



**NATIONAL OMBUDSMAN
ARGENTINIAN REPUBLIC
NATIONAL INSTITUTION OF HUMAN RIGHTS**

**Developing practical tools to help law enforcement bodies promote
and protect rights
humans in the context of peaceful protests**

***Special Rapporteur on the rights to freedom of peaceful assembly and
association***

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- 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?

The different economic, political and social crises that have occurred in our country in recent decades have generated spontaneous and/or massive demonstrations throughout the country on a daily basis, observing a notable decrease in the repressive response by the State. , although there are still isolated incidents of police repression and/or criminalization of protests in the context of these demonstrations that must be addressed.

The following laws and resolutions stand out that guide the actions of the police forces.

The Internal Security Law No. 24,059 grants to the Ministry of National Security in its art. 8, inc. 3, the power to "Understand the determination of the organization, doctrine, deployment, training and equipment of the Argentine Federal Police and Airport Security Police; and intervene in said aspects in relation to the National Gendarmerie and the Argentine Naval Prefecture, in the latter cases exclusively for the purposes established in this law."

Said Law in its article 22 prescribes that the Argentine State expressly adopted the Code of Conduct for Officials in Charge of enforcing the Law by providing that the police forces and security forces that make up the internal security system "must incorporate the Code of Conduct into their regulations. Professional Ethics established by the General Assembly of the United Nations Organization.

This establishes in its art. 2 "In the performance of their duties, law enforcement officials shall respect and protect human dignity and maintain and defend the human rights of all persons."².

Regarding the use of firearms by Members of the Federal Security Forces, by Resolution N°RESOL-2018-956-APN#MSG³Its General Regulations had been approved but were repealed by RESOL-2019-1231-APN-MSG⁴, because the norm significantly expanded those circumstances that enable the use of lethal weapons by officials of the police and security forces, moving away from the recommendations of the "Code of Conduct for Officials in Charge of Enforcing the Law." " established by the UNITED NATIONS GENERAL ASSEMBLY and the "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials"

— adopted by the Eighth Congress of the UNITED NATIONS ORGANIZATION. Therefore, we returned to the criteria for the use of lethal weapons that were regulated, until the issuance of Resolution RESOL-2018-956-APN#MSG, by specific provisions of each of the police and security forces, that regulated its use in accordance with the principles of proportionality, rationality, exceptionality and progressivity⁵.

The Action Protocol for the use of electronic momentary immobilization devices was recently approved by Resolution 261/2023 of the Ministry of National Security.⁶. In his recitals he foresees that "... the strengthening of public policies on democratic security requires including as guiding principles of state action the human rights standards emanating from the National Constitution and the instruments that make up the law."

²https://www.argentina.gob.ar/sites/default/files/s2d1.libro_codigo_de_conducta_web.pdf

³<https://www.argentina.gob.ar/normativa/nacional/resoluci%C3%B3n-956-2018-316948/texto>

⁴<https://www.argentina.gob.ar/normativa/nacional/resoluci%C3%B3n-1231-2019-333581/texto>

⁵Said regulation was contained, among others, in Normal Operating Procedure No. 1/06 "Basic standards for personnel performing security tasks" of the NATIONAL GENDARMERIA, Directives Nos. 8 and 9 "S"/2007 DOPE UP4 of the ARGENTINE NAVAL PREFECTURE, the General Regulations of Weapons and Shooting, RGPFA No. 8, modified by ODI No. 25 of the ARGENTINE FEDERAL POLICE and the General Protocol of Action for the use progressive and differentiated police force - (PGA) No. 5 of the AIRPORT SECURITY POLICE.

⁶<https://www.argentina.gob.ar/normativa/nacional/resoluci%C3%B3n-261-2023-382798/texto>

international human rights, as well as the pronouncements and jurisprudence of international organizations; which must function as a horizon and insurmountable limit for State interventions.”

In that order, it is necessary to approve a protocol that contains with greater clarity and precision the criteria and forms of use of the Electronic Momentary Immobilization Devices (DEIM), to guarantee the effective application by police personnel of the Principles of legality, timeliness, proportionality. and moderation, gradualness or progressivity, responsibility and accountability in their use.

It is worth saying that the State adopted the guidelines established in the guide on the use of less lethal weapons for the maintenance of order as a complement to the Basic Principles on the Use of Force and Firearms by those in charge of enforcing the law.

With specific regard to the actions of the police forces in the context of public demonstrations, it is worth clarifying that the Ministry of National Security approved by Resolution No. 210/2011 the document “Minimum criteria for the development of action protocols.” of police forces and federal security forces in public demonstrations”, establishing limits on police action, highlighting the non-use of firearms, although to date said document is not public. Subsequently, in 2016, the Ministry disseminated a document “Protocol for action in public demonstrations” that regulated the actions of security forces in public demonstrations, which was only approved by the Internal Security Council, but was never formalized or made official. through a decree, resolution or provision by that portfolio.

Finally, in our role as National Human Rights Institution, under the premise that social demonstrations and protests have been established as essential instruments for the demand, protection and promotion of the widest range of civil, political, economic, social and cultural and that its exercise must be developed guaranteeing compliance with and international obligations to respect and protect the rights that converge in these manifestations, the Ombudsman of the Nation jointly with National Human Rights Institutions of the Region and the Regional Office for America of the United Nations High Commissioner for Human Rights (OHCHR), we have developed the “Guidelines for the Observation of Demonstrations and Social Protests”⁷.

It is a tool that provides a practical assistance guide to all those who carry out the task of observing meetings and collective actions, in order to facilitate the process of verifying compliance with international obligations and standards, monitoring the circumstances that frame them. demonstrations and protests, as well as the collection of information, its review and eventual and immediate use in the face of violations of human rights.

At the internal level, the Ombudsman of the Nation sent this document to different relevant actors in the process of development of the demonstrations (Ministry of Security of the Nation on which the security forces depend, civil society, etc.) and all provincial ombudsmen to evaluate its implementation at the local level.

- 1) 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 Did they facilitate abusive human rights practices by law enforcement authorities in the context of the protests? How should they be improved?

Without prejudice to the actions implemented so far regarding incorporating the Code of Professional Ethics established by the General Assembly of the United Nations into the regulations of security forces, regulating the criteria for the use of lethal weapons for each of them. security forces and the recent approval by Resolution 261/2023 of the Ministry of National Security of the Protocol of action for the use of electronic devices for momentary immobilization, it still remains for the State to indicate whether the 2011 document "Criteria" is still in force. minimum for the development of protocols of action of the police forces and federal security forces in public demonstrations" and if so, it would be of interest that it be public, or else, create a new protocol linked to the action in the public demonstrations of the police forces, under international standards on the matter, in order to avoid excessive, arbitrary and unnecessary use of force by police officers who have the obligation to protect protesters and guarantee that demonstrations take place respecting human rights, given that the development of a protocol makes it possible to establish precise rules that provide certainty to the officials involved regarding the legality of their actions and, at the same time, facilitate the adequate monitoring and evaluation of said actions.

That, in this order of ideas, the Inter-American Commission on Human Rights (IACHR) has stated: "[t]he competent institutions of the State have the duty to design appropriate operational plans and procedures to facilitate the exercise of the right of assembly. This involves the rearrangement of the

pedestrian and vehicle traffic in a certain area, to the accompaniment of the people participating in the meeting or demonstration, to guarantee their safety and facilitate the carrying out of the activities that motivate the call. In the same sense, police forces need to have defined standards of action and the necessary professional training to act in situations that involve large concentrations of people, in order to generate the conditions so that these events can take place within the framework of the established norms without affecting the exercise of other human rights." Likewise, it has indicated that "the legitimate function of the security forces is to protect peaceful protesters and guarantee public safety by acting with complete impartiality in relation to all citizens (...) regardless of their political affiliation or the content of their demonstrations." (OEA/Ser.L/V/II. Doc. 57, paragraph 193, Pages. 88-89.). On the other hand, the IACHR has also warned that "[...] police forces must adopt the necessary provisions in order to prevent situations of violence derived from the abusive exercise of the right of assembly" (OEA/Ser.L/V/II. Doc. 57, paragraph 194, Page 89) and "that state authorities have the obligation to prevent and, where appropriate, control any form of violent conduct that violates the rights of any person under their jurisdiction" (OAS/Ser. L/V/II. Doc. 57, paragraph 198, Page 91).

2) 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?

We understand that one of the great obstacles is the lack of publicity of a protocol at the national level that guides the development of the actions of the police forces and federal security forces in massive and/or spontaneous public demonstrations, in accordance with international standards of human rights and that said protocol is also later adopted by the different provincial security forces.

On the other hand, the training and training of police personnel in this line is essential so that they can effectively fulfill their role as guarantors of human rights in the development of spontaneous or massive protests.

3) In the context of protests in crisis situations, what specific strategies and practices carried out by police authorities before, during and after the protests did you think were appropriate to ensure respect and protection of human rights during protests in such contexts (such as during public health or security crises, and/or during states of emergency)? What should be improved and how? What other guidance, protocols and other measures should be developed and what main elements should they include to avoid any restrictions

illegal and promote and protect human rights by facilitating protests in crisis situations?

Although in general terms, during the pandemic, the right to peaceful protests in our country was not affected, some isolated cases in certain provinces alerted this Ombudsman's Office to violations in the enjoyment of this right, for example, to the excessive use of force by police officers and arbitrary arrests of protesters, as happened in the province of Formosa in a four-day demonstration against the new coronavirus health restrictions imposed by the provincial governor who returned the isolation to Phase 1 (Total isolation). Faced with the throwing of stones by the protesters, the police blocked access to the place by firing rubber bullets and using tear gas, arresting 92 people, who were released in the following days.⁸

In order to guarantee the right to peaceful protests during a health crisis, it is essential that States establish basic guidelines for their development, such as social distancing, use of a mask, that they take place in open spaces, recommend the use of cars to demonstrate instead of marching on foot, recommend other forms of demonstrations that do not involve transportation, such as banging pots of food, massive applause, among others.

For their part, police forces should establish specific action protocols in the context of health crises in the development of their actions in public demonstrations, aimed at safeguarding the health of protesters and the development of the demonstration under the premises described.

- 4) 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?

There is no specific protocol for law enforcement or positive measure taken by police authorities to prevent and protect protesters and activists from sexual and gender-based violence in the context of protests.

- 5) What measures should law enforcement authorities take to prevent illegal arrests and detentions in the context of protests; as well as to ensure that the human rights of people legally detained in the context of protests are respected in accordance with international standards, including protection from torture and ill-treatment or sexual and gender-based violence?

⁸<https://cnnespanol.cnn.com/2021/03/08/formosa-protestas-argentina-cuarentena-orix/> <https://www.infobae.com/politica/2021/03/05/palazos-y-balas-rubber-in-formosa-for-a-protest-against-the-return-to-phase-1-of-quarantine/>

We understand that the authorities of the security forces in charge of enforcing the law must adopt preventive measures aimed at preventing illegal arrests and detentions in the context of protests (especially, training and training of police personnel in this regard) and for the In the event that illegal arrests and detentions have occurred, it is essential that the authorities implement effective accountability mechanisms and sanction and prosecute those responsible.

- 6) 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?

In particular, the actions of the federal police stand out, who, on the occasion of massive demonstrations in the autonomous city of buenos aires, implement operations to reorganize the traffic of pedestrians and vehicles in the vicinity where the protest is taking place, to guarantee the safety of the protesters and facilitate the carrying out of the activities that motivate the call.

On the other hand, the non-use of firearms by law enforcement officers during demonstrations is an assertive measure and in the case of having to repel any aggressive action by protesters, it must be progressive and through non-lethal methods.

- 7) What other measures have you found/experienced that police authorities have adopted to prevent and minimize harm to protesters, journalists and other actors involved in monitoring and/or reporting on protests, and to passersby in the context of the protests.

In scheduled operations, physical barriers by law enforcement forces are implemented in order to safeguard the integrity of protesters, police officers and uninvolved third parties, preserving the concentration at a certain point so as not to hinder other areas of public roads. , and thereby not affect the rights of other actors.

Along these lines of ideas, the provision of fences or another type of efficient delimitation of public space is also often used to avoid body-to-body contact between protesters and police.

- 8) What strategies, tools and techniques applied by law enforcement authorities have you observed/experienced to be successful (and which of them have been harmful and should absolutely be avoided) to facilitate the exercise of the right to freedom of peaceful assembly and protect rights of groups especially exposed to risks in the context of protests, including children and young people, women and girls; LGBTI people; People with disabilities; Indigenous villages; minority groups; migrants; refugees and asylum seekers.

There are no specific strategies, tools and techniques applied by police authorities to facilitate the exercise of the right to freedom of assembly and protest by children and young people, women and girls; LGBTI people; People with disabilities; Indigenous villages; minority groups; migrants; refugees and asylum seekers, so their participation is guaranteed under the general premises developed in this report.

9) What strategies, policies or protocols and measures should be put in place to ensure accountability of law enforcement officials alleged to have committed human rights violations in the context of the protests?

It is essential that the State guarantee that those responsible for enforcing the law who commit human rights violations in the context of demonstrations are held accountable for their actions, such violations are investigated, and those responsible are prosecuted.

To this end, it is essential that there is a clear assignment of hierarchical responsibilities, the functions of all personnel and the level of authorization necessary to order the use of force and that a thorough judicial and administrative investigation be carried out through a control body in cases of unjustified repression, homicide or injuries, regardless of the progress of the judicial case.

For its part, the monitoring carried out by civil society organizations in the face of these acts and the effective search to hold the perpetrators of the events responsible is of absolute relevance given that it allows the visualization of them and forces the state to adequate accountability.