



Buenos Aires, September 29, 2023

Ref. Contributions to the Presentation to the 55th Session of the HRC: Tools for Law Enforcement

To the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association

Of our most consideration,

From the Center for Legal and Social Studies (CELS)¹, we are writing to you with the aim of providing information to contribute to the preparation of practical tools to assist law enforcement agencies in the promotion and protection of human rights in the context of protests.

We remain at your disposal to expand or clarify what you deem necessary.

Sincerely,

Center for Legal and Social Studies (CELS)

Responses to the questionnaire addressed to civil society

1) What laws, regulations, protocols and mechanisms or strategies/practices related to the facilitation and policing of protests have you found effective in ensuring respect and protection of human rights by law enforcement before, during and after the protests?

- Can you give examples of positive measures and practices by law enforcement authorities that have resulted in the protection of human rights by law enforcement, specifically in the context of spontaneous protests and/or massive?

● **Minimum Criteria for the Development of Action Protocols of the Police Corps and Federal Security Forces in Public Demonstrations²**

In 2011, the Argentine Government, through its Ministry of National Security, decided, through Resolution No. 210/2011, to approve the "Minimum Criteria for the Development of Action Protocols of the Police Corps and Security Forces." Federals in Public Demonstrations". This instrument highlighted the commitment of the Argentine State to regulate the actions of police and security forces in contexts of social protest, according to the paradigm of human rights and democratic security.

¹Organization that has worked for the promotion and protection of human rights since 1979. This work is today developed through strategic litigation, research and advocacy on public policies in Argentina and in international and regional human rights bodies.

²Available in: <https://drive.google.com/drive/folders/1coLIYFFLAWHikzrOtRmXzaGSI4kQqmqk>



The “Minimum Criteria” established that the State's primary objective in the face of a social protest must always be the protection of the life and physical integrity of the protesters and third parties. In this sense, the need to prioritize non-violent resolutions to conflicts, dialogue, and negotiation by civilian personnel was stipulated, as well as the establishment of the principles of exceptionality, proportionality and a progressive use of force. The organization of operations was regulated, the carrying of firearms was prohibited and rules were established for the use of less lethal weapons.

Specifically regarding the use of less lethal weapons, point 10 of the Minimum Criteria establishes that “rubber batons may only be used for defensive purposes in case of danger to the physical integrity of any member of the security institutions, protesters or from third parties. Under no circumstances may this type of ammunition be used as a means to disperse a demonstration. Aggressive chemicals and anti-riot agents may only be used as a last resort and always upon prior order from the head of the operation who will be responsible for their improper use.”

It was also established that it was mandatory to carry identification for all intervening officials, as well as for police mobile phones. This resolution also ensures the protection of press workers in the coverage of social protests among other relevant points.

At the provincial level, Chaco is the only jurisdiction that has a complete and highest standard regarding the regulation of police action in social protests. In this way, Provincial Law 7710 of 2015 incorporates the “Minimum Criteria for the Development of Action Protocols of the Police Forces and Federal Security Forces in Public Demonstrations.” Even so, due to the lack of political support and transformations in police practices, in recent years there have been numerous cases of repression of protests in the province.

For its part, Law 5688, creating the Security System of the City of Buenos Aires, establishes the prohibition of the use of firearms by police personnel in the framework of social protest and establishes that the officers must be identified in those contexts.

● **Federal security forces protocols**

Between 2012 and 2013, the federal forces (Argentine Federal Police, Argentine National Gendarmerie, Argentine Naval Prefecture and Airport Security Police) dictated their own protocols regarding intervention in contexts of public demonstrations, all of them in line with the “Criteria Minimum” of ministerial resolution 210/2011, although some of its contents showed certain disparities or inconsistencies among themselves.

However, no progress has been made in the creation of a regulatory body that unifies criteria for state intervention for the protection and promotion of the exercise of the right to social protest from a human rights perspective.

2) What are the gaps and which of the protocols and guidance for law enforcement and mechanisms related to facilitation and policing of protests did you find restrictive, undermining the protection of human rights or encouraging or facilitated



abusive practices against human rights by law enforcement authorities in the context of protests? How should they be improved?

● Protocol for action of State security forces in public demonstrations

In 2016, the Ministry of National Security, under the management of Patricia Bullrich, announced in the media a new protocol for state intervention in contexts of public demonstrations, but it was not formally approved. Its content revealed a clear prioritization of the right to movement over the right to assembly, expression and social protest, while a state intervention was foreseen to free the streets and advance criminalization processes against protesters.

This protocol established that "public order", "social harmony" and "free movement" are values superior to the obligations of the State in terms of respect and protection of the physical integrity of people, the right to freedom of expression, assembly or the exercise of freedom of the press.

One of the most serious aspects of the resolution is that it did not explicitly prohibit police officers who intervene in demonstrations from carrying and/or using firearms and/or lethal ammunition, nor from using rubber bullets to disperse groups of people. The protocol also did not impose measures regarding the identification of police officers, such as the obligation to wear a uniform for all affected police officers, as well as the requirement to wear a badge with their visible name.

At the same time, it expanded police powers to restrict the freedom of movement of protesters. Police officers are authorized to "isolate and identify", and even "take the necessary measures" with respect to those people who "incite violence and/or carry blunt elements and/or weapons of any type, or use fire, fuel, explosive or flammable elements, chemical agents, pyrotechnics, or any other article that could harm the integrity of people, members of the FFSS, property found at the place of the protest, and the environment..

The text released by the Ministry also affected journalistic work since it established that the police would tell press workers where they can be located, so that "...they do not interfere with the procedure."

Although this protocol was not formally approved, it was used as a guide in other jurisdictions such as the Province of Chubut.⁴

3) What are the main obstacles for law enforcement authorities in your country to facilitate and police protests in accordance with international human rights law and standards?

³Available in: <https://drive.google.com/drive/folders/1coLYFfLAWHikzrOtRmXzaGSI4kQgmqk>

⁴ Chubut: organizations demand the repeal of police protocols. Press release available at: <https://www.cels.org.ar/web/2021/04/chubut-organizaciones-exigimos-la-derogacion-de-protocolos-policiales/>



- What measures adopted by police authorities have you found effective to overcome these challenges?

- What other measures should the authorities adopt?

Some of the problems in complying with the obligations that the Argentine State has in relation to the facilitation and protection of protests are linked to the lack of controls over police intervention by the Executive and Judicial powers. These obstacles also negatively impact the accountability of police officials who are alleged to have committed human rights violations in the context of the protests.

● **Judicial endorsement of police intervention**

The predominant response of the justice system is to legitimize police intervention. That is to say, their response is limited to determining that everything done by the security forces was legal and completely separating them from criminal responsibilities. In cases in which an investigation is initiated, it usually legitimizes the operation and advances only against the official(s) responsible for the violence, isolating that fact from the context in which it occurred. With this view, the collection and production of evidence is directed almost exclusively to finding the shooter and omits to analyze the general context of the operations.

● **Poor planning of operations**

Operations usually have problems in their coordination that make it difficult to reconstruct the events and assign responsibilities. These planning problems are reflected in the transmission of broad and confusing orders, in the delegation of overlapping authorities, in the lack of clarity about the assigned resources, in the lack of clarity in the chain of command and the lack of recording of everything. what's going on. For their part, judicial operators do not usually attend operations in person, although this would help control how the police carry out their orders.

● **Deficiency in operational records**

The operations are difficult to reconstruct due to corporate resistance to reporting and the reluctance of prosecutors or courts to seek information. In operations, the assignment of weapons is the product of a decision by those in command and a clear and detailed record of the roster of personnel involved, the weapons, ammunition and assigned mobile phones is not usually left.

● **Police personnel without identification**

On many occasions, members of the forces do not have identification, and sometimes they do not even wear a uniform. The actions of police personnel without identification or uniform is another problem for the reconstruction of operations when assigning criminal responsibility for the results.

● **Lack of administrative investigation**

The Executive Branch must also respond for abusive interventions by security forces in the context of protests. Security ministries at the national and provincial levels have to promote administrative investigations when there is suspicion of irregularities or non-compliance



police independently of the judicial authority. However, this disciplinary obligation is rarely carried out, which results in a lack of control by political authority and collaboration in judicial investigations. One of the strategies to prevent control is to subordinate the progress of administrative investigations to that of the judicial case. It is very common that the Internal Affairs offices, which should carry out the investigation and administrative sanction of irregularities committed by members of the forces, do not advance in their tasks if the judicial cases do not do so, even when the elements provided in those cases are sufficient to exercise disciplinary control.

The secrecy surrounding disciplinary investigations is reinforced because its regulations do not contemplate the participation of victims or individuals with an interest in the management of the case who can exercise democratic control. This circle of impunity between judicial and disciplinary cases is common when administrative investigations are carried out; audits are carried out, generally, focusing on particular cases from a casuistic and solely sanctioning perspective. Due to a lack of will, capacity or political power, they do not construct from all the summaries a structural view that seeks to identify problematic patterns in police action and outline policies to prevent human rights violations.

● **Lack of systematization and analysis of information**

The lack of construction of quantity and quality information on the effects of the use of police force reveals a view that does not problematize the use of violence in all its complexity. Due to its recurrence, the fact that there is no specific approach for the most serious cases of inappropriate use translates into institutional tolerance, to the extent that it shows a lack of interest in knowing the specific characteristics and concrete effects of these practices. The data that some state agencies have attempted to produce are fragmentary and dispersed, have been discontinued, or are not publicly accessible. This perpetuates the absence of control policies and reduces state responses to sporadic reactions. It is worth noting that there are no records that systematize the use of less lethal weapons. Information on the use of force would allow political authorities and the police themselves to reflect on the harmful effects of their interventions to prevent the repetition of human rights violations committed by security personnel.

In relation to these obstacles, the officials of the Executive Branches of the jurisdiction where a public demonstration takes place should design security operations aimed at guaranteeing an organized police deployment, with clear and precise roles and powers established in minutes that allow detailed control to be exercised. of events while the protest is taking place and after it ends.

● **Selection of personnel assigned to the operation**

For the selection of police and security personnel who intervene in a context of public demonstration, as well as the definition of the modes of administration and management of the use of force, those aspects related to the sociocultural values of those who participate in it should be particularly considered. protest and/or their membership in groups that must be specially protected. This includes the provision of special measures to avoid discriminatory effects and aggravated effects on groups such as women, LGBTIQ+ people, children and adolescents, people with disabilities, adults and older adults, and indigenous peoples, among others.



It is advisable to prohibit the intervention in security operations due to public demonstrations to those police or security officials who have been sanctioned or who are under administrative or judicial investigation for irregularities in their actions in the context of public demonstrations and/or excessive use of force. in any circumstance.

● **Designation of public official responsible for the operation**

In the face of widely attended or previously scheduled public demonstrations, when they involve prolonged conflicts or when there are circumstances whereby potential risks to the right to life and physical integrity of protest participants or third parties can objectively and reasonably be foreseen, It would be advisable for the Executive Branch to designate and identify a political official who will have the responsibility of coordinating the actions linked to the control operation, as well as strictly enforcing the rules on the use of force and police behavior in the framework of social protest. .

● **Registration and documentation of the operation**

The allocation of weapons, ammunition, equipment and the list of participating agents should be recorded in special minutes that ensure that it will later be possible to reconstruct what weapons each agent was carrying.

In cases where ammunition has been fired, this should give rise to an administrative summary in order to disciplinarily investigate the legality of the use of force in the incident, regardless of whether or not said use had harmful or lethal consequences.

The directive should be reflected in service orders and should also assign trained personnel for the transfer and custody of weapons, for their distribution and for the inspection of weapons and ammunition. The complexity of the operations requires that the modulations and film records be preserved, essential for investigating the behavior of the security forces. They are also necessary to establish what the events were like when arbitrary arrests of protesters are reported. Experience shows that poor records coincide with situations in which detentions are arbitrary.

● **Audiovisual record of the operation**

Within the framework of the security operation in the context of public demonstrations, police and security officials should have specially identified, specialized personnel equipped with video cameras to record everything that took place, who must reliably document the progression of events. , the activities of the protesters and the actions carried out by the police or security forces. The devices used must be clearly visible and at no time should they interfere with people's privacy.

● **Mandatory identification of police personnel and vehicles**

Police or security force officials who intervene in the security operation in public demonstrations will be expressly prohibited, while they are providing service,



wear civilian clothes or conceal by any means their membership in a police or security force. All police and security force personnel who take part in operations due to public demonstrations must conspicuously wear an identification badge or badge that shows their name, surname, hierarchy and personal file. The plate must be visible to the public at all times and be clearly legible, and must be worn on any type of uniform or protective equipment used for the occasion.

Security force agents must be uniformed and with visible identification when they intervene in an operation. This duty is made explicit in Law 5688 of the CABA regarding the Police of the City of Buenos Aires, in Internal Order of the Day 184/2006 of the Federal Police, in Resolution 210/2011 already mentioned for all federal forces, and is derived from the republican principle of control of government acts.

The use of vehicles (patrol cars, cellular trucks, cars, etc.) as police vehicles without them being duly identified with the emblems corresponding to the institution to which they belong will be expressly prohibited. If there are detainees, they may only be transported in patrol cars or vehicles specifically provided for such purposes.

5) Are you aware of any law enforcement protocols and have you observed any positive measures taken by police authorities to prevent and protect protesters and activists from sexual and gender-based violence in the context of protests? How can they be improved?

In general terms, there is a need in the region to work to achieve a system that protects women and LGBTIQ+ people, guaranteeing their free exercise of the right to protest, access to justice and reparation in cases of violations and violence. It is also necessary to work towards the effective implementation of current standards and protections.

● **Prohibition of forced stripping**

Degrading searches in detention spaces are one of the forms that sexual violence takes against women and LGBTIQ+ people. As a good practice at a regulatory level, it is advisable to expressly prohibit forced stripping in police procedures (there is a bill in Chile in this regard). As well as to strengthen surveillance mechanisms by entities external to police corporations.

In this sense, it must be regulated, in a very restrictive manner, in which cases comprehensive searches can be carried out and judicial supervision or validation of these measures is necessary. On the other hand, there are more general legal frameworks that identify rape as a form of torture and sexual violence as an element that can constitute inhuman or degrading treatment.

● **Respect for gender identity**

We also understand that it is necessary to establish the obligation to respect the gender identity of people at the time of searches and arrests, both for the definition of police personnel



intervener as well as for the choice of places of detention. Just as the participation of the military in the management of demonstrations should be prohibited

Police intervention protocols must include the obligation to respect at all times, and especially during searches and detention, the gender identity perceived by people, beyond the inscription that appears on their identity document. Likewise, the possibility of communicating with family members or trusted people to notify the arrest must be guaranteed. At the time of arrest, it must be assessed whether the person is in charge of minors, even if they are not present, to adequately guarantee their protection. Audio and video recording systems must also be incorporated inside police stations or detention spaces.

● **Protocols for the prevention, identification and punishment of gender-based violence**

It is necessary to take into account, as a research hypothesis, that violence against LGBTI+ protesters may be motivated or aggravated by prejudice towards their sexual orientation, gender identity and/or gender expression. Establish the possibility of participation of independent experts in research, with a gender and intersectional approach. And establish comprehensive reparation mechanisms for victims of gender-based violence in cases of institutional violence.

It is necessary to establish internal protocols for the prevention, identification and punishment of gender-based violence within police organizations. Not all countries have clear and transparent protocols that regulate police action during demonstrations. And the countries that have them do not always include specific content regarding gender issues, with clear and explicit lines of action.

Even in the cases of countries where they already have defined performance standards on these issues, constant tasks must be carried out to ensure compliance with these guidelines in practice, including the review and analysis of specific situations, the application of disciplinary sanctions for non-compliance. and ongoing training in coordination with gender or equality secretariats or ministries.

● **Participation mechanisms for women's organizations and LGBT+ people**

Regarding the promotion of the participation of organizations in public policies that affect them, one can think about integrating organizations of women and LGBTI+ people in the generation and monitoring of mechanisms for the prevention of violence and the control and investigation of police forces. and security. Community networks must also be strengthened and organizations that work to defend victims and defend human rights should be supported.

● **Legal advice and assistance system for addressing gender-based violence**

It is necessary to establish a system of legal advice at the time of the protest and/or permanent presence at police stations or police stations. Legal protections cannot depend exclusively on the ability of the detained person to make a call, given



that this action is often delayed and even prevented. Create assistance services that have sufficient resources, with adequate and personalized access channels, as well as personnel specially trained to deal with gender-based violence, especially sexual violence. These mechanisms must also be accessible in rural areas. Establish comprehensive support services, including shelters, psychosocial services, counseling, medical care, and legal and social services.

These spaces must integrate the gender perspective in the planning and implementation of all programs and other interventions related to human rights defenders. External control mechanisms for police actions must implement a data registry of gender-based institutional violence, including violence in the context of protest. They must include disaggregated data that allows for intersectional analysis.

The development of international and regional protection mechanisms has deepened, in recent years, the standards for handling protests from a human rights perspective. They refer to the need for specific actions regarding certain groups at higher risk such as women and LGBTI+ people. To date, we do not see an adaptation by States to their obligation to adopt a differential approach, but instead numerous violations of the rights of women and LGBTI+ people are reiterated in the context of protest. This work aims to provide reflections incorporating the vision and perspectives of organizations, activists, leaders, and victims of cases of violence to begin the path towards the development and implementation of policies that allow the full exercise of our rights.

7) What police strategies and practices undertaken by law enforcement authorities before, during and after the protests did you observe/experience to be effective in successfully de-escalating potential and actual tension/violence in the context of the protests?

Some effective proposals for conflict management in protest contexts are linked to the prioritization of dialogue and negotiation as a first measure to avoid the escalation of violence. At the same time, the participation of state organizations or civil society in observing the development of protests is essential to collaborate in the prevention and de-escalation of tense situations.

● **Spaces for dialogue and negotiation**

State interventions in the context of protests must provide for spaces for dialogue in advance of the demonstrations, between organizations and authorities, to facilitate the guarantee of carrying out the protest. Communication channels must be established between the organizing parties of the protest and the authorities, to channel and formalize the claims, with the participation of suitable officials in these spaces with gender capabilities. It is very important to provide for the guarantee of observation by human rights defenders. In many countries and/or local jurisdictions, the obligation to exhaust the means of dialogue in the face of a conflict in the context of protest, before the use of force, is not explicitly defined, including non-police negotiation teams that are diverse and have the participation of women and LGBTI+ people, people of African descent, indigenous people or peasants, among others.



Along these lines, the Executive Branch should designate one or more political officials to act as a liaison and facilitate dialogue between the various actors involved in the demonstration.

● **Observation and oversight functions by state organizations**

As a good practice, the observation and oversight functions that other State agencies can exercise are important for controlling situations of violence. For example, in the Autonomous City of Buenos Aires, the Ombudsman's Office usually performs oversight functions in public demonstrations. Following the Guidelines for the Observation of Social Demonstrations and Protests prepared by the Regional Office for South America of the United Nations High Commissioner for Human Rights, in conjunction with the National Human Rights Institutions and Ombudsmen of the region. Within this framework, it also established a telephone number to attend to any emergency that may occur before, during and after the march.