

Submission of inputs to the Special Rapporteur on the rights to freedom of peaceful assembly and of association for the development of practical tools to assist law enforcement agencies in promoting and protecting human rights in the context of peaceful protests.

Civil Society Questionnaire

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

In 2014, the *Protocol of Action of the Joint Police Unit for the Multidisciplinary Care of Children, Adolescents and Young People in Demonstrations, Rallies, Cultural, Social and Sporting Events* was published, a document whose contribution is the creation of the Juvenile Preventive Unit, consisting of a mixed police unit whose objective is to intervene in situations where they can

The law does not establish how the rights of children, adolescents and young people in demonstrations, rallies, cultural, social and sporting events are in danger of being violated, preventing and protecting them from criminal conduct, although it does not establish how they will be protected, and it further develops in relation to the detention of adolescents for committing violations of the Civic Culture Law or conduct classified as a crime. The *Eleventh* paragraph establishes that the Undersecretariat for Citizen Participation and Crime Prevention will establish the mechanisms to permanently monitor compliance with this regulatory instrument.

Subsequently, and as a result of the impulse given by the Human Rights Commission of Mexico City in the follow-up of the compliance of 7 Recommendations related to the social protest against the Government of the then Federal District, a working group was created, formed by the Front for Freedom of Expression and Social Protest (FELPS)¹, the then Secretary of Public Security, the Secretary of Government and personnel of this Commission, to propose modifications to the Police Action Protocol that was in force at that time, in order to adjust it to human rights standards, resulting in the issuance of two Protocols:

¹ Collective formed by various civil society organizations specialized in the right to freedom of expression. The FELPS is made up of Artículo XIX, CDH Vitoria, Centro ProDh, Cepad, Cencos, CAUSA, Brigada de Paz Marabunta, Propuesta Cívica, Serapaz, Red TDT, Serapaz, Available at <https://libertadyprotesta.org/>.

- Protocol of Police Action of the Secretariat of Public Security of Mexico City for the Protection of Persons in the Context of Demonstrations or Meetings,² hereinafter Protocol of Police Action.
- Protocol of Action of the Secretariat of Government in the event of demonstrations or meetings that take place in Mexico City.³

Subsequently, work continued with the Secretariat of Government and the Secretariat of Citizen Security, both of Mexico City, and together with the members of the FLEPS, two more agreements were issued:

- Agreement establishing coordination mechanisms between the authorities involved in the attention of blockades of primary roads as part of the social protest in Mexico City.⁴
- Agreement for police action in the prevention of violence and acts that violate the exercise of rights during demonstrations and meetings in Mexico City,⁵ hereinafter Agreement for the prevention of violence.

Both the *Police Action Protocol* and the *Agreement for the Prevention of Violence* have chapters on transparency, police responsibility and accountability; however, in practice, the regulations established in these chapters are not complied with.

Among the norms they do not comply with is the fact that the police covering the social protest come without a visible identification number on their helmets, vests and shields,

² No.37, Twentieth Epoch. Official Gazette of Mexico City, Acuerdo 21/2017 por el que se expide el Protocolo de Actuación Policial de la Secretaría de Seguridad Pública de la Ciudad de México para la Protección de Personas en el contexto de Manifestaciones o Reuniones. 29, March, 2017. Available at: http://data.ssp.cdmx.gob.mx/documentos/difusion/convocatorias/MANIFESTACIONES_O_REUNIONES.pdf

³ No.159, Twentieth Epoch. Official Gazette of Mexico City, Acuerdo por el que se da a conocer el Protocolo de Actuación de la Secretaría de Gobierno ante manifestaciones o reuniones que se desarrollen en la Ciudad de México. 20, September, 2017. Available at https://data.consejeria.cdmx.gob.mx/portal_old/uploads/gacetas/27cf717625f802f9a4308f1714d49b62.pdf

⁴ No.218, Twenty-First Epoch. Official Gazette of Mexico City. Agreement establishing coordination mechanisms between the authorities involved in the attention of blockades of primary roads as part of the social protest in Mexico City. 11, November, 2019. Available at: https://data.consejeria.cdmx.gob.mx/portal_old/uploads/gacetas/9296fe1c6245432ecb4912f6d06936b5.pdf

⁵ No. 419 Bis. Twenty-first Epoch. Official Gazette of Mexico City. Agreement for police action in the prevention of violence and acts that transgress the exercise of rights during the attention to demonstrations and meetings in Mexico City. 14, August, 2019. Available at: https://data.consejeria.cdmx.gob.mx/portal_old/uploads/gacetas/ea08a307a18b6fb7fe49736f72b9a3d9.pdf

with the purpose of identifying them and clarifying individual responsibilities, which allows them to act with certain secrecy, since the police refuse to give their names, as well as the names of their commanders; In addition, the General Directorate of Internal Affairs of said police institution does not attend social protests to document and initiate ex officio the corresponding procedures against police personnel who do not comply with current regulations, despite the fact that both actions are a regulatory obligation.

- 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 and/or mass protests?

A good practice in the past was that, in massive demonstrations, the police would position themselves in the streets along the route that the demonstration would follow or in the non-visible surroundings so that, without using the first level of the use of force (presence of the authority⁶), the police force would be able to react to any emergency incident; this, in order to prevent any confrontation with the people participating in the demonstrations. However, this strategy is no longer applied in most of the occasions and, on the contrary, now the police is placed on the sides of the contingents and accompanies them during most of the mobilization.

Another good practice that used to be carried out was that, in the programmed massive demonstrations, the police personnel and the Secretary of Government of Mexico City, participated in previous work meetings with organizations specialized in freedom of expression issues, mainly those that are accompanying the protests in the field, and with personnel of this Local Commission that performs mediation and documentation functions of human rights violations in the territory, to recognize the work that each one would carry out and to be able to share general logistical issues. This helped to build trust and mutual recognition of the social actors in the territory, thus facilitating dialogue at the time the protest materialized; however, this was also discontinued.

Although this Local Commission and civil society organizations have always expressed the importance of holding meetings after the mass protests, in order to provide the corresponding feedback, this was not achieved, although in the preparatory meetings mentioned in the previous paragraph, the space was used to place on the working tables observations on the actions of the authorities in previous demonstrations.

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

⁶ National Law on the Use of Force, Article 11, Section I.

As mentioned, the regulations regarding the actions of the authorities, including police, on the issue of social protest, particularly since 2017, were developed jointly with staff of this Commission and civil society organizations specializing in freedom of expression issues (FELPS)⁷, so although, under the principle of progressivity, the framework of protection of rights can always be expanded, it is considered that the existing legal framework meets the existing minimum standards.

- What further guidance, protocols and measures should be put in place to enhance the protection of human rights by law enforcement while facilitating protests, including spontaneous and/or mass protests?

Given that various non-police public actors participate in the territory and make decisions and interact with the people who are in the context of the demonstration, such as personnel from Dialogue and Coexistence⁸, the Secretariat of Government, the Protection Mechanism for Human Rights Defenders and Journalists, it would be valuable to have an inter-institutional action protocol that clearly defines the scope of competence and responsibility of each of the public servants, which would help to avoid blurring the responsibility that each one has, particularly in the area of conflict management through dialogue.

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

There is a budgetary obstacle, since on several occasions the Secretariat of Citizen Security (SSC) has stated that it does not have the economic resources to provide all its personnel with equipment with a visible identification number so that they can be individually identified. This contributes to the fact that the issue of transparency and accountability is the regulatory section that is least complied with.

Also, the police use their cell phones or private mobile devices to take graphic evidence, videos and photographs of demonstrators, in contravention of the provisions of paragraph 7.3 of the *Police Action Protocol*, and the twenty-sixth of the *Agreement on the prevention of violence*. In view of the above, the SSC has indicated that it does not have the resources to provide all personnel with the means to videotape or take photographs for the required documentation.

⁷ Collective formed by various civil society organizations specialized in the right to freedom of expression. The FELPS is made up of Artículo XIX, CDH Vitoria, Centro ProDh, Cepad, Cencos, CAUSA, Brigada de Paz Marabunta, Propuesta Cívica, Serapaz, Red TDT, Serapaz, Available at <https://libertadyprotesta.org/>.

⁸⁸ The group is made up of public servants assigned to different agencies of the City Government. Their presence in the territory can be noticed by the use of orange vests that identify them. The members of the Group form cells that accompany the protest walking together with the demonstrators and intervene in various situations that arise along the route of the march.

Finally, there is a constant lack of practical training in the use of force by police personnel and the elements they must meet to determine that there is a reasonable suspicion that empowers them to conduct personal inspections, as well as the Protocols and Agreements that regulate their actions in contexts of social protest.

- Which of the measures taken by law enforcement authorities have you found to be effective in overcoming these challenges?

To date, the obstacles related to accountability, transparency and responsibility on the part of police personnel who fail to comply with the Protocols have not been overcome.

However, something that has helped to facilitate the exercise of social protest, is the placement of fences and metal fences and walls to protect the right to property of other private and public agents, without the need for police personnel to be in those places, thus ensuring the protection of other rights, avoiding physical confrontation between people.

- What other measures should the authorities take?

Improve the supervision of objects other than those provided by the SSC itself, which each police officer carries to attend a social protest. On occasions it has been found that there are personnel who carry additional accessories to those provided to them institutionally.

4) In the context of protests in crisis situations, what specific strategies and practices carried out by law enforcement authorities before, during and after protests did you find successful in ensuring respect for and protection of human rights during protests in such contexts (such as during public health or security-related crises, and/or during states of emergency)?

In Mexico City, during crisis situations -public health or security- no measure was issued to restrict the right to social protest. In fact, during the year 2020, a year of greater restrictions due to the pandemic caused by the SARS-CoV-2 virus, this Commission attended 171 expressions of social protest, without documenting that they were prohibited or limited.

- What should be improved and how? What further guidance, protocols and other measures should be developed and what main elements should they include to avoid any unlawful restrictions and to promote and protect human rights in facilitating protests in crisis situations?

Develop a section on crisis situations within the Action Protocols, in order to generate legal certainty and permanence in the decisions that have been guaranteed in this area up to now, so that they remain in place regardless of changes in administration.

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

Although there is no regulation or protocol for action, a good practice that has been implemented is that when there are demonstrations where most of the participants are women, most of them are attended by female police officers.

As fewer male police officers participate in attending marches made up mostly of female demonstrators, reports of inappropriate touching by police personnel are significantly reduced, as is gender-based violence on a larger scale.

The way in which it could be improved is to hire more female police officers, since in massive demonstrations, the number of personnel is scarce and they have to resort to sending male police officers; in addition to regulating this good practice.

6) What measures should law enforcement authorities take to prevent unlawful arrests and detentions in the context of protests; as well as to ensure that the human rights of persons lawfully 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?

In Mexico City, for more than 5 years there have been no arrests of people in the context of demonstrations, but in the event of such arrests, the immediate bringing before the authorities is essential for the prevention of ill-treatment and torture.

Likewise, the fact that police personnel are of the same gender as the person to be detained and are in charge of the person being taken into custody also reduces the possibility of actions related to sexual and gender-based violence.

- Please share any positive examples of law enforcement measures and practices to protect protesters and activists from arbitrary arrest and detention, and to protect the human rights of persons lawfully detained in the context of protest.

Although the *Police Action Protocol* allows for arrests in cases of flagrante delicto for administrative or criminal infractions and the *Violence Prevention Agreement*, it only allows for arrests in the case of actions related to criminal matters, which provides greater tolerance for some political expressions that are carried out as part of social protest, such as graffiti and intervention of monuments. This last instrument, which is of more recent issue, significantly reduces the normative assumptions that the authority has to carry out any type of detention. Therefore, it would be worthwhile to homologate this situation in both regulations so that this practice may continue.

In addition, it has been observed that although damages are committed in private and public property, people are not arrested even if there is flagrancy, but in practice it has been decided to file the corresponding complaints and the law enforcement authorities are the ones who determine what is legally appropriate.

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

The *Police Action Protocol*, paragraphs 6.1 and 6.2, establishes that the SSC will opt for the use of security measures such as the placement of fences and metal bars, barricades, etc., which has been observed to be favorable to prevent tension and potential violence, as it protects the rights of third parties outside the demonstrations, mainly private and public property, without the need for police personnel to be in front of them for their protection, contributing to the protection of the personal integrity of both demonstrators and police officers.

As mentioned above, the SSC previously designated a liaison in the territory with decision-making capacity, with whom the specialized human rights organizations and agencies that accompanied them in the territory could dialogue and jointly undertake coordinated actions.

- What have been the gaps and how should they be improved?

Establish in the regulatory bodies the obligation of meetings to share logistical information and to have liaisons in the territory, with decision-making capacity.

- What is the role of civil society, protest organizers and communities in helping to de-escalate tension/violence in the context of protests?

It has been observed that in Mexico City, few civil society organizations, protest organizers and society in general, intervene to reduce tension and violence, although these few have a significant intervention -among them, Brigada Humanitaria de Paz Marabunta, Comité 68 and exceptionally Serapaz-; However, most of them usually monitor far from the conflict zones or, in case it happens near them, they prefer not to have communication with the demonstrators or individuals who, within their protest expressions, choose to carry out disruptive and confrontational actions against public and private actors, and much less when there is intervention by the authorities.

However, in situations of conflict, these organizations have intervened to dialogue with demonstrators who carry out actions of transgression and destruction of private and public property and confrontation with the police, asking them to cease such expressions, and in turn have managed to reach an agreement with the authorities so that the protest can be developed and thus make their political positioning.

For this reason, encouraging communication between the authorities and the public human rights organizations and agencies that usually intervene is essential in order to have more tools to reduce violence.

- How should law enforcement involve civil society and protest organizers before, during and after protests to prevent and de-escalate tensions arising in the context of protests?

As mentioned in numeral 1, through work meetings that allowed the sharing of relevant information on logistics and risk points in order to be able to react in a better way and the designation of liaisons with decision-making capacity in the territory.

It is worth mentioning that although some of the convening organizations continue to meet with the authorities, most of them are meeting with requests for logistical support, such as the loan of pavilions and sound systems, among others.

8) What other measures have you encountered/experienced that have been taken by law enforcement authorities to prevent and minimize harm to protesters, journalists and other actors involved in monitoring and/or reporting on protests, and bystanders in the context of protests; especially:

- in cases where the use of force can be justified as lawful; and

- To protect protesters from non-state actors?

This Commission has observed that, gradually and progressively, the direct action of some demonstrators, although they are in the minority, has been increasing, mainly those expressions that seek to transgress or destroy symbols of political power, such as breaking windows of public buildings, traffic lights and bus stops; as well as setting fire to objects in the public space itself; such expressions have also extended to private property both of franchises of transnational companies, banks and recently to local businesses, even the theft of merchandise has been observed.

Mainly when private property has been violated, it has caused passers-by, neighbors and merchants to react against the demonstrators who make such expressions and attempt to attack them.

In addition to the above, the social conflict is compounded by the fact that mainly in feminist protests or protests mainly made up of women, women have demanded that they not be covered by male journalists, but that women cameramen, photographers and reporters cover the protests. Given the lack of attention by the media to this request, it has been observed that some women protesters have physically assaulted the men of the media who are in the context of the social protest, where they have painted their cameras and have threatened to destroy them or even attempt against their personal integrity. This situation has been extended to all bystanders who try to take pictures of the protests.

In both situations, in most cases the police authorities have chosen not to intervene directly, in order not to generate greater confrontation with the demonstrators and have only placed

barriers or fences in some businesses, banks and private property that is usually damaged during the protests, in order to try to protect them; however, such support has been insufficient, due to lack of barriers and fences, to cover all the private property that is in the path of the demonstrations.

Likewise, through the Mechanism for the Integral Protection of Human Rights Defenders and Journalists, the State has sought to provide medical care and payment for damaged equipment to journalists by demonstrators and to provide them with support and accompaniment in the event that they wish to file a complaint.

9) What strategies, tools and techniques applied by law enforcement authorities have you observed/experienced that have been successful (and which of them have been harmful and should absolutely be avoided) in facilitating the exercise of the right to freedom of peaceful assembly and protecting the rights of groups particularly at risk in the context of protests, including:

i) children and youth;

j) women and girls;

k) LGBTI persons;

l) persons with disabilities;

m) indigenous peoples;

n) minority groups;

o) migrants;

p) refugees and asylum seekers.

The only differentiated practice that has been observed to protect the rights of one of the priority groups of attention -women- is that the attention to social protests, mostly made up of women, is mostly carried out by female police officers; however, so far it has not been observed that police personnel apply any differentiated strategies, tools or techniques in addition to this.

It has even been observed that when children, adolescents and people with disabilities participate in mass demonstrations, if they are near demonstrators whose political expressions are of transgression and destruction of private and public property and confrontation with police or individuals, police personnel resort to the same strategies they would use when these priority groups are not present, such as encirclement and/or encapsulation and the use of fire extinguisher powder to disperse, which has a greater and differentiated impact on these populations.

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

-What needs to be done to ensure that law enforcement oversight bodies are effective in responding to complaints about human rights violations by law enforcement in the context of protests?

-How can civil society help strengthen this process?

Various rules of the regulations governing the actions of SSC personnel covering social protests are not complied with, particularly those related to individual responsibilities that could be generated with specific police elements that do not adhere to the current regulatory framework, particularly Chapter IX, Police Responsibility and Accountability, of the *Police Action Protocol* and Chapter III, Transparency and Accountability, of the *Agreement for the Prevention of Violence*, since police personnel go without being identified, and sometimes even dressed in civilian clothes. In addition, during the demonstrations there is no presence of the General Directorate of Internal Affairs of the SSC to document the actions of police personnel and initiate the corresponding administrative proceedings in an informal manner and when they open investigations, usually no responsibility is determined due to lack of elements or identification of the personnel who committed the crime, since the basis of their investigation are the reports that the police personnel themselves make, without them collecting more evidence in an informal manner, for which their presence and documentation in the territory would be essential.

In addition to this, there is the constant institutional refusal, when police personnel are accused of non-compliance with current regulations, to deny the facts by the commanders and hierarchical superiors, without conducting any investigation of their personnel, which contributes to generating impunity.