applicable to protests, such as the purpose of “obligating or coercing (...) constitutional bodies or their members, in order to carry out an act or abstain from doing so, in the exercise of their duties.”²

Brazil passed an “anti-terrorism law” in 2016; in previous years the National Security Law in force since the military dictatorship, which covered acts “of terrorism due to political disagreement,” was applied against participants in public rallies. Likewise, the Law on Criminal Organizations approved in 2013 was modified in 2016 to also include penalties for terrorist groups. It was applied in 2015 in an accusation by the state of Goiás Public Prosecutor’s Office against four members of the Sin Tierra Movement (MST in Portuguese) in the context of a land dispute and the occupation of a sugar cane plant that, according to the MST, holds a huge debt with the state, accumulated since the 1970s.

In 2010, Paraguay enacted a law “that punishes criminal acts of terrorism, association and financing of terrorism.” With this objective, the regulation sanctions whoever commits “dangerous interventions in land transit” for the purpose of inciting or causing terror. The case of Paraguay shows how conduct that could be considered a minor offense or simple administrative infraction, such as a roadblock, can be categorized under the umbrella of the crime of “terrorism”, with a

² Paraguay, Law 4024 of 2010

The most severe impact of these regulations is that they enable, through legal or administrative channels, repressive state intervention when demonstrations do not comply with the established criteria. With some legal regulations and initiatives, this happens because they explicitly authorize repression; in others, the justification of repression is indirect.

potential sentence of up to 30 years in prison. In Venezuela, the Law Against Organized Crime and the Financing of Terrorism (LODOFAT in Spanish) was passed in April 2012, which classifies different criminal offenses that have been used to prosecute persons detained during demonstrations.

In countries like Argentina, Brazil, Ecuador or Mexico, the criminal offenses of terrorism and financing of terrorism have been reformed as a result of the initiative and pressure by the Financial Action Task Force (FATF), to include the adoption of regulations of this type, along with those that cover the crime of money laundering, in the directives for member countries. In Paraguay, the reform was pushed by the Secretariat for the Prevention of Money Laundering.

Chile is one of the most serious cases of the application of this type of regulation. Its Anti-Terrorism Law, which sets judicial penalties of the highest order, operates according to procedural norms, such as the use of anonymous or “faceless” witnesses and the use of pre-trial detention, that do not adhere to human rights standards. In a ruling on the use of this law against the leaders of the Mapuche people, the Inter-American Court of Human Rights concluded that the law infringes basic procedural guarantees, such as the presumption of innocence and the right to respond in liberty, in addition to finding that its application was based on stereotypes and prejudice related to the ethnic origin of the party involved.

ARGENTINA

Paradigm shift in a context of growing social conflict

For 12 years, from 2003 through 2015, the Argentine government sustained a principle of non-repression, prioritizing political negotiation as a way to allay conflicts. This approach had its setbacks and there were transgressions in several provinces, but in general terms, the balance for the period was the political decision to regulate the use of police force in demonstrations in response to the serious episodes of death and injury that marked the country's recent past. The most advanced materialization of this model was Resolution 210/11 of the Argentine Ministry of Security, which lays out principles for police action protocols, including prohibiting police officers from carrying firearms loaded with lethal ammunition when intervening in protest operations.

In late 2015 there was a change of government in Argentina. During the electoral campaign, the candidates for the Cambiemos alliance had already put forward their restrictive conception of social protest, referring to demonstrations as issues of public order, and even as crimes in the case of cutting off streets. Upon assuming the government, the

new authorities began to express this shift in focus, which involves less tolerance for some forms of protest, especially the cutting off of streets, prioritizing the use of repression over political negotiation.

At the regulatory level, the Ministry of Security announced a "Protocol for Action by State Security Forces in Public Demonstrations," which in practice gives instructions for the police forces to disperse street or roadblocks. The protocol has never been made official, and the status of its legal validity is ambiguous, so it appears to be more of a threatening message aimed at discipline. If implemented, it would entail serious setbacks on various fronts, given that it does not prohibit the bearing of firearms by police, does not regulate the use of rubber bullets, expands police authority to detain people without a court order in the context of protests, and restricts journalists' freedom to work.

In recent months, some violent operations have been carried out in provinces like Jujuy and Salta and in cities, such as La Plata, or on access routes into the city of Buenos Aires, where police forces have dispersed groups of protesters and roadblocks. In these

cases, water-cannon vehicles were used and rubber bullets were observed being shot at protesters to disperse them. In the province of Neuquén, a worker was injured by a lead bullet shot by provincial police during a protest.

The more restrictive approach to protest has also been used in cases of prosecution of social leaders. The most emblematic of these is the leader of the Tupac Amaru movement, Milagro Sala, who was incarcerated for leading a sit-in in a public space as a form of protest to government measures in the province of Jujuy.

The broad agreement regarding the need to prevent the state's response to protests from causing death and affecting the bodily integrity of protesters continues. Nevertheless, there is a question looming as to the consequences that could come with the consolidation of policies of low tolerance for certain protest formats and the messages to police forces to intervene with force, at a time when growing social unrest linked to the economic policies implemented by the current government demands even stricter control over police actions.

MEXICO

Laws against the right to protest

There is a growing wave of attempts in Mexico to regulate demonstrations and protests, accompanied by lax regulation of the arbitrary use of force. In a short period of time, executive and legislative authorities have passed laws or submitted bills with regulatory frameworks aimed at restricting, sanctioning or limiting rights.

In this sense, Mexican authorities have presented 17 local and federal initiatives in the past two years that regulate demonstrations. Their common characteristics are:

- Restricting demonstrations: they impede the use of certain traffic routes or allow protesters to occupy only half of the lanes.
- Requiring advance notice to authorities, with no consideration for the existence of spontaneous demonstrations. Sometimes this notice involves a series of disproportionate requirements. Furthermore, this has an inhibiting effect on people who do not know what might happen to them if they participate in spontaneous demonstrations.
- Granting broad, vague powers to the authorities in charge of

security in order for them to make use of the public forces, and even break up demonstrations under the justification of ensuring "peace and quiet, citizen safety, public peace and order," the vagueness of which is open to interpretation and can be used arbitrarily.

- Imposing administrative sanctions for any disruption of order, untimely crossing of public streets, carrying out actions or making omissions that damage the public order or morale, among others.
- Classifying demonstrations as lawful or not, violent or peaceful, and allowing entire demonstrations to be broken up instead of acting in a specific fashion in cases in which some incident may have occurred.
- In some cases, they are unclear as to the use of "non-lethal" weapons in operations and allow their arbitrary use.



In Peru, Venezuela and Paraguay, there are regulations that prohibit protests in certain places, such as close to public buildings or in the central areas of cities.

One of the most concerning aspects of these regulations is that they distinguish legitimate from non-legitimate protests, legal from illegal, peaceful from non-peaceful, scheduled from spontaneous, lawful from unlawful.

This is the case of the Law on the Use of Force for the state of Puebla, Mexico, which classifies demonstrations as “the mere expression of ideas” on one hand, and “violent” on the other; and the Mobility Law for the Federal District, which uses the concept of “perfectly legal” demonstrations. A bill introduced in Argentina in 2014 proposed that a distinction be made between public demonstrations “that are spontaneous and others that are scheduled in advance and with prior notification to the applicable authority,” whereby the former should be obligated to be carried out in “predetermined public spaces.” In Peru, although there is no existing regulation that explicitly makes a protest illegal, it is common practice for the state to arbitrarily declare a state of emergency – provided for in Article 137 of the Constitution – for 30 or 60 days to prohibit demonstrations and public gatherings in high-impact conflicts, and to militarize its control of public order. This has occurred repeatedly during mass protests in Amazonas in 2009; in Cajamarca in 2011 and 2012; and in Ilay and Apurímac in 2015.

These binary definitions do not account for the variety and complexity that situations of social protest can encompass. The lines between the categories are blurry and often extrapolate the classification of the conduct of a few individuals to apply it to an entire demonstration. In practice, these distinctions are turned into decisions made at the discretion of public authorities and often by police forces during operations. One consequence is the uneven response by states to protests, depending on the context in which they take place.

The established procedures for prior notification, in principle intended to guarantee the right to protest and the rights of third parties, have operated generally as restrictive mechanisms. In practice, they end up granting the right to free movement a higher status than that given to the right to demonstrate. In setting prohibitions or restrictions on the form or place for demonstrations, these regulations ignore the fact that protests, in most cases, seek to have a disruptive effect on everyday life in order to raise awareness of ideas and demands that usually do not have a place in the political system or in mass media. Such protests are also intended to draw the attention of the authorities and, therefore, it is imperative that they approach public authorities’ headquarters. Many regulations also ignore the sometimes spontaneous nature of social protest, which reflects the inherent dynamics of social conflicts.

The most severe impact of these regulations is that they enable, through legal or administrative channels, repressive state intervention when demonstrations do not comply with the established criteria. With some legal regulations and initiatives, this happens because they explicitly authorize repression; in others, the justification of repression is indirect.

The new regulations, decrees and protocols adopted in the region have given way to state responses aimed at making demonstrations difficult and inhibiting them. They discriminate between protests considered permitted and others deemed prohibited, and have the general effect of enabling the use of force and increasing the punitive power of the state.



Cutting off streets or roads as a form of protest is very entrenched throughout Latin America. In different countries, there have been attempts to restrict this practice by prioritizing traffic circulation over demonstrators’ right to protest.

PERU

Restricted use of public space

The Political Constitution of Peru indicates that gatherings in public plazas and streets “require advance notice to authorities, which may prohibit them only for proven security or public health reasons.” It does not establish an administrative authorization, but rather prior notice for the exercise of the freedom of assembly. However, a resolution by the Ministry of the Interior requires a free procedure called “request for guarantees” to be carried out at least three days in advance. Interested parties must communicate in writing the identity and personal addresses of the conveners, the date, time and route of the rally, estimated number of participants and grounds for the assembly. In

addition, the resolution requires the signing of an official agreement that includes the planned route and a commitment to not alter the public order, interfere with traffic, cause property damage or bear arms or blunt objects.

In practice, this procedure functions as an administrative authorization, because omitting it is viewed by the police as misconduct. In “unauthorized” public protests, the jurisdictional police determine at the time whether a demonstration may take place or not and under what conditions, a situation broadly open to their discretion. The minimum notice of three days cannot always be met, given that immediate calls to assemble are more and more frequent in reaction to

circumstances, and facilitated via social networks.

In January 2015, then Interior Minister Daniel Urresti tried to put a de facto limit on the right to assemble at a youth demonstration protesting reduced labor rights, for which prior notification had not been given. As a condition for access to the demonstration site, the minister required that demonstration participants present their IDs to police forces, and prohibited them from carrying backpacks or wearing scarves to cover their faces. The minister announced the prohibition through the media, but in the end, criticism by the chair of the Council of Ministers forced him to reconsider the decision.

chapter 2

Repression and the use of force



chapter 2

Repression and the use of force

Latin American states use police force as a way to prevent, break up or limit the development and scope of demonstrations. The police in the countries analyzed share certain patterns of behavior when it comes to intervening in protests and carrying out operations in a scenario characterized by the absence of specific regulation of the use of force, lack of education and proper training of police personnel and, in some cases, the involvement of the Armed Forces.

Historically, the violent state response to social protests was generally concentrated in rural, peripheral and marginalized areas. At present this has extended to a growing variety of protests that bring together a broad spectrum of social groups and sectors.

Police practices

• Inexistence of opportunities for dialogue or political channeling of conflicts

There are nearly no experiences in the region of political negotiation as a way to mediate conflicts, and in most cases force is used without having attempted dialogue with protesters. During occupations and roadblocks, this problem becomes more evident, given that the police forces usually proceed immediately to free up property or streets, vacating and dispersing by force.

In cases in which protesters' demands could be resolved by the political authorities, what usually happens is that opportunities for dialogue, if any, generally occur between police chiefs and demonstrators on the protest site, without the presence of interlocutors with any real decision-making capacity to make commitments and propose alternatives that might address some of the demonstrators' complaints.

Institutional mechanisms have been created in some instances, but they aren't always implemented so as to function as effective methods of response to social conflicts. For example, in Peru – where approximately 80 people lost their lives at the hands of police during social conflicts between 2010 and 2015 – the government created a National Office of Dialogue and Sustainability in 2012. However, 56% of dialogue processes were opened after a violent event had occurred.

In Argentina, Resolution 210 on the “Minimum Criteria for Developing Protocols for Action by Police and Federal Security Forces in Public Demonstrations” stipulates that negotiations with demonstrators cannot be handled by those in charge of police operations, and shall “have the objective of identifying demonstrators' demands in order to channel them to the proper area.” This article makes a distinction between handling the use of public space in a specific situation and the state's obligation to respond to the underlying social conflict. But because these action principles do not have the weight of law, they have not been incorporated into regular practice by the police or sustained over time.

In the events that occurred in Nochixtlán, Mexico, the lack of proper mechanisms to respond to protest situations had serious consequences. In June 2016, during the conflict over the education reform, teachers and townspeople blocked a highway. Eight hundred troops belonging to the Oaxaca Public Police, the Federal Police and the Gendarmerie carried out an operation to remove them. According to information from human rights organizations and the Office of the UN High Commissioner for Human Rights, at least ten people were killed by bullet wounds as a result of the eviction. An excessive use of force was also documented: firearms, tear gas and rocks were used. At least 23 people were detained arbitrarily, and peoples' right to health was also affected due to lack of medical attention.

In Colombia, the National Police Anti-Riot Mobile Squadron (ESMAD in Spanish) has been held responsible for 448 cases of aggression, affecting 3,950 victims between 2002 and 2014. These cases include 13 extrajudicial executions, 137 injuries, 91 arbitrary detentions, 107 threats and two episodes of sexual violence, according to the database of the Center for Popular Research and Education (CINEP in Spanish).

• The indiscriminate use of “less-lethal” weapons

The wide use of “less-lethal” or anti-riot weapons is common throughout the countries of the region. These types of weapons are used indiscriminately to break up demonstrations; even after the crowds have been dispersed, police often pursue protesters leaving the rally site. Rubber bullets and tear gas grenades, among other weapons, are often used in response to demonstrations, even though there have been no protocols or regulations put in place to limit or prohibit their use by security forces.

In August 2015, an infantry group in Tucumán, Argentina pursued demonstrators in a multitudinous protest and fired rubber bullets point-blank and at their backs. In addition, the mounted police used whips and clubs to beat protesters. Dozens were injured. Similar operations have occurred in other countries, such as Paraguay in September 2014, where police repressed a protest over land and housing access in front of the Asunción city hall.

Rubber bullets, sound and tear gas bombs have caused a huge number of injuries all over Latin America, some with irreversible consequences such as in the case of photographer Sergio Silva, who lost sight in one eye after being shot with a rubber bullet in an act of repression in São Paulo, Brazil in 2013. In Venezuela,

since 2004 there have been at least 330 injured by rubber bullets during protests, most in 2014. In Chalchihuapan, Mexico, a 13-year-old boy died as the result of gas grenades thrown by police. In Chile, student Rodrigo Avilés went into a coma and had severe repercussions after being sprayed at short range from a water cannon during a demonstration in Valparaíso in May 2015. In Argentina, teacher Carlos Fuentealba died in 2007 after being shot with a tear gas grenade. In 2014, during a strike involving farmers, ethnic and grassroots groups in Colombia, 78 protesters, including minors, were injured by rubber bullets and tear gas thrown indiscriminately into buildings or shot directly at people. Some members of the National Police Anti-Riot Mobile Squadron (ESMAD) used tasers on young people and women.

• Police saturation and crowd-kettling

The increase in the number of police and equipment that states allocate to operations verified in different countries of the region has different consequences: it may discourage attendance at protests and add tension to conflicts. Furthermore, large deployments of hundreds of armed police protected by shields create a threatening atmosphere around protests. In Brazil, during the 2013 Confederation Cup, the Armed Forces added 3,700 agents and 500 vehicles to those deployed by the police, including armored vehicles, troop transport, eight helicopters, cavalry and a section of trained war dogs. Turning off street lighting in places where gatherings take place compounds this problem, as has occurred in Brazil and Mexico.

At the same time, kettling, or corralling, tactics are used, which involve surrounding demonstrators and blocking all exits. This practice combined with the use of police force has serious effects. In a great number of cases, the police forces close exit routes and use “less-lethal”

weapons, which under these circumstances pose a greater risk of physical harm. This is what happened in January 2014 in Asunción, Paraguay at a protest over a public transit fare increase, when protesters were surrounded and beaten with batons, kicked and hit with officers' anti-riot shields. Very similar operations occurred in Brazil during the World Cup Final, when the Rio de Janeiro Military Police kept a crowd corralled for four hours under brutal repression; in Mexico, kettling protesters is also a frequent practice.

This type of operation stands in the way of people exercising their right to protest, for example when police barriers prevent protesters from moving or setting a course.

• Mass, arbitrary and violent arrests

Mass, arbitrary and violent detentions are a frequent state response to social protests. In some countries, the number of arrests is huge. For instance, there have been protests in Mexico, Colombia and Brazil in recent years in which hundreds of people have been detained in just a few hours. At the same time, the arrests are often characterized by their violence: batons, hitting and kicking are repeatedly used.

Arrests do not usually follow a pattern nor are they planned. In some cases, police arrest anyone close to them or that they can surround as a tactic to break up the protest; there are also usually arrests after the protest has been dispersed or on neighboring streets. In other cases, the detentions happen based on discriminatory criteria. This is seen, for example, in a radio communication recording how a Mexican policeman orders the arrest of "all these young guys with backpacks, those are the vandals; arrest anyone with a backpack."

In different countries, there have been complaints of arrests that violate constitutional and legal precepts such as procedural time limits, and do not comply with the obligation to turn detainees over to the Public Prosecutor's Office and be put under the control of the judicial branch. In Brazil, the most widely used method for justifying arrests is taking people into custody for "questioning", a generic category that allows the police to search and detain people for contempt and *in flagrante*, often based on fabricated evidence. In Chile, observers from the National Human Rights Institute have noted that, although the protocols regulating actions by the *Carabinero* police stipulate that minors under age 17 must be released without requiring the presence of a responsible adult, police agents continue to demand this condition for their release. In Colombia, the concept

Rubber bullets and tear gas grenades, among other weapons, are often used in response to demonstrations, even though there have been no protocols or regulations put in place to limit or prohibit their use by security forces.

of "protective detention" established in the National Police Code allows people with emotional disorders to be detained without a court order; this regulation was used against young people in the protests of May 1, 2013.

• Attacks on freedom of speech and journalism

Mistreatment of people covering demonstrations, in particular when it comes to recording violations committed by police, are also a common factor among the countries studied. In some cases, these situations occur when security forces establish a police cordon intended to keep press workers off site. In recent years, attacks on journalists and press photographers have included beatings, pellet-gun shots, pepper gas, detentions, confiscation of camera equipment and cell phones, suppression of audiovisual and photographic material, threats and intimidation during coverage of protests.

In Venezuela, journalist José Alejandro Márquez was arrested on February 19, 2014 by an official of the Bolivarian National Guard who demanded he hand over his cell phone. Márquez fled to avoid arrest and the officer fired on him; he was able to evade the bullets but then fell and hit his head on the sidewalk. Guard officers then beat him and took his phone. Márquez died a few days later. There are also reports and records of police aggression of varying degrees against persons documenting demonstrations in Colombia, Mexico, Paraguay, Argentina and Brazil.

• Inadequate education and training

In the majority of these countries, education and training of their police agents to act in the context of demonstrations is nonexistent or insufficient.

In an investigation done on the Rio de Janeiro police in 2014, 64% of officers interviewed stated they had not received proper training on how to perform their jobs during demonstrations. In Venezuela, the state has not launched programs on the proper use of force during protests, despite having been ordered to do so by the Inter-American Court of Human Rights in its ruling on the events of El Caracazo, the massive protests that took place in 1989.¹

¹ Inter-American Court of Human Rights, ruling of August 29, 2002 on the events of El Caracazo (Redress and costs)

In some countries, the effectiveness of positive training initiatives is diminished due to the lack or insufficient nature of any regulation on the use of force that clearly sets out the relevant legal standards, and because of the impunity for those who do not comply with standards and protocols. In Peru, the principles of necessity, legality and proportionality on the use of force figure in the "Manual of Human Rights Applied to Police Duties," which stipulates that the use of force should be avoided in crowd dispersal or limited to the minimum necessary. It recommends firearms be used only when there is an imminent threat of death or serious injury. Nevertheless, the excessive use of force remains a systematic practice by security forces. In Argentina, there have been incidents of excessively violent arrests in which violence is used to physically punish protesters.

• Uniformed police personnel without visible ID and infiltrated agents

Participation by uniformed police officers who are not wearing visible identification, in some cases even with their faces covered, has occurred in Colombia, Brazil, Mexico and Paraguay. This practice creates an obstacle when it comes to identifying and investigating human rights violations during demonstrations and can adversely affect the reconstruction of events and assignment of responsibility. There have also been many reports of cases of plainclothes police present among demonstrators in different countries.

These situations increase the risk of other rights violations, in addition to violence against protesters, as is the case when organizations and social movements are infiltrated and criminalized, and force is used through illegal procedures. For example, in a protest in Rio de Janeiro in July 2013, there were reports of police agents – the "P2s" – who infiltrated a protest and threw Molotov cocktails at police in order to justify the repression and arrests.

Regulating the use of force

In the region, policies and regulations are lacking on the rational use of force during demonstrations and on violations of national and international human rights standards.

Some positive examples of the regulation of the use of force can be seen in Argentina and Colombia. In Argentina, the "Minimum Criteria for Developing Protocols for Action by Police and Federal Security Forces in Public Demonstrations," adopted in 2011,

lists guidelines that must be observed by security forces and should serve as the basis for drafting specific action protocols. Separately, at the local level, the mayor of Bogotá, Colombia approved a specific protocol in November 2015. Both these documents stipulate that police agents present at demonstrations must wear ID; that force should be used only as a last resort; the use of firearms must be banned; and some measures regulating the use of “less-lethal” weapons must be taken.

In most countries, the regulation of police conduct is marked by the following problems:

- **Low-level regulations and a lack of oversight**

Given the increase in social protests, a variety of legislative initiatives have sought to limit, and in some cases, criminalize the exercise of the right to protest; the majority of countries, however, have omitted the issue of regulating police action. There are practically no laws in Latin America that establish standards on the use of force.

In many cases, the existing resolutions and decrees issued by the executive are not even adopted by political authorities, leaving them up to the police forces under their own supervision.

In Brazil, the only standard in place establishing criteria for police action in the context of demonstrations is a resolution by the Council for the Defense of Human Rights (CDDPH in Portuguese) from 2013. Although it sets forth principles of non-violence, dialogue and rights guarantees as a paradigm for police action during protests and evictions, the regulation has no binding effect for public security organs.

In Argentina, the process of institutionalizing the Minimum Criteria was interrupted and the guidelines were not passed into law, nor did they lead to specific protocols for action by federal forces. They also had very little impact on police practices in provincial jurisdictions.

- **Minimum principles too broad**

In some cases there has been progress toward incorporating minimum principles on the use of force into the legal system, but they have not had a great impact on security forces in practice. This is the case in Peru, where Legislative Decree 1186, adopted in August 2015, put an end to the legal vacuum and incorporated principles on the use of the force, the graduated and

exceptional use of lethal weapons, subsequent actions by police agents – provision of medical care, communication of events to families of the injured or dead, presentation of a report on events to the police unit of origin – and rights and responsibilities. Nevertheless, the regulation permits the use of lethal weapons in the event of a “violent, tumultuous assembly,” without specifying what would constitute these conditions. The excessive use of lethal force continued after the decree: one month after it came into effect, the police executed three community members participating in a mass protest against the Las Bambas mining camp located in the Andean region of Apurímac.

In other countries, new protocols for social protests have been adopted with a lax regulation of the use of force. Local legislatures in Mexico approved regulations granting broad, unspecific powers to the authorities in charge of security for them to make use of the public forces and even break up demonstrations, invoking ambiguous, vague assertions such as “peace and quiet, citizen safety, order and public peace.” In the most severe case, a regulation approved in Puebla in May 2014 allows the use of lethal weapons in the context of demonstrations. Article 44 of this regulation stipulates the use of weapons as a measure of legitimate defense to ward off aggression, preserve life or avoid serious harm to the bodily integrity of police or third parties.

- **Broad criteria for dispersing protests**

The regulatory frameworks all share a lack of clear criteria for authorizing the dispersal of protesters and defining how this should be carried out. Compounding this is the lack of subsequent controls or assessment: police agents are not usually sanctioned for giving or executing an order to disperse in breach of a regulation – if there is one – or that has had negative consequences on the life or physical integrity of protesters.

In Venezuela, for example, a decision by the Supreme Court of Justice in 2014 stipulated that “any crowd, demonstration or public assembly that does not have prior authorization (...) may lead to action by the police and public security agents in charge of law and order to ensure the right to freely moving transit and other constitutional rights (...), using the best means possible to disperse said crowds.” This case demonstrates how the administrative mechanisms of prior notification are used to justify violent dispersal.

Another common feature of regulations on the use of force in the region is how demonstrations are characterized as “peaceful” or “violent” and the different

police actions allowed in each case. The protocol regulating the use of force in Mexico’s Federal District is an extreme example, which permits demonstrations to be broken up based on the “state of aggressiveness” of those demonstrating. Public security forces act in these cases making no distinction between a peaceful demonstration and isolated acts of violence, at times attacking people who were not even participating in the demonstration. In Chile as well, the protocols for police action by the *Carabineros* distinguish between authorized marches, considered legal, and unauthorized ones, deemed illegal and warranting police intervention. Spontaneous demonstrations, in turn, are subject to the discretion of police authorities, whose actions are determined based on criteria such as “peacefulness, safety and respect for police authorities.” In Colombia, the new National Police Code establishes that “any assembly or demonstration that upsets people’s coexistence shall be dissolved,”² a quite broad criteria that legitimizes the general practice of breaking up demonstrations by the Anti-Riot Mobile Squadron.

- **Broad criteria for detentions and searches**

Detaining and searching people during protests is usually done according to regulations that do not set clear criteria.

Chile is an illustrative case, where the protocols on the use of force for the *Carabineros* violate the principle of presumed innocence in establishing the “duty to act swiftly to arrest criminals that could alter a peaceful demonstration.” They also establish the searching of clothing, equipment and vehicles, and the checking of IDs for up to eight hours; after that period, “if there is any indication that the person may have hidden his or her true identity, said person should be arrested.” With regard to the regulation of mass arrests, the internal regulations for the *Carabineros* indicate that the police force should “avoid them,” which ignores the legal criteria in force in Chile for arrests and their prohibition under international law.

² Article 53 of the National Police Code and Social Harmony, Law 1801 of 2016

Police violence against women



In addition to repressing protests, power and violence seek to reestablish traditional gender roles that assign a socially passive role to women.

In addition to the violence against participants in demonstrations in general, there are also cases of physical, sexual and verbal violence aimed at women across countries on the continent.

Gender violence in the region has been recorded through threats or sexually suggestive verbal aggression by police and the excessive use of force. In this context, in addition to repressing protests, power and violence seek to reestablish traditional gender roles that assign a socially passive role to women. One example was a demonstration in Temuco, Chile, in which a 22-year-old woman was verbally assaulted and then arrested – in breach of any legal standard – and forced to undress. In demonstrations in Brazil, Mexico and Chile, there have been reports of verbal abuses the likes of “fucking whores, you wanted to come march?” or “this little bitch is ready to fuck;” “search her as far as her cunt” and “go home, dirty bitches.”

Other expressions of gender violence include the excessive use of force to repress protests by women’s and feminist movements. In Chile, after seven

femicides in seven days, a demonstration was convened in March 2016 in front of the government palace to demand a gender alert be raised in light of escalated sexist violence. Around 50 special forces agents with water-cannon trucks faced off with 50 women protesters. The operation culminated with nine women and three men arrested, beatings, kicking and insults from the police. In November 2015, participants at the 1st Feminist and Independent Book Fair in Porto Alegre, Brazil were assaulted and threatened by police. Moreover, in the Marchas das Vadias (SlutWalks) that go on in different cities across the country, participants commonly suffer offenses of a sexual nature, as well as aggression and threats in some cases.

This is not a new phenomenon. However, it is usually kept in the dark and thus contributes to the perpetuation of violent practices against women by police and state agents.

Police violence in rural areas

Just as with security policies in general, the levels of violence employed by security forces in social protest situations also change according to space, context and social group. Common patterns of disproportionate and illegitimate use of force in protests in rural contexts can thus be observed in the region.

Extensive areas of the region have historically faced social, environmental and labor issues associated with models that prioritize extraction – mining in particular, and industrial agriculture – to the detriment of other land uses, such as agroecology, community property and cultural and religious traditions. In this context, indigenous and rural communities have become the protagonists in struggles for access, restitution, acknowledgment and the defense of their land and territory.

Instead of prioritizing consultation, dialogue and respect for human rights, governments confronting these scenarios generally give priority to the use of force, often resulting in injuries, evictions, displacements and casualties that frequently go unpunished. In Paraguay, particularly after the

massacre at Curuguaty in 2012, the level of violence has increased in evictions of rural communities with the participation of police and Armed Forces and the use of firearms. In Peru as well, security forces typically respond with extreme violence in conflicts between rural communities and extractive industries. At least 75 deaths were registered there between 2010 and 2015 in this type of conflict, the majority of them caused by the use of firearms. After the arrest of environmental leader Marco Arana in a main plaza of Cajamarca on July 4, 2012, a citizen asked police on the scene, “Why do you treat us this way?” The literal response was, “Because you are dogs.”

Public security forces in many countries are at the service of private and corporate interests, and constantly intimidate these communities, attempting to interfere in their organizational efforts, curtailing participation by deploying a disproportionate number of security agents and even militarizing certain zones and communities. In some cases, this is also combined with actions taken by private security companies.

Another difference is related to the use of force in the central areas of large cities compared to the peripheries or in informal settlements, such as favelas or shantytowns. In Brazil, the occupation of the favelas of Rio de Janeiro by the Armed Forces and Military Police as a strategy against drug trafficking has meant more violence in response to demonstrations that take place there than in the rest of the city.

Much of this aggression remains invisible, either because it occurs in faraway places or areas of difficult access for the press, or because society has a greater level of tolerance for it. The lack of democratic control in these areas compared to urban centers makes it incredibly difficult to effectively investigate the facts, and contributes to the chronic persistence of these levels of violence.

BRAZIL

Racist state responses

2.5

black youth are 2.5 times more likely to be killed than whites

2737

black teenagers aged 16 and 17 were killed in 2013

Racism permeates action by public security and criminal justice agents in Brazil. According to the Index of Juvenile Vulnerability to Violence and Racial Inequality for 2014, black youth are 2.5 times more likely to be killed than whites. An investigation done by Amnesty International indicates that of the 56,000 homicides perpetrated in the country in 2012, 30,000 victims were young people, of whom 77% were black. In 2013, 2,737 black teenagers aged 16 and 17 were killed, i.e. 66.3 per one thousand young people – a homicide rate 173.6% higher than for whites. At the same time, the 2005 “Human Development Report on Brazil: Racism, poverty and violence” of the United Nations Development Program (UNDP) shows that police action is rife with racism. According to that publication, blacks represent 11.1% of the population and 32.4% of deaths at the hands of police in the state of Rio de Janeiro. Among whites, the

situation is inverted; while they represent 54.5% of the population, whites account for 19.7% of fatalities at the hands of security forces.

The racial selectivity of the public security system also plays out in protests, where use of firearms and a high degree of police lethality are common: 12 out of 20 deaths in protests between June 2013 and March 2014 occurred in favelas. The population that lives in these shantytowns is predominantly black, so the issue of class is permeated by racism in these marginalized neighborhoods. The case of Aliélson Nogueira, a man of African descent who was executed by military personnel with a shot to the head on April 4, 2013 during a protest in Jacarezinho, exemplifies these practices. The other protesters surrounded the body to guarantee that the forensic examination be done properly and to prevent police from removing it. After his death, the demonstration that had begun earlier intensified

and was repressed with sound bombs and firearms.

Moreover, when Afro-descendants protest in central areas of the city, they usually suffer tougher repression and arrests. Two emblematic cases are Rafael Braga Vieira and the Black Women’s March. Rafael, a young, homeless black man, was close to a large demonstration in June 2013 and was carrying two bottles of cleaning products. He was arrested arbitrarily, accused of “carrying explosives” and sentenced to five years in prison. In November 2015, 20,000 women participated in the Black Women’s March Against Racism and Violence and for Living Well in Brasilia. Outside the Congress building, police belonging to a group defending the previous military dictatorship threw homemade bombs at the women and fired shots into the air above the crowd.

In the region, policies and regulations are lacking on the rational use of force during demonstrations and on violations of national and international human rights standards.

Discretion and lack of oversight

With few exceptions, the regulatory framework for police action is usually general, contradictory and has broad margins of discretion when it comes to action by security forces. These regulations often have no legal hierarchy, or oversight mechanisms to guarantee their compliance. Furthermore, the validity and application of these regulations has not been consistent.

In Venezuela, the Constitution prohibits the use of toxic substances and firearms in the control of peaceful demonstrations, and there are regulations establishing the principles of proportionate, differentiated and graduated use of force. However, no policies have been developed to ensure that these regulations are met. On the contrary, in 2014 the Supreme Court issued a decision allowing repression if demonstrators do not have prior authorization by the state.

These examples show that the transformation of police practices depends not only on the adoption of clear action criteria, but also on the institutionalization of these criteria into laws that incorporate international human rights standards. In general, such criteria have not been given sufficient priority and their application has been subject to the political will of governments, without responding to outside controls, whether administrative or judicial. Another problem affecting the vast majority of countries is the absence of education and training of police officers on these principles, in addition to the lack of oversight and supervision of operations to allow for the subsequent investigation and sanctioning of those responsible when human rights violations occur.



Another common feature of regulations on the use of force in the region is how demonstrations are characterized as “peaceful” or “violent” and the different police actions allowed in each case.

chapter 3

Criminalization of protest



chapter 3

Criminalization of protest

The criminalization of social protest is based on the use of the criminal justice system to respond to social conflicts. People who lead or participate in demonstrations to express opposition or dissent often must face arbitrary arrests and criminal proceedings.

This criminal prosecution of protesters and social activists is a historical trend that shows certain patterns throughout Latin America. First, the repertoire of criminal offenses used to prosecute protest is similar across countries. Furthermore, there has been a proliferation of legal reforms in the region, including the creation of new offenses, an increase in sentences, the creation of aggravating factors and the loosening of procedural guarantees.

Criminalization does not always end in a sentence. In Paraguay, in cases involving situations of social protest, the Public Prosecutor's Office has promoted the Conditional Suspension of Procedure (Probation). This mechanism allows alternatives and averts the need to go to trial, but requires acknowledgment of the events. The accused opt for accepting this escape route to conclude proceedings as quickly as possible. But this also has consequences in that any discussion of merits is avoided, and the conduct of the accused is never submitted to judicial analysis.

Even though in general the protagonist in this trend is the judicial branch, all branches of government usually concur, by act or omission. In Brazil, for example, after mass protests in 2013, the Ministry of Justice and Secretariats of Security in the states of São Paulo and Rio de Janeiro pushed for stiffer sentences for crimes like arson, property damage and injury during demonstrations or when the victims are military police. This state reaction ignored the evidence of arbitrary or illegal functioning of the judicial branch against protesters and sought to expand its powers even more.

Another common pattern in the region is judicial selectivity when it comes to accusing, and the asymmetrical progress of cases. This is clearly evident when we

compare the results of judicial investigations against those who participate in marches, occupations, roadblocks or sit-ins with those investigating police responsibility for violent evictions, repression and death.

The violent repression of the Indoamericano Park occupation in Argentina in 2010 and the massacre at Curuguaty, Paraguay in 2012, are paradigmatic cases. In the Argentine episode, a violent operation to evict people who were defending their right to housing resulted in three people dead. While the trial of the police officers has still not taken place, the judiciary of the city of Buenos Aires has invested vast resources into taking some of the social leaders who participated in the occupation to court. Those protesters were absolved in 2014; the judges ruled that the prosecutors had no evidence to sustain the allegations. In the Curuguaty massacre, those responsible for the death of nine peasants during the eviction remain unpunished, but more than a dozen people who occupied the vacated lands were sentenced in a criminal trial full of irregularities. In other cases, social leaders have been prosecuted after organizing or participating in acts of protest, with the objective of punishing them or restricting their capacity to organize new demonstrations.

In Colombia, an emblematic case is that of indigenous leader Feliciano Valencia, leader of the Cauca Indigenous Regional Council (CRIC in Spanish), who was prosecuted and sentenced by the Popayán Superior Court to 18 years in prison for the crime of abduction in September 2015. The proceedings started in the context of the 2008 Minga Social Indígena event, in which nearly 30,000 indigenous people took part. During the march, indigenous authorities found an army corporal attempting to infiltrate the mobilization and then proceeded to detain him and sanction him to numerous "spiritual lashings," facts that the court qualified as abduction and torture. And even though Valencia did not take part in detaining the soldier, and indigenous jurisdiction is recognized under the Constitution, the charges were

filed against him because he was a visible leader of the march. In May 2016 in an appeal submitted by the defense, even the prosecutor sustained to the Supreme Court the atypical nature of the conduct saddled upon the indigenous leader.

A third pattern identified in numerous cases is the violation of procedural guarantees. Arbitrary arrests, collective accusations without an individualized account of conduct, and the disproportionality of sentences imposed upon protesters are some of the most serious aspects of this pattern. The increasing use of intelligence tactics, such as the infiltration of police agents in assemblies and marches, and communications surveillance, all aggravate this picture and are an additional threat to civil and political rights.

In the vast majority of cases, protesters are criminalized for legitimate conduct that is inherent to social protest. The primary effects of using criminal law to prosecute protest are the disbanding of social organizations, causing additional strain on their financial resources, stigmatizing those who stand accused, and discouraging actions that seek to demand compliance with their rights.

What are protesters being accused of?

It is common for the right to protest to be prosecuted using existing categories in the criminal code. In these cases, protesters do not remain in custody for very long, although there have been cases in which they were held in pre-trial detention. In other situations, criminal offenses that establish stiffer sentences, such as usurpation, are applied. The most serious cases involve the application of criminal offenses for which the toughest sentences in the legal system are handed down, such as conspiracy, abduction, extortion and terrorism. The main criminal categories applied in Latin America are:

• Obstruction of public roadways

In Peru, during the presidential mandates of Alejandro Toledo and Alan García, Congress increased the penalties for collective acts of protest moving along public roads: the crime of disrupting public transit services went from a maximum penalty of four years to six years in 2006, and to eight years in 2010. This reform, by increasing sentence lengths, enabled the possibility of pre-trial detention. Since nearly all protests occupy public space, these regulations are invoked frequently by judicial officials.

In Venezuela, the criminal offense that applies to blocking traffic provides that there must be intent to "prepare to cause damage." However, this article of the Criminal Code is employed by the Public Prosecutor's Office to criminalize protests that use blocking traffic as a strategy, even though they have no such intent. In Colombia as well, the offense of blocking public roads is used to bring criminal charges against protesters. In March 2013, 77 people were arrested and 11 of them prosecuted for this crime for participating in the Valle de Toledo protests in opposition to the construction of a new dam. In July 2013, the public prosecutor brought charges against 70 people who participated in a mining strike on the Cali road for "disrupting public transit service." In Paraguay, a case was brought against rural leader Maguiorina Balbuena for cutting off a road in protest of the impeachment of then President Fernando Lugo, applying Article 218 of the Paraguayan Criminal Code on "dangerous interventions in land transit."

• Resisting authority, insults and contempt

In Paraguay, the crime of resisting authority is invoked constantly by the police and the Public Prosecutor's Office. Defined as "resisting or physically assaulting an officer or other person officially in charge of executing laws, decrees, sentences, judicial provisions or resolutions in the course of performing those duties," it is



used against protesters when they react to arbitrary or violent arrest.

The crime of contempt, which the Inter-American Commission on Human Rights considers incompatible with the American Convention, remains in force in Brazil's Criminal Code. This type of offense is applied indiscriminately and frequently used in response to verbal complaints about police action when apprehending protesters. Often this crime is applied along with others, such as threat, resistance and disobedience. Protesters in numerous cases have been arrested and accused of contempt for having denounced violent or illegal acts by police. In other situations, the police have given abusive orders, such as forcing protesters to remain standing in the same position for long periods of time, threatening to charge them with contempt if they fail to comply.

In Mexico, something similar occurs with the application of the crime of insulting a public authority. In March 2016, the Supreme Court of Justice in that country declared this article of the Criminal Code unconstitutional; regardless, the criminal category has remained and continues to be used against persons who protest.

• Disturbing the peace and public order

In Paraguay, disturbing the peace – aimed at punishing those who commit or instigate “violent acts” – is one of the criminal categories most commonly used in cities. In addition, conduct that “increases the willingness” of other protesters to commit violent acts is also penalized. The vagueness of these definitions enables the Public Prosecutor's Office and the judicial branch to interpret this offense in the broadest sense, to the detriment of people's right to protest.

On December 1, 2012, dozens of people were charged with the crime of attacks on public peace and were arbitrarily arrested during a day of protests against President Enrique Peña Nieto in Mexico. Fifteen protesters were arrested during demonstrations in Mexico City on November 20, 2014 and turned over to the Public Prosecutor's Office, which charged them with “attacks on the public peace” and “possession of objects apt for assault.”

In Chile, there are three different categories of “public disorder,” defining it as a misdemeanor, punishable by up to five years in prison, or a felony, with up to ten years. This situation gives public agents the discretion to decide how to categorize conduct by protesters.

• Squatting and usurpation

Occupying real estate is a common strategy for demanding the right to housing or denouncing the public use of a property. In this sense, occupation of a building or land and resistance to eviction are forms of protest.

It is often the case that participants in this type of conflict in urban and rural environments are accused of the crime of usurpation and forced to go through long criminal proceedings. Paraguay is a paradigmatic example: the leaders of evicted rural communities are usually investigated for squatting. Originally, this type of crime applied if persons “settled” on the property, and the penalty was a maximum two years in prison. In 2008, it was amended to enable criminal prosecution from the moment someone enters the property, with an aggravating penalty if they do so “with the intent to settle.” In this way, its use was expanded to criminalize the rural movement.

• Incitement and conspiracy to commit a crime

Protesters or social leaders in different countries of the region have been charged with criminal conspiracy and incitement due to protests, strikes or occupations. In Venezuela, Rubén González, the secretary general of a state-company union, was sentenced for several crimes, including incitement to commit a crime after leading a strike. In Mexico, after protests on November 20, 2014 over the disappearance of students from Ayotzinapa, the Assistant Special Prosecutor for Organized Crime Investigation brought criminal charges against 11 young people, mostly students, accusing them of conspiracy; they were held in custody for ten days in maximum-security detention facilities. In Paraguay, rural residents were charged with conspiracy in the case of the Curuguaty massacre. According to the accusation, the commission created to request granting of the lands was formed to commit crimes, even though in Paraguay neighborhood commissions are an administrative requirement for land claims brought before the National Institute for Rural Development and Land.

In Peru, between May and June 2015, the Public Prosecutor's Office began investigations into the offense of conspiracy to commit a crime and money-laundering against local leaders and authorities from the Valle del Tambo in Arequipa who protested against a mining project by the transnational company Southern Peru, under the hypothesis that the social organizations promoting the protests are a means to commit crime, and that financing for the protests came from illegal sources.

Surveilling the communications of members of social organizations and movements is a trend related to the criminalization of protest and social conflict common to many Latin American countries.

In Brazil as well, the crime of conspiracy is used to criminalize protest. The use of this criminal offense was particularly intense after a protest by Rio de Janeiro teachers in October 2013, when 190 people were arrested and 84 put in pre-trial detention for “conspiracy.” Their crime was having participated in the protest. In 2014, 19 demonstrators were arrested during the soccer World Cup and accused of “armed conspiracy” for the mere possibility that they might commit acts of violence: based on surveillance of those planning the protests, a judge concluded that there were “serious indicators they were planning acts of extreme violence” and that “police action was necessary to prevent that objective from being carried out.” The protesters obtained a court order for them to stand trial in liberty, but on the condition that they not participate in other protests. In addition, four activists from the Sin Tierra Movement were remanded to pre-trial custody after participating in an occupation in the Santa Helena de Goiás municipality in the context of a land title dispute in 2015. Among the accusations lodged against them: forming a criminal conspiracy.

• Extortion

In Peru, the crime of extortion encompasses the occupation of premises, obstructing transportation routes and streets, and disrupting the functioning of public services to obtain “any benefit or advantage” from the authorities. This crime has a penalty of between five and ten years in prison, and as much as 25 years if two or more people participate in the act. This expanded criminal category is used recurrently when police detentions take place or prosecutors open investigations. Its broadness allows any act of protest that creates obstacles to transportation routes or traffic to be criminally prosecuted. The objective of obtaining an advantage “of any kind” presupposes the possibility of filing charges for this crime against anyone who protests in defense of demands or rights. The crime of extortion furthermore contains sanctions for public officials who participate in strikes.

Similarly, in Paraguay the criminal offenses of coercion and duress are commonly applied during demonstrations by rural communities to sanction the act of “severely forcing” another to “do, not do or tolerate something they do not want.” When this is done “by threat endangering life or physical integrity,” the penalty is aggravated. The Public Prosecutor’s Office applies this crime to the act of not allowing people to enter an area or blocking a street. These types of crimes are often compounded by the offense of “threats of punishable



acts” applied, for example, to cases in which a community threatens to stop fumigations or demands compliance with environmental regulations.

Procedural guarantees in jeopardy

The trend of bending procedural guarantees in protest contexts is reflected in the frequency with which security forces arbitrarily arrest protesters and in the indiscriminate authorization of phone tapping and surveillance of the digital communications of persons involved in social conflicts. This is what occurred recently in Brazil, where activists were prosecuted for information gathered from social networks.

Moreover, collective charges that do not separate the conduct of individuals from a group of persons arrested at the same time during a protest violate the right to defense.

Another common trend can be seen in legal actions based exclusively on the testimony of police agents. This generally happens in cases against demonstrators as well as those aiming to attribute responsibility to state agents for abuses committed. For example, in Brazil organizations have reported that in more than 70% of *in flagrante delicto* cases, the only witness was a member of the security forces.

In Colombia, the Citizen Security Law introduced procedural norms that contradict guarantees. While the Constitution states that a person may not be deprived of liberty without a court order except in cases of *in flagrante delicto*, the law relativizes this in establishing that this legal concept shall apply “when the person who commits the crime is recorded on video or is in a vehicle in which a crime was just committed.” In Paraguay, numerous forced evictions of rural communities have been carried out without court orders, based on the argument that the property is being occupied, the *in flagrante* nature of the act thus warranting intervention and the arrest of participants.

In Peru, there was a change in territorial jurisdiction for legal proceedings that criminalized social protests. Administrative Resolution 096-2012-CE-PJ, issued by the Chief Justice of the Judiciary, moved judicial investigations and cases against peasants, social leaders and local authorities regarding protests against mining projects to faraway locations – up to 20 hours away – from the place they occurred. This served to limit access to justice for persons of limited means. Public authorities who supported the protests were remanded to pre-trial custody.

Surveillance and intelligence

Surveilling the communications of members of social organizations and movements is a trend related to the criminalization of protest and social conflict common to many Latin American countries. Illegal espionage, video recordings, phone tapping and geo-localization pose serious threats to rights such as free association, assembly, free speech and privacy, which are constitutionally recognized by states and under international human rights treaties.

Brazilians have denounced police tracking of Internet pages and social networks in which protest information is spread, as well as phone tapping of protesters and lawyers. For example, in Rio de Janeiro on the day before the World Cup final in June 2014, there were pre-trial prison orders against 28 people, including two teenagers; 19 people were arrested and accused of armed conspiracy for having organized acts against the World Cup. In this case, the criminal prosecution focused on those who had created the events on social networks, setting the time and place for the protest. Furthermore, criticism on social networks of police action was considered incitement to crime. Even more serious, the data collected from social networks was used to tap the phones of 38 people and monitor 60 Facebook profiles, including one belonging to a human rights organization, on the grounds that “it is difficult to obtain satisfactory proof as to the criminal responsibility of those who commit crimes in protests.” In the end, those arrested were released but required to comply with a series of measures, including the prohibition to participate in public demonstrations, a condition that clearly goes against constitutional guarantees and human rights agreements. The legal proceedings against the protesters remain open.

In Peru, in July 2014 the Quechua Indigenous Federation of Pastaza discovered that three police officers had infiltrated their communal assembly in the context of an indigenous strike demanding dialogue with the government over contamination of Amazon territory attributed to the company Pluspetrol.

In Argentina, there have been reports of illegal espionage activities involving officers from different security and intelligence forces. In 2012, it was discovered that officers of the national Gendarmerie had infiltrated picket lines and mobilizations, posing as journalists to obtain information on the protests. During the investigation of this claim, the Gendarmerie was found to have collected information that had nothing to do with crime prevention between 2004 and 2012. Furthermore, in 2015 a public

defender from the city of Esquel in the province of Chubut reported the existence of files containing information on the activities and political stances of journalists and activists. The files had been given to the Public Prosecutor’s Office by a federal intelligence agent regarding a case of usurpation against the Mapuche community. The agent was prosecuted for violating the intelligence law, but it is still not known who gave the order to compile the information. These practices occur despite the fact that information produced solely on the basis of ideological factors is prohibited in Argentina. The weak oversight and supervision of intelligence activities combined with the secrecy and proliferation of state agencies with the capacity to carry out intelligence activities are factors that facilitate the persistence of such practices, despite being prohibited in many cases.



The United Nations Human Rights Committee recommended that the Venezuelan state adopt the necessary measures to prohibit civilians from being tried under military jurisdiction.

VENEZUELA

The use of military justice

In Venezuela, the criminalization of protest has reached alarming levels with the use of military justice to penalize protesters. Since 2012, military jurisdiction began to be used to incarcerate members of indigenous and union movements defending their rights in protests mounted close to military compounds, state companies or public entities considered to be security zones. Military facilities are also frequently used to hold persons arrested during demonstrations in custody.

In August 2012, five workers were arrested in the Venezuelan state of Táchira for protesting a breach of contractual commitments by a company hired to build housing units on the Fuerte Murachí military compound. The union members were charged by the 11th Military Tribunal Criminal Circuit Court and held in the Department of Military Convictions in the Santa Penitentiary. The military judge ordered deprivation of liberty and accused them of insulting the guard and the Bolivarian National Armed Forces (FANB in Spanish). In February 2016, seven people were arrested after protesting while standing in line to obtain food on the “La Zamorana” missions base in Chirgua. A citizen was accused of the crimes of “insulting a guard, damage to a military asset and theft of a weapon for the purpose of thwarting.” A military tribunal ordered him to be imprisoned in the

military compound of Ramo Verde in the state of Miranda, more than 370 miles (600 km) from his place of origin.

The Venezuelan Constitution clearly states the limits between military and ordinary jurisdiction. Nevertheless, military judges, even at the highest instances, continue to apply criteria that replaces ordinary jurisdiction with military. Despite the fact that military justice is only for military personnel and its application to civilians a violation of human rights, this has been a regular practice in the country since the 1960s, when it was applied to persons classified as subversive.

The practice became more evident as of 1999, even though the Constitution of 1961 stated unequivocally that every person is entitled to trial by an impartial judge in the proper jurisdiction. The Criminal Chamber of the Supreme Court authorized the application of military justice in some cases against civilians, contradicting the Constitution and human rights treaties. In July 2015, the United Nations Human Rights Committee expressed in its final recommendations to the Venezuelan state that it should adopt the necessary legislative measures, or others, to prohibit civilians from being tried before military tribunals.

chapter 4

Impunity of police violence



chapter 4

Impunity of police violence

Action by the public bodies that should investigate and sanction police violence and repression during demonstrations reflects different problems summed up in two trends: excessive delays in investigation and insufficient progress toward assigning criminal responsibility.

Irregularities, obstacles, delays and omissions that do not allow for proper legal protection are common in Latin America. In a great number of cases, the investigations are inadequate; in many others, nil. Frequently, neither the material perpetrators nor those politically responsible are identified and there are no sanctions. People who have gone through violent situations do not usually receive proper attention from state institutions afterwards. In addition, they must face long criminal proceedings and numerous obstacles in the way of receiving redress. The lack of a proper state response has psychological, social and economic consequences that increase the damage and lead to an ongoing process of re-victimization.

Both criminal and administrative investigations tend to be slow and fail to attribute responsibility when it comes to the use of force in protest situations. In contrast, the criminal system advances quickly in cases against social leaders or protesters.

Many of the obstacles in the way of investigating police abuses, and not only the ones that occur in protest situations, are attributable to resistance by court officials to investigate members of security forces with whom they have close, daily relationships. At other times, police authorities make judicial work difficult by restricting or delaying access to information.

When it comes to investigating violence or abuses, action protocols acquire special importance in that they establish correct conduct and are therefore essential for sanctioning violations of duties. They are also useful in criminal investigations, particularly with regard to determining guilt or negligence. Resistance to these

protocols lies in these functions they fulfill.

In Argentina, the trial for the death of protesters caused by police action during the mass protests in the city of Buenos Aires in December 2001 did not get underway until 2014. In May 2016, for the first time in Argentina, the judiciary found political officials criminally responsible for the consequences of the order to repress a social protest. The appeal proceedings before the Appeals Chamber and the Supreme Court will extend the process for several more years.

The disparity between progress made in cases against protesters versus those that probe the responsibility of state agents is a generalized trend in the region. In Venezuela, according to the Public Prosecutor's Office, 3,351 persons were arrested in 2014 in the context of demonstrations and put to trial. Of these cases, there were 911 final decisions involving 2,844 people. The Public Prosecutor's Office also informed that 878 people were injured during the protests, and that in the same year it had denounced 30 security force officials for presumed violation of fundamental guarantees, including cases of homicide and cruel treatment. However, the Prosecutor's Office does not provide details on the status of the investigations into these acts by officials.

The same trend can be observed in Peru in the prosecution of violence that occurred in the conflict in the Amazonian province of Bagua. In 2014, a trial got underway against 53 people, including indigenous authorities, who participated in a protest in 2009. The prosecutor accused them of killing police agents, inciting the seizure of official firearms, disturbing the peace, mutiny and disruption of transportation services. At least 23 of the accused are members of the Awajún-Wampis indigenous people, who were interrogated by police without the presence of a translator. The prosecutor requested life sentences for seven of them. Meanwhile, the criminal investigation over the ten deaths and numerous injuries suffered by indigenous and mestizo people, attributable to police action during the same

In nearly all these countries, even when direct responsibility is determined for deaths and injuries in social protest situations, the judicial proceedings rarely reach the point of analyzing the conduct of the police or political officials who were in charge of operations.

protest, barely managed to affect one police officer.

In Mexico, data from the Special Prosecutor's Office for Attention to Crimes Against Freedom of Speech (FEADLE in Spanish) shows that, between 2010 and 2015, out of a total 705 preliminary investigations, only 84 were fact-finding inquiries. In other words, only 11.9% of cases made it to that judicial instance. As of early 2016, there had still been no sentencing.

In Paraguay, the Specialized Unit on Punishable Acts Against Human Rights was created in 2011 under the domain of the Public Prosecutor's Office. At that time, human rights organizations considered the increase in resources for investigating rights violations to be positive. However, today structural deficiencies are notable: investigations are prolonged, work is sporadic, victims are often questioned, statements are often not taken from witnesses, and the versions told by security force agents are given too much weight.

In nearly all these countries, even when direct responsibility is determined for deaths and injuries in social protest situations, the judicial proceedings rarely reach the point of analyzing the conduct of the police or political officials who were in charge of operations. Most judicial agents are loath to consider the potential criminal responsibility of those who plan, coordinate and give orders. Thus, many investigations are limited to determining who was responsible for the fatal shots and do not analyze if, for example, the order to repress issued by the chief of operations should be sanctioned.

The norms regulating the professional police system generally indicate that superior officers should exercise control and command of their subordinates. This means they must verify what type of weapons are used, direct the movement of officers involved and try to ensure that if abuses occur, the scene of the events is preserved for the purposes of investigation. The violation of these duties should be criminally sanctioned. However, this does not often happen.

For example, in the Federal District of Mexico, the prosecutor's office has not brought before the judiciary any prior investigations for crimes committed by public security officers against journalists and citizens documenting demonstrations, nor has it investigated police commanders who, by act or omission, allowed the abuses.

In some countries, laws have been passed granting impunity for the abusive use of force by security forces. This is the case of a reform to the Peruvian Criminal Code in 2014 that "exempts from criminal responsibility those personnel who, while in the line of duty and use of their weapons or other means of defense, cause death or injury." This law was applied by a criminal judge of first instance to absolve four police officers accused of killing three young people, including a 14 year old, and injuring another 12 people during a student protest in the city of Huancavelica.

In Colombia, a constitutional reform promoted by the Ministry of Defense in 2015 determined that, in the investigation and prosecution of police conduct deemed punishable "in relation to an armed conflict or a confrontation that meets the objective conditions under International Humanitarian Law, the standards and principles of the latter shall apply." The reform absolves members of the public forces of criminal responsibility for the homicide of civilians in certain cases. The vague category of "confrontation that meets the objective conditions" can weaken the conditions for access to justice in cases of police violence, including in the context of social protest.





Asymmetry in the progress of judicial cases

The investigations of people who participated in marches, occupations, roadblocks or sit-ins have had very different results from the cases that investigate police responsibility for violent evictions, repression and death.

2012

Paraguay

CURUGUATY MASSACRE

During a land eviction, a total of 17 peasants and police officers died. Impunity continues for those responsible for the death of nine peasants. 11 peasants who had occupied the evicted lands were convicted in a criminal case riddled with irregularities.

2010

Argentina

INDOAMERICANO PARK

Two people were killed by police bullets on December 3 during an eviction of the park, which had been occupied. The police involved in the operation have not yet been tried. The social leaders who participated in the occupation were tried on charges of having organized it: they were acquitted but had to live through the process of criminalization.

2009

Peru

BAGUA MASSACRE

When a massive roadblock over an environmental conflict was broken up, 33 people (demonstrators and police officers) died. 53 people were tried, including indigenous leaders. They were ultimately acquitted. The criminal investigation over the 10 deaths and numerous injuries suffered by indigenous and mestizo people, due to police action, only affected one officer.

Administrative investigations and sanctions

In terms of administrative oversight and discipline, police corps and security forces in the region are usually supervised by offices of internal affairs, an ombudsman or other control mechanisms. These administrative structures have a mission to investigate and determine if a police official infringed the rules of conduct. Intervention by these areas in cases of repression of social protest shows a marked disinterest in moving disciplinary processes forward, which thus also usually leads to impunity.

In some countries, the sluggishness of the judiciary is used as an excuse for inaction in the administrative arena. In truth, there are no reasons to justify turning the disciplinary process into an appendix of what is resolved in a criminal case, since both processes are aimed at establishing different types of responsibility.

Nevertheless, in Argentina, it is often the case that those in charge of leading internal investigations delay their progress, do not gather evidence, and are only concerned with whether the criminal proceedings go forward or not. Given this panorama, administrative inquiries can remain open for decades, long after the police in question have retired from active duty. In the homicide of Mariano Ferreyra, a young activist from the Workers' Party killed during protests in 2010 by a group from the Railroad Union in complicity with the Federal Police, the police officers were convicted in April 2013. That sentence was upheld in September 2015, but the disciplinary inquiry against the officers remained open as of mid-2016.

In Colombia, there were no criminal sanctions for the human rights violations committed during the National Agrarian Strike in 2013. Thirty disciplinary investigations were opened; 77% are still in the preliminary inquiry stage, i.e. there is no one person tied to them.

In Paraguay, the Paraguay Human Rights Coordinator (CODEHUPY in Spanish) network requested that administrative inquiries be opened to investigate conduct by police officers in protest situations; they did not receive any response from the Ministry of the Interior, to which the National Police reports. Nor have they had word regarding sanctions applied against police involved in situations of rights violations. In Brazil, the situation is characterized by the lack of institutional and political autonomy of the Military Police's internal control organ, which is responsible for receiving reports of abuse committed by security agents. The scenario is similar in Chile, where investigations into breaches are delegated

to the *Carabiniero* officers themselves, who have disciplinary powers over their subordinates and make inquiries and resolutions at their own discretion. The National Human Rights Institute (INDH in Spanish), in its assessment of the institutional response by the *Carabineros* to the pressure and violence allegedly exercised by officers against Mapuche persons between 2004 and 2011, confirmed that only eight out of 62 reports against officials were investigated and only two were elevated to the level of inquiry.

In general, regulations that apply to disciplinary processes offer few opportunities for intervention by the victims or their families. In Argentina, in contrast to what happens in criminal proceedings, disciplinary proceedings do not take the plaintiff or injured party into account. The disciplinary case is always between the public administration and the public official. The victim is often denied access to the disciplinary file and not given the possibility of producing evidence or filing claims. Furthermore, the channels for filing reports due to irregularities are often scarce or not clearly communicated. In Chile, for example, when an administrative inquiry is ordered, due diligence is done in secret, blocking participation by the police officials under investigation or the victims.

In some countries, after events in which there has been an excessive use of force by police personnel, not only do they not open internal investigation procedures, but the political authorities and high commanders of the security forces congratulate the police for their work.

Impunity is a message that guarantees the persistence of practices that violate human rights. At the same time, if there are no effective systems for assessing administrative responsibility, it is less likely that police action protocols, if there are any in place, will function effectively as instruments for regulating conduct.

States have the obligation to guarantee access to justice for human rights violations. For this to occur, it is essential that legal mechanisms be effective and that procedures be framed in terms of due process and expedience. At the same time, institutions must have the necessary resources and, especially, properly trained personnel.

COLOMBIA

Protocol for social protest in Bogotá

There has been positive progress with regard to the regulation of social protest in Bogotá. The city mayor approved a decree in November 2015 establishing an “Action Protocol for Social Mobilizations in Bogotá: The Right to Mobilization and Peaceful Protest.”

The decree created a District Roundtable to monitor the exercise of the rights to freedom of speech, assembly, association and social mobilization. The roundtable is composed of district authorities, police and civil society organizations. Its mission is to formulate recommendations to the authorities for the proper protection of rights. It also grants civil society commissions powers to observe how mobilizations develop and coordinate with authorities actions intended to protect rights, such as oversight of police conduct, the conditions for arrest and with regard to work done by the press.

The decree regulates action by security forces and establishes that their mission is to protect the rights of people who take part directly or indirectly in mobilizations. With regard to the use of force, it stipulates that this must be used as a last resort, and strictly prohibits the use of firearms, other potentially lethal weapons and

non-regulation “non-lethal” weapons. Furthermore, it requires police agents to identify themselves.

The measure takes precedent from an October 2013 hearing of the Inter-American Commission on Human Rights and a similar forum in the Colombian Congress, which led to the campaign “Defending freedom: everybody’s business” and an agreement with the mayor of Bogotá to establish an action protocol for security forces during protests. The district administration that took office in January 2016 questioned the protocol and has plans to modify it. Nevertheless, it is a significant milestone with regard to the prevention of human rights violations during demonstrations.

CHILE

Student protests demanding free, quality public education

The year 2011 was marked by protests in Chile over an education model designed during the military dictatorship (1973-1990) and maintained by subsequent democratic governments. The Chilean education system is largely private and, therefore, organized based on profit and favors inequality. High school and university students were demanding free, quality public education and asking for a constitutional reform to guarantee this right. During the protests, which lasted months and involved millions of people, there were marches, strikes, occupied buildings, pot-banging rallies, roadblocks and artistic interventions.

The government of Sebastián Piñera prohibited the demonstrations and curtailed the right to assemble. With these decisions came the justification for the use of police force, mass arrests, repression with anti-riot gear and chemical agents, and violence against those detained. According to the annual report by the National Human Rights Institute, on August 4, 2011 alone, there were 308 detentions during two unauthorized demonstrations in Santiago. Of those, there are records of only six people formally processed in Santiago. During another of the 2011 demonstrations, 14-year-old Manuel Gutiérrez was shot to death:

the police officer implicated was prosecuted through the military justice system and sentenced to three years probation.

To discredit the demands, national authorities accused student leaders of disturbing public order and promoting violence. Nevertheless, the majority of the population remained in favor of the protests. At the time, the students were able to put education at the top of the political agenda prior to the legislative elections and managed to gain seats in Congress.

conclusions

Transforming state responses



Transforming state responses

A democratic response by states to conflicts and social protests involves a commitment to guarantee the rights to assembly, petition, speech and participation. This principle of the legitimacy of protest entails two pillars.

First, in cases where protests articulate specific demands that can be met by the state or private entities, the recognition of the petitioners' right to make claims should open up political channels capable of responding to the core issues. In this sense, the chief role of the state is to mediate between opposing interests in a conflict.

The second pillar is that security operations in public demonstrations must be guided by principles of non-repression and the protection of rights. The political design of these operations cannot be based on the notion that protests are a matter of security or public order; the mechanisms must guarantee the exercise of rights and prevent situations of violence and confrontation. This requires principles and standards focused on these objectives.

The common reality across Latin America is that states usually respond by using force to contain and control rallies. This is apparent in the analysis of regional trends in recent years.

Repression and abusive use of force by police in their handling of protests, and the criminal prosecution of protest participants and social leaders, have been going on for years. In recent times, this has been coupled with a new trend involving bills submitted and laws enacted to regulate the exercise of the right to freely protest, prohibiting actions or adding new offenses to criminal codes that apply to protest situations.

Recently, these trends have opened a new line of work for regional and international human rights mechanisms. The Inter-American Commission on Human Rights (IACHR) and the UN Human Rights Council have devoted specific efforts to these issues, notable among which is the "Joint Report by the UN Special Rapporteurs on the rights to the freedom of peaceful assembly

and association and on extrajudicial, summary or arbitrary executions" and the chapter on "Use of Force in Social Protests" in the 2015 IACHR Annual Report.

In a context largely characterized by threats to the right to protest, it is urgent that the state response to social protest in Latin America be transformed. Throughout this publication, we have highlighted some initiatives from the three branches and different levels of government that sought to encourage a new paradigm – adopting tools such as protocols, laws and judicial interpretations that protect rights – and that point to possible ways to achieve this.

Latin American State Responses to Social Protest

- photos



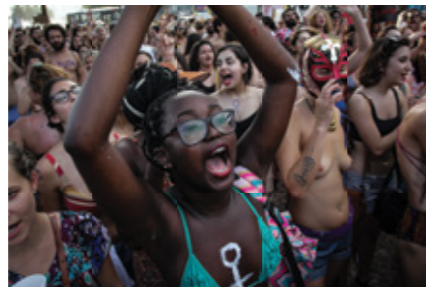
Cover
MÍDIA NINJA
Demonstration on the day of the World Cup final.
Rio de Janeiro, Brazil. 2014.



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Demonstration on the day of the World Cup final.
Rio de Janeiro, Brazil. 2014.



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