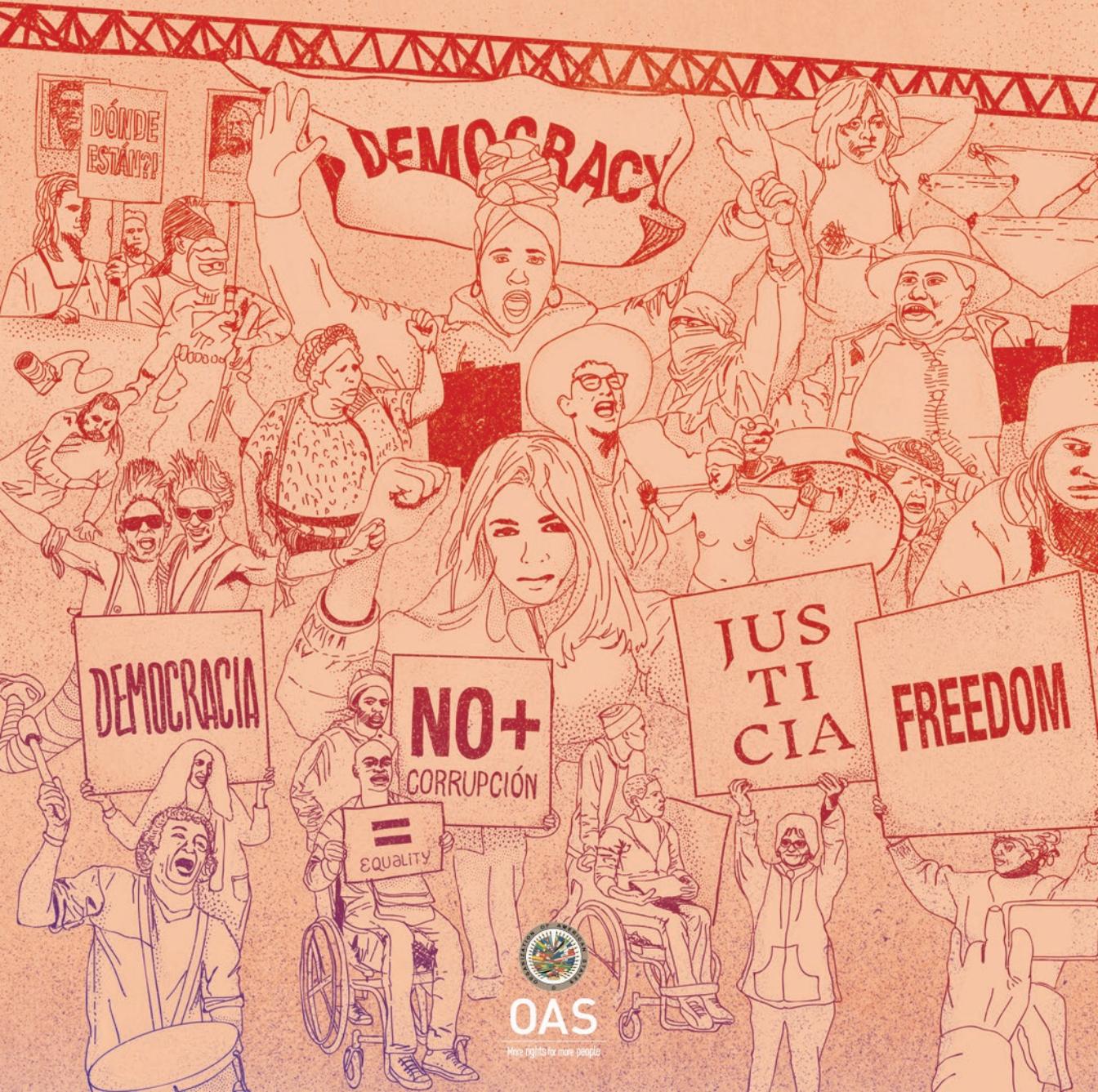


# Protest and Human Rights



OEA/SER.L/V/II  
CIDH/RELE/INF.22/19  
September 2019  
Original: Spanish

## Protest and Human Rights

Standards on the rights involved in social protest and  
the obligations to guide the response of the State

Office of the Special Rapporteur for Freedom of  
Expression of the Inter-American Commission  
on Human Rights

Edison Lanza  
Special Rapporteur for Freedom of Expression

2019



**OAS** | More rights  
for more people

***OAS CATALOGING-IN-PUBLICATION DATA***

Inter-American Commission on Human Rights. Office of the Special Rapporteur for Freedom of Expression.

Protesta y derechos humanos / Relatoría Especial para la Libertad de Expresión de la Comisión Interamericana de Derechos Humanos.

v. ; cm. (OAS. Documentos oficiales ; OEA/Ser.L/V/II)

ISBN 978-0-8270-6938-1

1. Protest movements--America. 2. Human rights--America. I. Lanza, Edison. II. Title. III. Series.

OEA/Ser.L/V/II CIDH/RELE/INF.22/19



This report was supported, in part, through a grant from the open society foundations.

# **INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

## **Members**

---

Margarette May Macaulay

Esmeralda Arosemena de Troitiño

Francisco José Eguiguren Praeli

Luis Ernesto Vargas Silva

Joel Hernández García

Antonia Urrejola

Flávia Piovesan

## **Executive Secretary**

---

Paulo Abrão

## **Assistant Executive Secretary for Monitoring, Promotion and Technical Cooperation**

---

Maria Claudia Pulido

## **Chief of Staff of the Executive Secretary of the IACHR**

---

Marisol Blanchard Vera



# TABLE OF CONTENTS

<b>CHAPTER I</b> GUIDING PRINCIPLES.....	3
<b>CHAPTER II</b> APPLICABLE LEGAL FRAMEWORK.....	9
1.    RIGHTS INVOLVED .....	11
2.    LEGITIMATE RESTRICTIONS TO THE RIGHTS INVOLVED IN DEMONSTRATIONS AND PROTESTS .....	14
3.    PRINCIPLE OF NONDISCRIMINATION .....	21
<b>CHAPTER III</b> OBLIGATION TO RESPECT RIGHTS .....	25
1.    THE RIGHT TO PARTICIPATE IN PROTEST WITHOUT PRIOR AUTHORIZATION .....	27
2.    THE RIGHT TO CHOOSE THE CONTENT AND MESSAGES OF THE PROTEST .....	29
3.    THE RIGHT TO CHOOSE THE TIME AND PLACE OF THE PROTEST .....	31
4.    THE RIGHT TO CHOOSE THE MODE OF PROTEST; SCOPE OF THE PROVISION ON “PEACEFUL UNARMED EXERCISE”.....	33
<b>CHAPTER IV</b> OBLIGATION TO PROTECT AND FACILITATE .....	37
1.    USE OF FORCE IN THE CONTEXT OF PROTESTS.....	41
2.    MAXIMUM RESTRICTION ON FIREARMS .....	44
a) <i>Acquisition, use, and control of less lethal weapons</i> .....	46
b) <i>Arrests</i> .....	48
c) <i>Evictions</i> .....	51
d) <i>Forced dispersal or break-up</i> .....	54
3.    POLICE OPERATIONS, PROTOCOLS, AND INSTITUTIONAL STRUCTURE OF THE SECURITY FORCES AND EXCLUSION OF THE ARMED FORCES .....	55
4.    DIALOGUE AND NEGOTIATION BODIES.....	61
5.    THE DUTY TO NOT CRIMINALIZE LEADERS AND PARTICIPANTS IN DEMONSTRATIONS AND PROTESTS .....	62
a) <i>The creation of broad, vague, or ambiguous criminal offenses in violation of the principle of legality</i> .....	64
b) <i>Criminal definitions that violate inter-American standards by punishing activities of social protest</i> .....	66
c) <i>The formalistic and broad application of the criminal law to criminalize social protest</i> .....	67
d) <i>Failure to observe fundamental guarantees</i> .....	69
e) <i>Prohibition of arbitrary arrests</i> .....	71
f) <i>Intelligence</i> .....	73
g) <i>Stigmatization and criminalization in the speech of political leaders</i> .....	74
<b>CHAPTER V</b> OBLIGATION TO GUARANTEE RIGHTS.....	77
1.    THE DUTY TO INVESTIGATE, PROSECUTE, AND PUNISH .....	80
a) <i>Judicial investigation and penalties</i> .....	81
b) <i>Administrative investigation and penalties</i> .....	87
2.    RESPONSE FROM THE AUTHORITIES .....	90
3.    MONITORING AND OBSERVATION OF PROTESTS.....	91
<b>CHAPTER VI</b> PROTESTS AND THE INTERNET .....	93
<b>CHAPTER VII</b> ACCESS TO INFORMATION.....	97
<b>CHAPTER VIII</b> STATES OF EMERGENCY .....	103
<b>CHAPTER IX</b> CONCLUSIONS AND RECOMMENDATIONS.....	109



# **FOREWORD**



## FOREWORD

Social protest is a core element for the existence and consolidation of democratic societies and is protected by a constellation of rights and freedoms, which the inter-American system guarantees both in the American Declaration of the Rights and Duties of Man and in the American Convention on Human Rights.

Indeed, the rights to freedom of expression, peaceful assembly, and association guarantee and protect various forms—individual and collective—of publicly expressing opinions, dissenting, demanding compliance with social, cultural, and environmental rights, and affirming the identity of groups that have historically been discriminated against. Protest also plays a central role in defending democracy and human rights. According to the instruments of the inter-American system, the joint exercise of these fundamental rights makes the free exercise of democracy possible.

The region, far from offering a picture of consensus regarding the protection of demonstrations and protests, has been—and continues to be—the scene of repression, dispersal, and limitation of the exercise of these rights in the public sphere, the product of a deep-rooted conception that considers citizen mobilization to be a form of disruption of the public order or, even worse, a threat to the stability of democratic institutions. Hence, a central objective of this report, prepared by the Inter-American Commission of Human Rights and its Office of the Special Rapporteur for Freedom of Expression, is to contribute to a better understanding of State obligations aimed at guaranteeing, protecting, and facilitating public protests and demonstrations, as well as the standards that should frame the progressive use of force—and as a last resort—in protest contexts.

This report also acknowledges that in different circumstances protests cause disruption and affect the normal course of other activities—but this fact does not make these forms of expression *per se* illegitimate. It is based on the fact that one of the functions of protest is to channel and amplify the demands, aspirations, and grievances of different segments of the population, including those that, due to their situation of exclusion or vulnerability, cannot readily access traditional media and institutional mediation.

The report stresses that demonstrators have the freedom to choose the mode, form, place, and message for peaceful protest, and States have the obligation to manage social conflict through dialogue. To this end, States must respect the limits on their ability to place legitimate restrictions on demonstrations and protests.

The report also provides an update on the exercise of these rights in relation to the growing importance of the Internet, the media, and the role of advertising, as well as the protection of the social control exercised by journalists and media workers during the organization, announcement, and holding of protests.

The IACHR and its Office of the Special Rapporteur for Freedom of Expression emphasize that this report is the result of the ongoing monitoring of the situation of these freedoms in the region and the opening of dialogue with States and civil society. For more than two years the IACHR and its Office of the Special Rapporteur have conducted academic visits and consultations with social and academic organizations, experts who have contributed

information and reflections to this report<sup>1</sup>; in this regard, they are grateful for the contributions received and hope that these standards will be useful to those responsible for establishing adequate legal frameworks or for judicial authorities who must adjudicate matters related to protest. In addition, we hope that it will become a reference for the security forces that have the obligation to protect and manage the staging of demonstrations and protests.

---

<sup>1</sup> The Inter-American Commission and its Special Rapporteurship for Freedom of Expression have paid special attention to the guarantee of the rights involved in social protests and have referred to the matter on various occasions. As background we can mention that in his 2005 Annual Report, the IACHR dedicated a chapter to “Public demonstrations as an exercise of freedom of expression and freedom of assembly”. The matter has also been the subject of various thematic audiences, has been part of annual reports, country reports and communications. As a direct precedent of this document, in March 2015, at its 154th session, the Commission held the first regional thematic hearing on human rights in the context of social protest, requested in light of regressions of varying severity in State responses to public demonstrations in various countries of the region by organizations from different countries: American Civil Liberties Union (ACLU), Article 19 Brasil, Article 19 México, Asociación Pro Derechos Humanos, Perú (APRODEH), Canadian Civil Liberties Association (CCLA), Cauce Ciudadano A. C., México, Centro de Derechos Humanos Fray Francisco de Vitoria, México, Centro de Derechos Humanos Miguel Agustín Pro Juárez, México, Centro de Estudios Legales y Sociales, Argentina, Centro de Justicia para la Paz y el Desarrollo, México, Centro Nacional de Comunicación Social (CENCOS), México, Colectivo de Abogados José Alvear Restrepo, Colombia, Comité de Familiares de Detenidos Desaparecidos- Honduras (COFADEH), Comité de Solidaridad con Presos Políticos, Colombia, Conectas Direitos Humanos, Brasil, Coordinadora Nacional de Derechos Humanos, Perú, Corporación Humanas, Chile, Espacio Público, Venezuela, Fundar Centro de Análisis e Investigación, México, Instituto de Defensores de Direitos Humanos, Brasil (DDH), Instituto de Estudios Legales y Sociales (IELSUR), Uruguay, Instituto Mexicano de Derechos Humanos y Democracia, México (IMDHD), Justiça Global, Brasil, Núcleo Especializado de Cidadania e Direitos Humanos de Defensoria Pública do Estado de São Paulo, Observatorio Ciudadano, Chile, Programa Venezolano de Educación – Acción en Derechos Humanos, Venezuela (PROVEA), Propuesta Cívica, México, Red de Apoyo para la Justicia y la Paz, Venezuela, Red Nacional de Organismos Civiles de Derechos Humanos “Todos los derechos para todas y todos”, México y Servicios y Asesoría para la Paz, A. C. (SERAPAZ), México. The human rights organizations asked the Commission to address the regional trends that were exposed; develop new standards in the field; discuss with States ways to promote the incorporation into their national laws and policies of the standards developed in the 2009 Citizen Security and Human Rights Report; and identify in a specific document a series of guiding principles on the promotion and protection of human rights in social protest contexts. In October 2015, a follow-up meeting was held between the organizations requesting the hearing and the Executive Secretariat of the IACHR. In its 2015 annual report, the IACHR dedicated a section of its chapter 4A to the use of force in social protest contexts, after conducting a public consultation to which numerous organizations and states in the region replied. In 2016, the IACHR instructed the Office of the Special Rapporteur for Freedom of Expression to produce a broader thematic report, which would bring together different aspects of the right to social protest, based on the relevant background of the Inter-American System and the international human rights system. Edison Lanza, Special Rapporteur for Freedom of Expression, Ona Flores, specialists from the Office of the Special Rapporteur, and Gustavo F. Palmieri, specialized consultant, participated in the preparation of the document. On February 23, 2017, with a first draft of the document, the Office held an experts’ meeting in Washington, DC. Participants included: Paulo Abrao, IACHR Executive Secretary, Heidy Rombouts from the Office of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, María Luisa Bascur, for the Mexico Office of the UN Human Rights High Commissioner, Daniel Holder from the Committee on the Administration of Justice (CAJ) in the UK, Catalina Botero, from Universidad de los Andes-Colombia and former IACHR Special Rapporteur for Freedom of Expression, Michael Hamilton from University of East Anglia/OSCE –Great Britain. In addition, the following organizations were represented: Centro de Estudios Legales y Sociales/CELS Argentina; Article XIX, (Offices in Brasil and the UK), the Canadian Civil Liberties Association de Canadá, Colectivo de Abogados José Alvear Restrepo-Colombia; American Civil Liberties Union/ACLU de EEUU; Centro PRODH-México; Universidad Católica Andrés Bello Venezuela; Centro para la Justicia y el Derecho Internacional/CEJIL; Due Process Law Foundation/DPLF USA; International Institute on Race, Equality and Human Rights and The International Center for Not Profit Law/ICNL, EEUU; Nicolás Hernández, Daniel Simons and Sandra Coliver, Mariana Mas, Roxane Cassehgarri from Open Society Justice Initiative.

**CHAPTER I**

**UIDIN PRINCIPLES**



# I. GUIDING PRINCIPLES

## The Right to Protest: Definitions and modes

1. Protest<sup>2</sup> is a form of individual or collective action aimed at expressing ideas, views, or values of dissent, opposition, denunciation, or vindication. Examples include the expression of political, social, or cultural opinions, views, or perspectives; the vocalization of support or criticism regarding a group, party, or the government itself; the reaction to a policy or the denunciation of a public problem; the affirmation of identity or raising awareness about a group's situation of discrimination and social exclusion.
2. The right to freedom of expression is strongly interconnected with freedom of assembly and the right to protest. Assemblies, defined as any intentional and temporary congregation of a group of people in a private or public space for a specific purpose,<sup>3</sup> “play a vibrant role in mobilizing the population and in formulating grievances and aspirations, facilitating the celebration of events and, importantly, in influencing States’ public policy.”<sup>4</sup> At the same time, the expression of individual and collective opinions is one of the objectives of any protest.
3. The right to protest is also strongly associated with human rights activities, including demands for the recognition, protection, or exercise of a right. In many cases, and in different countries in the region, protests are used to react to specific acts of violence, evictions, labor issues, or other events that have affected rights. Protests have been a means to achieve both the raising of the threshold to guarantee fundamental rights at the national level and the inclusion of a large number of rights in the progressive development of international human rights law.<sup>5</sup>
4. Protest is also closely linked to the promotion and defense of democracy. In particular, the Inter-American Court has recognized that in situations involving a breakdown of the democratic institutional order, protest should be understood to “[correspond] not only to the exercise of a right, but also to compliance with the obligation to defend democracy.”<sup>6</sup>
5. In democratic societies, individuals and the general public organize and express their demands in different ways and through strategies that vary from condemnation to direct pressure, and in more institutional and structured forms, through formally

---

<sup>2</sup> Notwithstanding the substantive discussions on the terms used in this section, the concepts of “social protest” and “public demonstrations” will be used interchangeably for the purposes of this report.

<sup>3</sup> A/HRC/20/27, para. 51

<sup>4</sup> A/HRC/20/27, para. 51

<sup>5</sup> Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 23 May 2011, A/HRC/17/28, para. 31. It has also been stated that assemblies “play a critical role in protecting and promoting a broad range of human rights.” Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 6.

<sup>6</sup> I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, paras. 148 *et seq.*

- established organizations—although this also encompasses non-institutional strategies, and spontaneous and horizontally organized demonstrations and protests.
6. In this regard, protests may be led or supported by different types of actors or by a combination of actors. Organized civil society, or NGOs; neighborhood associations, religious bodies, schools, research institutions; trade unions and professional associations; political parties and social movements make these processes of grievance and expression feasible, within the framework of their strategies for the promotion of their ideas and interests or for the defense or promotion of rights.
  7. However, spontaneous protests are also a legitimate form of expression, denunciation, protest, or support for various events. They may involve a single person, small groups of individuals, or multitudinous groups in which thousands of people may be coordinated without any specific association with more structured organizations such as those mentioned above.
  8. The Commission notes that although protests and demonstrations in general are associated with rallies or marches in public spaces, they can take different forms and modes—as recognized by the various international human rights protection systems. In its report on the Situation of Human Rights Defenders in the Americas, the IACHR considered traditional forms of protest, but also made special mention of roadblocks, *cacerolazos* [drumming pots and pans], and vigils, as well as parades, conferences, and sporting, cultural, artistic, and other events.<sup>7</sup>
  9. In recent years, the United Nations Rapporteurs also included demonstrations, strikes, sit-ins, and peaceful occupations in their reports as part of the exercise of the rights to peaceful assembly and association. National and international high courts have held that the right to peaceful and unarmed assembly should not be interpreted narrowly, since it constitutes a fundamental element of democracy.<sup>8</sup>
  10. In short, the Commission understands that some of these forms of protest present complexities for purposes of harmonizing the rights at stake, and that they draw from a diverse repertoire that changes under different conditions and contexts, both in urban and rural settings, as well as when carried out by the most vulnerable groups. In any case, however, it is essential for State responses to the various modes of protest to be guided by dialogue and guarantees for the exercise of all other associated rights.
  11. For example, many protests are aimed at expressing opinions rejecting public policies or the officials responsible for them, demanding new measures from the different branches of the State or levels of government, supporting or amplifying public events, or commemorating historical events related to the identity of a people or group, reinforcing the identity of social groups as actors on the public stage and claiming their rights or the conditions of access to them, demanding justice, or protesting against decisions of the Judiciary that they consider unjust, etc.

---

<sup>7</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, 2006.

<sup>8</sup> UN, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A-HRC-20-27, para. 12.

12. The IACHR also recognizes in this report that, whatever the form of protest, the inter-American instruments establish that the right of assembly must be exercised peacefully and without arms. In the same vein, the Commission recognizes that States have a duty to take the necessary measures to prevent acts of violence and to guarantee public safety and order. However, when using force in these contexts, States must use measures proportional to the accomplishment of these objectives and not arbitrarily hinder the exercise of the rights at stake in protests.
13. Moreover, forms of protest must also be understood in relation to the subject and objective of the action, the underlying theme it addresses, and the context in which it takes place. Some modes seek to create a certain disruption of daily life or a response to practices and norms as a way to raise awareness of proposals or issues or amplify voices that would otherwise be unlikely to be on the agenda or part of public deliberation. Protests directed at private actors, whether an individual, an institution, or a company, may also express grievances or opinions on matters of public interest. This is the case, for example, in many of the public demonstrations condemning the environmental harm or pollution that may result from the activity of large extractive companies, or from the operation of businesses that have impacts on territories.
14. The IACHR recognizes that protest plays a fundamental role in the development and strengthening of democratic systems, is protected by inter-American human rights instruments, and is instrumental in enabling citizen participation in elections and referendums. They can also contribute to the full enjoyment of civil, political, economic, social, and cultural rights.<sup>9</sup>
15. Protest as a form of participation in public affairs is also relevant because of the structural inequalities that still characterize our region. As the IACHR's Office of the Special Rapporteur for Freedom of Expression has already pointed out, the most impoverished sectors of our continent face discriminatory policies and actions and have just begun to have access to information on measures that affect their daily lives. The traditional channels of participation to which they should have access in order to make their demands public are often curtailed.<sup>10</sup>
16. Although groups and sectors with greater representation and access to formal channels of complaint and political participation also have broad access to the exercise of protest, the protection and guarantee of this right deserve special attention when it is expressed by underrepresented or marginalized sectors or groups that face institutional frameworks not conducive to their participation, or serious barriers to access to other forms of mass communication. Protest is

---

<sup>9</sup> Human Rights Council, The promotion and protection of human rights in the context of peaceful protests, 24 March 2014, A/HRC/25/L.20; Human Rights Council, The promotion and protection of human rights in the context of peaceful protests, 11 April 2014, A/HRC/RES/25/38. The Special Rapporteur on the rights to freedom of peaceful assembly and association and the Special Rapporteur on extrajudicial, summary or arbitrary executions have similarly stated with regard to the proper management of play a fundamental role in public participation, holding governments accountable and expressing the will of the people as part of the democratic processes." Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 5.

<sup>10</sup> IACHR, Annual Report 2005, Volume III, Report of the Office of the Special Rapporteur for Freedom of Expression, February 27, 2006, OEA/Ser.L/V/II.124 Doc. 7, Chapter V, "Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly," para. 1.

particularly relevant “in amplifying the voices of people who are marginalized or who present an alternative narrative to established political and economic interests.”<sup>11</sup>

---

<sup>11</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 6.

**CHAPTER II**  
**APPLICABLE LEGAL**  
**FRAMEWORK**



## II. APPLICABLE LEGAL FRAMEWORK

### 1. Rights involved

17. In recent years, both in the inter-American human rights system and in the universal and other regional systems, it has been held that States have obligations to respect, protect, and guarantee human rights in the context of protest. This Commission observes that the international system<sup>12</sup> and the regional systems have pointed out, on different occasions, the relationship of interdependence and indivisibility of the rights exercised through public demonstrations and social protest actions. In particular, the inter-American system has acknowledged the relationship between political rights, freedom of expression, freedom of assembly, and freedom of association, and that these rights, taken together, make the democratic process possible.<sup>13</sup>
18. *Right to freedom of expression.* This right is enshrined in Article IV of the American Declaration of the Rights and Duties of Man, and in Article 13 of the American Convention on Human Rights. This Commission has on numerous occasions considered “public demonstrations as an exercise of freedom of expression.”<sup>14</sup> This is because the expression of opinions, the dissemination of information, and the articulation of demands are central objectives of protests. The IACHR and its Office of the Special Rapporteur for Freedom of Expression have reiterated that, “Freedom of expression constitutes the primary and basic element of the public order of a democratic society, which is not conceivable without free debate and the possibility that dissenting voices be fully heard.”<sup>15</sup> In this regard, the right to protest is protected by the right to freedom of expression.<sup>16</sup>
19. *Freedom of assembly.* Social protest is also protected by the freedom of assembly<sup>17</sup> enshrined in Article XXI of the American Declaration of the Rights and Duties of Man,

<sup>12</sup> Human Rights Council, Res 19/35, of 23 March 2012; 22/10, of 21 March 2013; 25/38, of 28 March 2014; 31/37, of 24 March 2016; 38/11 of 16 July 2018.

<sup>13</sup> I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015, para. 160.

<sup>14</sup> IACHR, Annual Report 2005, Volume III, Report of the Office of the Special Rapporteur for Freedom of Expression, February 27, 2006, OEA/Ser.L/V/II.124 Doc. 7, Chapter V, “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly.”

<sup>15</sup> IACHR, Annual Report 2005, Volume III, Report of the Office of the Special Rapporteur for Freedom of Expression, February 27, 2006, OEA/Ser.L/V/II.124 Doc. 7, Chapter V, “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly,” para. 6, citing the Court’s opinion in *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC 5/85, Series A, No. 5, of November 13, 1985, para. 69.

<sup>16</sup> *Idem.* IACHR 2005, para. 6, citing ECtHR, *Vogt v. Germany*, Judgment of 26 September 1995, Series A, No. 323, para. 64; ECtHR, *Rekvenyi v. Hungary*, Judgment of 20 May 1999, 1999-III Reports of Judgments and Decisions, para. 58; ECtHR, *Young, James, and Webster v. United Kingdom*, Judgment of 13 August 1981, Series A, No. 44, para. 57; ECtHR, *Refah Partisi (The Welfare Party) and others, v. Turkey* Judgment of 31 July 2001, para. 44, available at <http://www.echr.coe.int>; ECtHR, *United Communist Party of Turkey and Others v. Turkey*, Judgment of 30 January 1998, Report 1998-I, para. 42. See also: Supreme Court of Zambia, *Christine Mulundika and 7 Others v. The People*, Judgment of February 7, 1996, 2 LCR 175 (where the Court held that the right to organize and participate in a public meeting is inherent in the right to express and receive ideas and information without interference as well as to communicate ideas and information without interference).

<sup>17</sup> In that report, the IACHR stated that, “the right of assembly (...) is essential to the enjoyment of various rights such as freedom of expression, the right of association, and the right to defend human rights. Political and social

and Article 15 of the American Convention on Human Rights. Freedom of assembly protects the peaceful, intentional, and temporary congregation of people in a given space for the achievement of a common goal, including protest. As such, it is indispensable for the collective expression of people's opinions and views.<sup>18</sup> The exercise of freedom of assembly is vitally important for the consolidation of democratic societies and is therefore of compelling social interest.<sup>19</sup>

20. *Right to freedom of association.* Protest is often an important means of action and the pursuit of legitimate objectives by organizations and groups, and as such can also be protected by the right to freedom of association<sup>20</sup> provided for in Article XXII of the American Declaration of the Rights and Duties of Man and in Article 16 of the American Convention on Human Rights. This protection, moreover, has specific dimensions, such as trade union rights and the right to strike.<sup>21</sup> The Human Rights Council has recognized the link between freedom of association and protest, stating that "Other rights that may be applicable in case of peaceful protests include, for instance, the right to freedom of association."<sup>22</sup> The Inter-American Court of Human Rights (hereinafter, "Inter-American Court") has held that freedom of association "establishes the right of assembly and is characterized by authorizing individuals to create or take part in entities or organizations in order to act collectively to achieve very diverse purposes, provided they are legitimate."<sup>23</sup> This entails "the right and the freedom to associate in order to seek together a lawful purpose, without pressure or interference that can alter or [distort] this purpose."<sup>24</sup>
21. This Commission underscores that the lawful and legitimate aims of freedom of association include public demonstrations and social protests. The protection granted to the freedom of association extends throughout the life of the association and

---

participation through the exercise of freedom of assembly is critical to the consolidation of democratic life in societies and thus contains a keen social interest." In: IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, December 31, 2011, OEA/Ser.L/V/II. Doc. 66, paras. 128-129.

<sup>18</sup> See communication No. 1948/2010, *Turchenyak et al. v. Belarus*, views adopted on 24 July 2013.

<sup>19</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, December 31, 2011, OEA/Ser.L/V/II. Doc. 66, paras. 128-129.

<sup>20</sup> In relation to the duty of the States to ensure the right of association, the Inter-American Court has said that freedom of association protects "the right to join with others in lawful common pursuits, without pressure or interference that may alter or impair the nature of such purpose" (I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 143).

<sup>21</sup> Article XXII of the American Declaration of the Rights and Duties of Man; Article 8 of the Additional Protocol to the American Convention in the Area of Economic, Social, and Cultural Rights – "Protocol of San Salvador"; Article 23 of the Universal Declaration of Human Rights; Article 22 of the International Covenant on Civil and Political Rights; Article 8 of the International Covenant on Economic, Social and Cultural Rights. See: General Assembly, Report of the Special Representative of the Secretary-General on human rights defenders, 13 August 2007, A/62/225, para. 12.

<sup>22</sup> Human Rights Council, Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, Report of the United Nations High Commissioner for Human Rights, 21 January 2013, A/HRC/22/28, para. 4.

<sup>23</sup> I/A Court H.R., *Case of Escher et al. v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 6, 2009, para. 169.

<sup>24</sup> *Cfr. Case of Baena Ricardo, et al., supra* note 46, para. 156; *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 144; *Case of Kawas Fernández, supra* nota 35, para. 143; I/A Court H.R., *Case of Escher et al. v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 6, 2009, para. 170.

includes enabling the exercise of the purposes for which it was established.<sup>25</sup> Such protection may include associations that are not supported by a formal institutional or legal structure. It should be noted that the formal organizations that make up our pluralistic democratic societies arise, for the most part, through gradual processes of institutionalization.

22. *Right to organize and right to strike:* The right to freedom of association has particular dimensions when it comes to specific groups and collectives or specific forms of protest. One example of this is trade unions and strikes, respectively. In this field, the right of association is especially protected by Article 8 of the Additional Protocol to the American Convention in the Area of Economic, Social, and Cultural Rights – “Protocol of San Salvador.” The right to freedom of trade union association consists of “freedom of association consists basically of the ability to constitute labor union organizations, and to set into motion their internal structure, activities and action program, without any intervention by the public authorities that could limit or impair the exercise of the respective right.” The right to strike is one of the expressions of this right, and has been considered one of the most common forms of exercising the right to protest. The specific protection afforded to indigenous peoples’ forms of association and organization under the United Nations Declaration on the Rights of Indigenous Peoples, and their forms of demonstration and protest when related to specially protected rights, such as their cultural identity and lands, should be interpreted in the same regard.<sup>26</sup>
23. *Right to political participation:* Protest in the context of the consolidation of democracies in the region is a fundamental tool of political participation and of the right to “participate in the conduct of public affairs,” both in terms of the Inter-American Democratic Charter<sup>27</sup> and under Article 23 of the American Convention. The Human Rights Council has also maintained that “Other rights that may be applicable in case of peaceful protests include (...) the right (...) to take part in the conduct of public affairs (Article 25).”<sup>28</sup> Protest as a form of participation in public affairs is especially relevant for groups of people historically discriminated against or marginalized.
24. *Economic, social, and cultural rights:* Protest is also an essential mechanism for guaranteeing economic, social, cultural, and environmental rights. The struggles for

<sup>25</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66 (December 31, 2011), para. 155; ECHR, *United Communist Party of Turkey and Others v. Turkey*, No. 19392/92, para. 33.

<sup>26</sup> United Nations General Assembly. Declaration on the Rights of Indigenous Peoples. (A/61/L.67 and Add.1). 107<sup>th</sup> plenary meeting, 13 September 2007.

<sup>27</sup> Article 2 of the Inter-American Democratic Charter states that “Representative democracy is strengthened and deepened by permanent, ethical, and responsible participation of the citizenry within a legal framework conforming to the respective constitutional order.” Article 6 states, “It is the right and responsibility of all citizens to participate in decisions relating to their own development. This is also a necessary condition for the full and effective exercise of democracy. Promoting and fostering diverse forms of participation strengthens democracy.”

<sup>28</sup> Human Rights Council, *Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests*, Report of the United Nations High Commissioner for Human Rights, 21 January 2013, A/HRC/22/28, para. 4. The Human Rights Council has further stated, “Acknowledging also that participation in peaceful protests can be an important form of exercising the rights to freedom of peaceful assembly, of expression, of association and of participation in the conduct of public affairs,” and “Recognizing that peaceful protests can make a positive contribution to the development, strengthening and effectiveness of democratic systems and to democratic processes, including elections and referendums.” Whereas clauses of Resolution 25/38 adopted by the Human Rights Council. The promotion and protection of human rights in the context of peaceful protests. A/HRC/RES/25/38. 11 April 2014.

the right to land, the right to a healthy environment, demonstrations against economic reforms and labor flexibilization, among many other things, have led thousands of human rights advocates, as well as student, social, and rural leaders to organize in order to fight for the enjoyment of their rights.<sup>29</sup> The most impoverished sectors of our hemisphere face discriminatory policies and actions, their access to information on the planning and execution of measures that affect their daily lives is in its infancy, and in general the traditional channels of participation to publicly voice their complaints are often limited. Against this backdrop, in many countries of the hemisphere, social protest and mobilization have become tools for petitioning public authorities as well as channels for the public condemnation of abuses or violations of human rights.<sup>30</sup>

25. *Other rights:* A protest may encompass other specific rights linked to the groups, actors, or interests involved, such as gender equality in women’s movements, or rights protecting migrants, children and adolescents, or indigenous peoples. Protest has also been—and remains—a fundamental tool in the region for different population groups to express their identity and challenge intolerance and discrimination, such as LGBTIQ people and populations of African descent.
26. An analysis of the rights involved in demonstrations and protests must also take into account the fact that improper responses by the State may affect not only the abovementioned rights but also other fundamental rights, such as the rights to life, physical integrity, personal safety, and the right to liberty. This occurs when the State’s response leads to the deaths and injuries of demonstrators, mainly due to acts of repression by government agents or a lack of State protection against assaults by other demonstrators or third parties. In our region, participants in protests have often been victims of extrajudicial executions, forced disappearances, torture, ill-treatment, and illegal deprivations of liberty. In some cases it is not only the State, but also private actors acting with the acquiescence of public officials.

## **2. Legitimate restrictions to the rights involved in demonstrations and protests**

27. The Inter-American Commission has documented on several occasions that States in the region have perceived and implemented disproportionate responses to protests, as if they were a threat to the stability of the government or to national security. In this regard, the failure to comply with the obligations to respect and guarantee the rights involved in protest “has triggered widespread violence, which in turn has led to serious violations of this right and violations of the rights to life, physical integrity, and personal liberty and security of those participating in the social protest demonstrations.”<sup>31</sup>

---

<sup>29</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, March 7, 2006, para. 215.

<sup>30</sup> IACHR, Chapter IV, Annual Report 2002, Vol. III “Report of the Office of the Special Rapporteur for Freedom of Expression,” OEA/Ser. L/V/II. 117, Doc. 5 rev. 1, para. 29.

<sup>31</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, December 31, 2011, OEA/Ser.L/V/II. Doc. 66, paras. 130-131; IACHR, Report on Citizen Security and Human Rights, December 31, 2009, OEA/Ser.L/V/II. Doc. 57, para. 192.

28. With regard to this situation, the Commission has pointed out that States are obliged to guarantee and facilitate the exercise of the human rights at stake during demonstrations and protests, and to implement measures and mechanisms to ensure that those rights can be exercised in practice, rather than hindered. The Inter-American Court has also ruled that citizen security cannot be based on a use of force paradigm aimed at treating the civilian population as the enemy, but must consist of the protection and control of civilians participating in demonstrations.<sup>32</sup>
29. The Inter-American Court has held that the obligation to respect the rights and freedoms recognized in the American Convention, established in Article 1.1 thereof, entails “the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.”<sup>33</sup>
30. At the same time, Article 2 of the Convention establishes the duty of the States “to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.”<sup>34</sup> This duty entails “the adoption of measures of two kinds: on the one hand, elimination of any norms and practices that in any way violate the guarantees provided under the Convention; on the other hand, the promulgation of norms and the development of practices conducive to effective observance of those guarantees.”<sup>35</sup>
31. With respect to the scope of these rights, while freedom of peaceful assembly, expression, association, and participation are not absolute, restrictions on them should be subject to a number of requirements.<sup>36</sup> For restrictions on these rights to be legitimate they must be expressly established by law and be necessary to ensure respect for the rights of others or the protection of national security, public order, or public health or morals,<sup>37</sup> under the terms of Articles 13, 15, and 16 of the American Convention, and Articles IV, XXI, and XXII of the Declaration.<sup>38</sup>

<sup>32</sup> I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 78; *Case of Women Victims of Sexual Torture in Atenco v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 371, para. 167.

<sup>33</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 166; I/A Court H.R., *Case of Godínez Cruz v. Honduras*, Judgment of January 20, 1989, Series C No. 5, para. 175.

<sup>34</sup> American Convention on Human Rights, art. 2.

<sup>35</sup> I/A Court H.R., *Case of Castillo Petruzzi et al. v. Peru*. Judgment of May 30, 1999. Series C No. 52, para. 207; I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Competence. Judgment of November 28, 2003. Series C No. 104, para. 108; I/A Court H.R., *Case of Cantoral Benavides v. Peru*. Merits. Judgment of August 18, 2000. Series C No. 69, para. 178; I/A Court H.R., *Case of La Cantuta v. Peru*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 172.

<sup>36</sup> IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2002, Chapter IV, “Freedom of Expression and Poverty,” para. 31; IACHR, Annual Report of the Inter-American Commission on Human Rights 2005, Volume III, Report of the Office of the Special Rapporteur for Freedom of Expression, February 27, 2006, OEA/Ser.L/V/II.124 Doc. 7, Chapter V, “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly,” para. 2; Human Rights Council, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, 21 May 2012, A/HRC/20/27, para. 15; Human Rights Council, Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, Report of the United Nations High Commissioner for Human Rights, A/HRC/22/28, 21 January 2013, para. 5.

<sup>37</sup> IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2002, Chapter IV, “Freedom of Expression and Poverty,” para. 31; IACHR, Annual Report of the Inter-American Commission on Human Rights 2005, Volume III, Report of the Office of the Special Rapporteur for Freedom of Expression, February 27, 2006, OEA/Ser.L/V/II.124 Doc. 7, Chapter V, “Public Demonstrations as an Exercise of Freedom of Expression and Freedom

32. Before examining these requirements with respect to the rights at stake, the Commission wishes to stress that the right to protest must be considered the general rule, and limitations to this right must be the exception.<sup>39</sup> The protection of the rights and freedoms of others should not be used as a mere excuse to restrict peaceful protests.<sup>40</sup> In turn, States must bear in mind that these rights are exercised interdependently during a demonstration or protest; in the words of the Inter-American Court: “The ability to protest publicly and peacefully is one of the most accessible ways to exercise the right to freedom of expression, and can contribute to the protection of other rights.”<sup>41</sup>
33. A comprehensive analysis of the standards relating to restrictions on the main rights involved—freedom of expression, freedom of assembly, and freedom of association—makes it possible to identify common elements in the application of the three-part “test” to assess restrictions on demonstrations and protests. First, any limitation must be provided for in law. Second, it should pursue the legitimate objectives expressly set out in the American Convention. Third, the restrictions must be necessary in a democratic society—a criterion from which proportionality standards are also derived. The authority imposing limitations on a public demonstration must demonstrate that these conditions have been met and all of them must be respected simultaneously in order for the limitations imposed on social protest to be legitimate under the American Convention.<sup>42 43</sup>

---

of Assembly,” para. 2; IACHR, Report on the Situation of Human Rights Defenders in the Americas, March 7, 2006, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, para. 55; Human Rights Council, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, 21 May 2012, A/HRC/20/27, para. 15; Human Rights Council, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, 24 April 2013, A/HRC/23/39, para. 47; Human Rights Council, Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, Report of the United Nations High Commissioner for Human Rights, A/HRC/22/28, 21 January 2013, para. 5.

<sup>38</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, December 31, 2011, OEA/Ser.L/V/II. Doc. 66, para. 107; IACHR, Annual Report 2007, Chapter IV, paras. 260-261.

<sup>39</sup> Human Rights Council, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, 24 April 2013, A/HRC/23/39, para. 47.

<sup>40</sup> Human Rights Council, Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, Report of the United Nations High Commissioner for Human Rights, A/HRC/22/28, 21 January 2013, para. 12.

<sup>41</sup> I/A Court H.R., *Case of López Lone et al. v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 302, para. 167.

<sup>42</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 68.

<sup>43</sup> The UN Human Rights Committee has expressed the same view. Under Article 19, para. 3 of the Covenant, certain restrictions on freedom of expression are permitted, but only to the extent that they are established by law and are necessary to: a) ensure respect for the rights or reputations of others; or b) the protection of national security, public order, public health, or morals. The criteria for restrictions on the rights guaranteed in Articles 21 and 22 of the Covenant follow a similar logic. The mere existence of objective justifications for limiting these rights is not sufficient. The State party must further demonstrate that the prohibition is necessary to prevent a real, and not merely hypothetical, threat to national security or the democratic order, that less intrusive measures would not be sufficient to achieve the same purpose, and that the restriction imposed is proportionate to the interest to be protected. (See: General Comment No. 34 of the Human Rights Committee, on Freedoms of expression and opinion, para. 34; Communication No. 1119/2002, *Jeong-Eun Lee v. Republic of Korea*, views adopted on 20 July 2005, para. 7.2; *Belyatsky and Others v. Belarus*, Communication No. 1296/2004, decision of 7 August 2007, para. 7.3).

34. *The restrictions must be provided for in the law* in advance, expressly, exhaustively, precisely and clearly,<sup>44</sup> both procedurally and substantively.<sup>45,46</sup> Only procedural law, the Inter-American Court has held, “is capable of restricting the enjoyment or exercise of the rights recognized by the Convention.” “The word ‘laws’ in Article 30 of the Convention means a general legal norm tied to the general welfare, passed by democratically elected legislative bodies established by the Constitution, and formulated according to the procedures set forth by the constitutions of the States Parties for that purpose.”<sup>47</sup> Laws that restrict social protests should be drafted in the clearest and most precise terms possible, since the legal framework that regulates freedom of expression must provide legal certainty to citizens.<sup>48</sup>
35. The Office of the Special Rapporteur for Freedom of Expression has stated that “vague or ambiguous legal provisions that grant, through this channel, very broad discretionary powers to the authorities, are incompatible with the American Convention, because they can support potential arbitrary acts that are tantamount to prior censorship or that establish disproportionate liabilities for the expression of protected speech.”<sup>49</sup> Such provisions discourage the dissemination of information and opinions out of fear of punishment, and can lead to broad judicial interpretations that unduly restrict freedom of expression. As such, the State must specify the conduct that may be subject to subsequent liability in order to prevent adverse impacts upon the free expression of protest and disagreement with the actions of the authorities.<sup>50</sup>
36. Limitations on social protests must seek to achieve the legitimate objectives authorized by American Convention. Article 15 of the American Convention, which addresses the right of peaceful assembly, establishes that this right may be subject to restrictions imposed “in the interest of national security, public safety or public

<sup>44</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 69; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paras. 39-40; I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135, para. 79; I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para. 120; I/A Court H.R., *Case of Tristán Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, para. 117; IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights. Title IV. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995; IACHR. Report No. 11/96. Case No. 11.230. Francisco Martorell. Chile. May 3, 1996, para. 55; IACHR. Arguments before the Inter-American Court in the *Case of Ricardo Canese v. Paraguay*. Reprinted in: I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 72. a).

<sup>45</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 69;

<sup>46</sup> ACHR, Arts. 13, 15, 16.2; See also IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 69.

<sup>47</sup> I/A Court H.R., Advisory Opinion OC-6/86, May 9, 1986, Series A No. 6.

<sup>48</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 69. With regard to the legal requirement concerning restrictions on the right of assembly and association, see: IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15 December 31, 2015, para. 120; Annual Report 2007, Venezuela, OEA.Ser.L/II.130, December 29, 2007, para. 260; Cf. I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Merits, Reparations and Costs. Judgment of February 2, 2001. Series C No. 72, paras. 168.

<sup>49</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 70

<sup>50</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 71.

order, or to protect public health or morals or the rights or freedom of others.” Article 16.2 provides the same substantive conditions for a legitimate restriction on freedom of association. Article 13.2 states that restrictions placed on the exercise of freedom of expression are legitimate only if they seek to ensure (i) respect for the rights or reputations of others; or (ii) the protection of national security, public order, or public health or morals. The restrictions imposed must pursue one of the compelling objectives specified in the American Convention, and must be necessary to achieve compelling public interests that, because of their importance in specific cases, clearly prevail over the social need for the full enjoyment of this right.<sup>51</sup> The IACHR has held that the States are not free to interpret in any way the content of these objectives for purposes of justifying a limitation to freedom of expression in specific cases.<sup>52</sup>

37. Exceptions such as “State security,” “public safety,” “public order,” and “protection of the rights of others” must be defined and interpreted in accordance with the inter-American legal framework. The Inter-American Court has defined “public order” as “the conditions that assure the normal and harmonious functioning of institutions based on a coherent system of values and principles.”<sup>53</sup> The notion of “public order” cannot be invoked to suppress a right guaranteed by the Convention, to change its nature or to deprive it of its real content.<sup>54</sup> If this concept is invoked as a basis for limiting human rights, it must be interpreted strictly in accordance with the just demands of a democratic society that takes into account the balance between the different interests at stake and the need to preserve the object and purpose of the American Convention.<sup>55</sup>
38. Limitations on social protest must be necessary in a democratic society for the achievement of the compelling aims they pursue, and strictly proportionate to those aims.<sup>56</sup> The requirement of necessity “in a democratic society” is expressly provided for both in Articles 15 and 16 on freedom of peaceful assembly and freedom of association, and in Articles 29 and 32 of the American Convention.<sup>57</sup> In the opinion of the Court, “It follows from the repeated reference to ‘democratic institutions,’ ‘representative democracy’ and ‘democratic society’ that the question whether a restriction on freedom of expression imposed by a state is ‘necessary to ensure’ one of the objectives listed in subparagraphs (a) or (b) [of art. 13.2 of the ACHR] must be judged by reference to the legitimate needs of democratic societies and institutions. [...] The just demands of democracy must consequently guide the interpretation of

<sup>51</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 74

<sup>52</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 75.

<sup>53</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 64.

<sup>54</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, paras. 80/82.

<sup>55</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 64.

<sup>56</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 67.

<sup>57</sup> Cf. IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights. Title IV. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995.

the [American Convention] and, in particular, the interpretation of those provisions that bear a critical relationship to the preservation and functioning of democratic institutions.”<sup>58</sup>

39. In addition, the adjective “necessary” does not mean “useful,” “reasonable,” or “timely.”<sup>59</sup> In order for the restriction to be legitimate, it must be clearly established that there is a certain and compelling social need to implement the restriction, meaning that such legitimate and compelling objective cannot reasonably be achieved by means less restrictive of the human rights involved.<sup>60</sup> The Inter-American Court has explained, in this regard, that necessity entails the existence of an overriding social need, and that demonstrating the usefulness, reasonableness, or timeliness of the restriction is not sufficient, while “the legality of restrictions [...] depend upon showing that the restrictions are required by a compelling governmental interest. That is, the restriction must be proportionate and closely tailored to the accomplishment of the legitimate governmental objective necessitating it.”<sup>61</sup>
40. The requirement of “necessity” also means that restrictions on rights must not go beyond what is strictly necessary, so as to ensure the full exercise and scope of these rights. This requirement suggests that the least burdensome means available should be selected to protect fundamental (protected) legal interests from the most serious attacks that harm or endanger them, otherwise it would lead to the abusive exercise of State power.<sup>62</sup> In other words, among several options to achieve the same objective, the one that least restricts the rights protected by the American Convention should be chosen.<sup>63</sup>
41. It is inherent to the functioning of a democratic society that the State must continuously weigh competing or conflicting legitimate rights and interests against each other.<sup>64</sup> And this weighing, under the requirement of necessity—understood as a compelling social need—means that at times the exercise of freedom of assembly can alter daily routine routines, especially in large urban centers, and even create

<sup>58</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paras. 42 & 44.

<sup>59</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 85; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 46; I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 122; IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights. Title IV. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995.

<sup>60</sup> European Court of Human Rights *Dudgeon Case*, Judgment of 22 October, 1981, Series A: v. 45, # 51; IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 85.

<sup>61</sup> I/A Court H.R., OC-5/85, para. 46; IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2002, Chapter IV, “Freedom of Expression and Poverty,” para. 32.

<sup>62</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, paras. 86; I/A Court H.R., *Case of Tristán Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, para. 119.

<sup>63</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights), Advisory Opinion OC-5/85 de November 13, 1985, Series A, No. 5, para. 46; IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 86.

<sup>64</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 195.

- nuisances or affect the exercise of other rights that should be protected and guaranteed by the State, such as freedom of movement. Nevertheless, as the Commission has acknowledged, “such disruptions are part of the mechanics of a pluralistic society in which diverse and sometimes conflicting interests coexist and find the forums and channels in which to express themselves.”<sup>65</sup>
42. Restrictions must also be strictly “proportionate” to the legitimate aim for which they are intended, and closely tailored to the achievement of that aim, interfering as little as possible with the lawful exercise of that right.<sup>66</sup> To determine the strict proportionality of the restrictive measure, it must be determined whether the sacrifice of freedom of expression it entails is exaggerated or excessive in relation to the advantages obtained through such measure.<sup>67</sup> In the opinion of the Inter-American Court, in order to establish the proportionality of a restriction when freedom of expression is limited for purposes of preserving other rights, the circumstances of the case must be examined, for instance: (i) the degree to which the competing right is affected (serious, intermediate, moderate); (ii) the importance of satisfying the competing right; and (iii) whether the satisfaction of the competing right justifies the restriction to freedom of expression.<sup>68</sup>
  43. The principle of proportionality should also take into consideration the subprinciple of narrow tailoring. That is, in order for protest to be limited by an instrument or means that suitably or appropriately meets the objective pursued, such measure must be effectively conducive to achieving the legitimate and compelling objectives sought. An application of this principle means that the States must avoid widespread and indiscriminate measures to restrict protest.<sup>69</sup>
  44. Finally, the fact that demonstrations and protests involve the right to freedom of expression, both in the way in which they take place and in the content they express, can often result in specially protected forms of speech, the robustness of which is conducive to the development and strengthening of democratic coexistence. In that regard, the imposition of subsequent liability is strictly enforceable (Article 13.2 of the Convention). The Inter-American Court has held that “the guarantees contained in the American Convention regarding freedom of expression were designed to be more

---

<sup>65</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 198.

<sup>66</sup> I/A Court H.R., *Case of Kimel v. Argentina*. Judgment of May 2, 2008 Series C No. 177, para. 83; I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, para. 85; I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para. 123; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 46; IACHR. Arguments before the Inter-American Court in the Case of Herrera Ulloa v. Costa Rica. Reprinted in: I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para. 101.1.B). Cf. IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 88.

<sup>67</sup> Cf. IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 88; I/A Court H.R., *Case of Kimel v. Argentina*. Judgment of May 2, 2008 Series C No. 177, para. 83.

<sup>68</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 89.

<sup>69</sup> IACHR, *Inter-American Legal Framework*, para. 87.

generous and to reduce to a bare minimum the restrictions impeding the free circulation of ideas.”<sup>70</sup>

45. In view of the foregoing, States should be particularly strict when imposing restrictions on public demonstrations. The widespread application of legal restrictions on the right to take part in peaceful protests is inherently disproportionate, as it does not allow for the consideration of the specific circumstances of each individual case.<sup>71</sup>

### 3. Principle of nondiscrimination

46. The general principle of nondiscrimination applies especially to demonstrations and protests. Indeed, States may not limit social protest on the basis of the prejudices and intolerance that governments or societies have towards an individual or group. We should not lose sight of the fact that under Articles 13 and 16 of the American Convention, “everyone” has the right to freedom of expression and association, and that restrictions to the right to protest “must not perpetuate prejudice or promote intolerance.”<sup>72</sup>
47. Nor may they impose restrictions with discriminatory effects based on the type of complaint, content, or demand that the participants in the demonstrations seek to assert. When States impose limits on social protest based on prohibited grounds of discrimination,<sup>73</sup> Article 24 of the American Convention is also violated.<sup>74</sup> On this point, Principle 2 of the Declaration of Principles on Freedom of Expression states that “All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.”<sup>75</sup>
48. Pursuant to Article 1 of the American Convention, a State’s differentiated treatment of participants in a social protest because of their membership in a particular group or because they have made critical claims against governments or dominant sectors of society may fall within the prohibition of discrimination in Article 1.1 of the ACHR.

<sup>70</sup> I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85, Series A, No. 5, of November 13, 1985, para. 50.

<sup>71</sup> OSCE/ODIHR - Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2<sup>nd</sup> ed., 2010. Guiding principle 2.4.

<sup>72</sup> Cfr. IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights. Title III. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995.

<sup>73</sup> Article 1.1. of the ACHR prohibits discrimination on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. The Court has established that the “other status” clause is merely illustrative and can be expanded according to the changing circumstances of society, as it considers the ACHR to be a living instrument. With this understanding, other prohibited grounds of discrimination such as sexual orientation have been established. On this point, see: *Case of Atala Riffo and daughters v. Chile*, 2013. On this prohibited ground of differentiation, the ECtHR held that the right to freedom of assembly and the prohibition of discrimination were violated in the case of *Alekseyev v. Russia* (Applications nos. 4916/07, 25924/08 and 14599/09) by Russia’s ban on LGBTI pride marches in Moscow.

<sup>74</sup> Cfr. IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 93; I/A Court H.R., *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141 para. 170.

<sup>75</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para.93

49. In the universal sphere, Article 21 of the International Covenant on Civil and Political Rights recognizes that all people have the right to freedom of peaceful assembly. All individuals, groups, unregistered associations, legal entities, and companies are free to organize and participate in public meetings.<sup>76</sup>
50. The United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association has recalled that this provision should be read in conjunction with Article 2 of the Covenant, which establishes that “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,”<sup>77</sup> and with Article 26, “which guarantees to all individuals equal and effective protection against discrimination on grounds identified in Article 2.”<sup>78</sup> In this regard, the Human Rights Council has recalled the obligation of States to respect and protect the rights of all persons who hold minority or dissenting opinions or beliefs, human rights defenders, trade unionists, and migrants.<sup>79</sup>
51. The United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association recognized that the most at-risk groups share the experience of discrimination, unequal treatment, and harassment,<sup>80</sup> as well as a lack of visibility and systematic exclusion from public debate.<sup>81</sup> In this regard, he highlighted the situation of women, children and young people, people with disabilities, foreigners (including asylum seekers, refugees, and migrant workers), members of ethnic and religious minorities, displaced persons, indigenous peoples, people who are discriminated against because of their sexual orientation or gender identity, and human rights defenders (including journalists, trade unionists, environmental activists, among others).<sup>82</sup> In his opinion, if the exercise of these groups' rights to freedom of assembly and association is restricted or excluded, their marginalization will be reinforced. In turn, marginalization often means that these individuals and groups are less able to exercise these rights. The ability to assemble and associate is,

---

<sup>76</sup> Human Rights Council, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, A/HRC/31/66, 4 February 2016, para. 15-16.

<sup>77</sup> ICCPR, art. 2.

<sup>78</sup> Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 21 May 2012, A/HRC/20/27, para. 13.

<sup>79</sup> Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 14 April 2014, A/HRC/26/29, paras. 16 & 22. See also: General Assembly, Report of the Special Representative of the Secretary-General on human rights defenders, 5 September 2006, A/61/312, para. 80.

<sup>80</sup> Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 14 April 2014, A/HRC/26/29, para. 10.

<sup>81</sup> Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 14 April 2014, A/HRC/26/29, para. 11.

<sup>82</sup> Human Rights Council, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, A/HRC/31/66, 4 February 2016, paras. 15-16; Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 14 April 2014, A/HRC/26/29, para. 10-11.

in fact, a key component for the empowerment of marginalized communities and individuals.<sup>83</sup>

52. The Commission has similarly stated that “Our hemisphere’s most impoverished sectors encounter discriminatory policies and actions, their access to information about the planning and execution of measures affecting their daily lives is nascent at best, and, cxxvi in general, the traditional channels of participation for publicizing their complaints are frequently blocked off to them. Faced with this, in many countries around the hemisphere, protests and social mobilizations have become a tool for petitioning the authorities and a channel for publicly denouncing human rights abuses and violations.”<sup>84</sup> Along the same lines, the IACHR has underscored that the lawful function of the security forces is to protect peaceful demonstrators and to ensure public security, acting with complete impartiality towards all (...) citizens, regardless of their political affiliation or the content of their demonstrations.”<sup>85</sup>
53. It should also be noted that the State is not the only perpetrator of violations related to peaceful assembly and association. The actions of non-state actors play a significant role in denying at-risk groups the space to exercise their rights, often through patriarchal attitudes, stereotypes, assumptions, and social constructs that keep these groups at the margins of society. In this regard, the obligations of States extend beyond respecting and guaranteeing rights to protecting right holders from violations and abuses by third parties.<sup>86</sup> The latter includes the duty to take positive measures to prevent a group of vulnerable demonstrators from being threatened or intimidated for exercising their rights.

---

<sup>83</sup> Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 14 April 2014, A/HRC/26/29, para. 15.

<sup>84</sup> IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2002, Chapter IV, “Freedom of Expression and Poverty,” para. 29; IACHR, Annual Report of the Inter-American Commission on Human Rights 2005, Volume III, Report of the Office of the Special Rapporteur for Freedom of Expression, February 27, 2006, OEA/Ser.L/V/II.124 Doc. 7, Chapter V, “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly,” para. 1.

<sup>85</sup> IACHR, *Report on the Situation of Human Rights in Venezuela*, para. 301.

<sup>86</sup> Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, 14 April 2014, A/HRC/26/29, para. 9.



**CHAPTER III**  
**OBLIGATION TO RESPECT RIGHTS**



### III. OBLIGATION TO RESPECT RIGHTS

54. The general obligation to respect rights has a special application for the purpose of refraining from preventing or hindering social protest. This Commission has previously maintained that the obligation to respect rights “is defined as the State’s duty not to interfere with, hinder or bar access to, the enjoyment of the resources that are the object of the right. The obligation to protect is the duty to prevent third parties from interfering with, hindering, or barring access to the resources that are the object of that right,”<sup>87</sup> the obligation to facilitate the exercise of a right includes obligations to “guarantee that the [person entitled to] the right is able to gain access to the enjoyment of the right, when he or she is unable to do it for him or herself, [and] the obligation to promote is the duty to create conditions so that the [right-holder] can have access to the enjoyment of the right.”<sup>88</sup>
55. The inter-American standards linked to the obligation to respect the right to participate in demonstrations and protests are further discussed below:

#### 1. The right to participate in protest without prior authorization

56. The IACHR has considered that the exercise of freedom of assembly through social protest should not be subject to government authorization or excessive requirements that make it difficult to carry out.<sup>89</sup> Legal requirements underlying the prohibition or limitation of a meeting or demonstration, such as the requirement of prior permission, are not compatible with freedom of assembly<sup>90</sup> or the exercise of freedom of expression in the inter-American system.
57. Prior notice, generally justified by States on the basis of the need to provide greater protection to a demonstration, cannot function as a covert authorization mechanism. The IACHR maintained in its report on the “Criminalization of the Work of Human Rights Defenders” that the requirement of prior notification must not be confused with the requirement of prior authorization granted in a discretionary manner,<sup>91</sup> which must not be established in the law or practice of the administrative authorities, even when it comes to public spaces.<sup>92</sup>

<sup>87</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2009, OEA/Ser.L/V/II. Doc. 57, para. 35.

<sup>88</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2009, OEA/Ser.L/V/II. Doc. 57, para. 35.

<sup>89</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15 December 31, 2015, para. 129.

<sup>90</sup> In that report, the IACHR found that laws requiring that a police permit be requested ten days in advance for any public event, assembly, election, conference, parade, congress, or sporting, cultural, artistic, or family event constituted a restriction incompatible with the right of assembly. Cfr. IACHR, Annual Report 1979-1980, OEA/Ser.L/V/II.50, October 2, 1980, pp. 119-121.

<sup>91</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15 December 31, 2015, para. 129; IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, para. 137.

<sup>92</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15 December 31, 2015, para. 129; IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, paras. 140 & 142.

58. The United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association has been emphatic in stating that he “believes that the exercise of fundamental freedoms should not be subject to previous authorization by the authorities (...), but at the most to a prior notification procedure, whose rationale is to allow State authorities to facilitate the exercise of the right to freedom of peaceful assembly and to take measures to protect public safety and order and the rights and freedoms of others.”<sup>93</sup> At the same time, the existence of mechanisms requiring demonstrators to notify the authorities in advance of the place, date, and time of the protest is only compatible with Article 13 of the ACHR when States require it in order to be able to take measures to protect demonstrators and thus facilitate social protest.<sup>94</sup>
59. Similarly, when notification procedures are very bureaucratic or intervene unnecessarily or disproportionately in determining the place, time, and manner of a protest, have a chilling effect on the exercise of this right. With regard to the requirement of prior notice to hold a protest, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, has said that “such a notification should be subject to a proportionality assessment, not unduly bureaucratic.”<sup>95</sup> In particular, prior notification should be requested only for large gatherings or events that could cause transit disruptions<sup>96</sup> in order to facilitate their conduct and protect demonstrators.
60. In addition, the organizers’ failure to give prior notification to the authorities should not lead to the break-up of the gathering or to the imposition of criminal or administrative penalties such as fines or deprivation of liberty against the organizers, leaders, or their associations.<sup>97</sup> Under this same interpretation, the European Court of Human Rights held that the dissolution of a peaceful demonstration for failure to comply with the prior notification requirement constitutes a disproportionate restriction on the freedom of peaceful assembly.<sup>98</sup>
61. Spontaneous demonstrations are also protected. Spontaneous gatherings should be exempt from the notification requirement and law enforcement should, to the extent possible, protect and facilitate spontaneous gatherings as they would any other such event.<sup>99</sup> This Commission recommends that States take account of the fact that there are events in which it is not possible to identify the organizers and that, although announced in advance, take place in a highly improvised and spontaneous manner.

---

<sup>93</sup> Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A/HRC/20/27, 21 May 2012, para. 28; Guidelines on Freedom of Peaceful Assembly, p. 63. Inter-American Commission on Human Rights, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, para. 57.

<sup>94</sup> IACHR, Annual Report 2015, Chapter IV.A, “The Use of Force,” para. 66.

<sup>95</sup> Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A/HRC/20/27, 21 May 2012, para. 28

<sup>96</sup> Guidelines on Freedom of Peaceful Assembly, p. 63.

<sup>97</sup> Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A/HRC/20/27, 21 May 2012, para. 29

<sup>98</sup> Cf. ECtHR, *Bukta and Others v. Hungary*, application No. 25691/04 (2007).

<sup>99</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 23.

The impossibility of identifying the organizers of a demonstration cannot justify the prohibition, dissolution, or repression of a demonstration. In addition, a spontaneous change in a march's route does not negate the obligation to facilitate protest and protect demonstrators and third parties present.

62. The notification procedure, moreover, cannot be regarded as a binding commitment by the organizers to the time, place, and manner of a protest. Nor is it reasonable for the notification procedure to serve as a basis for the imposition of penalties for acts committed by third parties against persons or organizations that have assumed the functions of dissemination, organization, or dialogue with the State with respect to a protest.

## 2. The right to choose the content and messages of the protest

63. The presumption of *ab initio* coverage of all types of speech has a direct application in social protests because it is a right derived from freedom of expression and one that aims to disseminate social demands in a democratic society. The Office of the Special Rapporteur for Freedom of Expression has stated that, in principle, all forms of speech are protected by the right to freedom of expression, regardless of its content and degree of acceptance by society and the State.<sup>100</sup> Freedom of expression within the framework of social protests must be guaranteed not only in terms of the dissemination of ideas and information received favorably or considered inoffensive or neutral, but also in terms of those that offend, shock, disturb, are unpleasant, or disturb the State or any sector of the population because of the type of complaint they involve.<sup>101</sup>
64. This general presumption of coverage of all expressive speech is explained by the State's primary duty of content-neutrality and, as a consequence, by the necessity to guarantee that, in principle, there are no persons, groups, ideas or means of expression excluded *a priori* from public debate.<sup>102</sup> The IACHR has noted in several reports that Article 13 of the American Convention covers the right of persons to express their sexual orientation and gender identity, and that this type of expression enjoys a special level of protection under inter-American instruments, as it relates to an essential element of personal identity and dignity.<sup>103</sup> Similarly, the IACHR has stressed the importance of freedom of expression to protect women's right to a life free from violence.
65. Within the framework of the Universal System, the Special Rapporteur on the rights to freedom of peaceful assembly and association has similarly stated that "Any restriction imposed on the nature or content of the message the organizers and participants want to convey, especially in relation to criticism of Government policies, should be proscribed, unless the message constitutes 'incitement to discrimination, hostility or violence.'"<sup>104</sup>

<sup>100</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 30.

<sup>101</sup> Cfr. IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 30.

<sup>102</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 30.

<sup>103</sup> IACHR, *Violence against LGBTI Persons*, 2017, para. 80

<sup>104</sup> Human Rights Council, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, 24 April 2013, A/HRC/23/39, para. 59.

66. However, the IACHR has taken the view that, without prejudice to the presumption of *ab initio* coverage, there are certain types of speech which, by virtue of express prohibitions embodied in international human rights law, do not enjoy protection under Article 13 of the American Convention within the framework of a social protest.<sup>105</sup> Specifically, this includes war propaganda and hate speech that constitutes incitement to violence on discriminatory grounds such as sexual orientation, gender, race, religion, or nationality.
67. Article 13.5 of the American Convention expressly provides that “any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.”<sup>106</sup> Direct and public incitement to genocide is outlawed both under conventional international law—by Article III(c) of the Convention on the Prevention and Punishment of the Crime of Genocide—and under customary international law.<sup>107</sup>
68. These restrictions must be backed up by actual, truthful, objective and strong proof that the person was not simply issuing an opinion (even if that opinion was harsh, unfair, or disturbing), but that the person had the clear intention of promoting illegal violence or any other similar action against LGBTI people, as well as the ability to achieve this objective, and that this entails a real risk of harm to people belonging to these groups.<sup>108</sup>
69. The United Nations Special Rapporteur has similarly stated that “only propaganda for war or advocacy for national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (art. 20 of the Covenant on Civil and Political Rights) or acts aimed at the destruction of the rights and freedoms enshrined in international human rights law (art. 5) should be deemed unlawful.”<sup>109</sup> In this regard, the Special Rapporteur maintained that “Restrictions on the content of assemblies may be imposed only in conformity with the legitimate limitations on rights (...), for example, where the message advocates national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Where a content-based restriction is justified, authorities should take the least intrusive and restrictive measures to address the issue.”<sup>110</sup>

---

<sup>105</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, paras. 57 *et seq.*

<sup>106</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 58.

<sup>107</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, 2010, para. 59.

<sup>108</sup> IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 59.

<sup>109</sup> Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A/HRC/20/27, 21 May 2012, para. 18.

<sup>110</sup> Human Rights Council, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, A/HRC/31/66, 4 February 2016, para. 33.

70. In the case of protest, the promotion of national, racial or religious hatred, advocacy of discrimination, hostility, or violence should not be understood exclusively in terms of speech. In addition to promoting a type of speech, protest involves a gathering of people that takes place in a certain space and time, in direct interaction with others present. This involves a potential threat to physical or psychological integrity, or the exercise of rights by third parties depending on the chosen place, time, or manner of protest.

### 3. The right to choose the time and place of the protest

71. Restrictions on the time, place, or manner of a protest should be exceptional, defined on a case-by-case basis and justified on the basis of the protection of persons. Any State interference in the time and place of a demonstration should meet the criteria of necessity and proportionality in a democratic society.
72. Protests are indispensable for democratic consolidation and therefore constitute as legitimate a use of public space as any other. Thus, they cannot be suppressed as a way of guaranteeing other more routine uses of these spaces, such as commercial activity or the circulation of persons and vehicles.<sup>111</sup> In that regard, the IACHR has emphasized that streets and squares are privileged places for public expression.<sup>112</sup>
73. The authorities should facilitate the holding of public gatherings, social protests, and demonstrations, ensuring that they can be carried out, seen, and heard by the target public in the space chosen by the organizers, in order to deliver the message that the organizers and participants wish to disseminate.<sup>113</sup> Therefore, as a general rule, the right to demonstrate and protest includes the right to choose the time, place, and manner of doing so.<sup>114</sup>
74. The United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association maintained that “States [have the] obligation to guarantee law and order, but restrictions on peaceful assembly in relation to its ‘time, place, and manner’ should be limited to the extent that such restrictions meet the aforementioned strict test of necessity and proportionality.”<sup>115</sup> The Rapporteur recommended that, if enacted, laws governing freedom of assembly should avoid blanket time and location prohibitions.<sup>116</sup> Informally or formally imposing on the organizers the expectation to negotiate the time and place of the assembly with the authorities is equally inappropriate.<sup>117</sup>
75. The choice of where to hold the protest is a substantial component of what is meant to be communicated and is important to the demonstrators. Restrictions on where social protests can take place have a negative impact on the transmission of the

<sup>111</sup> OSCE/ODIHR - Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2<sup>nd</sup> ed., 2010, p. 32, para. 20.

<sup>112</sup> IACHR, Annual Report 2015, Ch. IV A, para. 64.

<sup>113</sup> Cf. *Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association*, Maina Kiai, A/HRC/23/39, 24 April 2013, para. 60.

<sup>114</sup> European Court of Human Rights, *Sáska v Hungary*. Final 27/2/2013. p. 21.

<sup>115</sup> Human Rights Council, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, 24 April 2013, A/HRC/23/39, para. 59.

<sup>116</sup> Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A/HRC/20/27, 21 May 2012, para. 39.

<sup>117</sup> Cf. Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A/HRC/23/39, 24 April 2013, para. 56.

intended message to its intended recipients. The IACHR has made it clear that notification of the demonstration cannot allow the authorities to arbitrarily dictate dates, times, or places to demonstrate or protest, prohibiting any demonstration that fails to comply with those determinations.

76. If a protest or demonstration seeks to deliver a specific message to a person, group, or organization, it should, in principle, be able to be held at a place and time that allows for the visual and audio dissemination of the message, in accordance with the principle known as sight and sound.<sup>118</sup> With regard to the place where public demonstrations are held, the UN Rapporteur has warned against the practice whereby the authorities allow a demonstration to take place, but only in the outskirts of the city or in a specific square, where its impact will be muted.<sup>119</sup> As the European Court of Human Rights has ruled, such restrictions are disproportionate and unjustified because they affect the very purpose of the protests.<sup>120</sup>
77. The European Court of Human Rights has also held that the prohibition of a public demonstration on the sole ground that there is another public event scheduled to take place at the same place and time, without a clear indication that the events cannot be properly managed by the security forces, disproportionately interferes with freedom of assembly.<sup>121</sup> Heated tensions or exchanges between opposing groups cannot be used as the only justification for banning demonstrations, as this would be disproportionate and would deprive society of the opportunity to hear different opinions. On the contrary, the State must take reasonable and timely positive measures to protect participants in demonstrations and counter-demonstrations.<sup>122</sup>
78. In addition, counter-demonstrations may not interfere with the exercise of the right of third parties to assemble.<sup>123</sup> People should be able to hold their demonstration without fear of being subjected to violence by their opponents, as this fear may deter the expression of certain opinions or perspectives on issues affecting a community. In other words, the State must not allow the right to hold a counter-demonstration to extend to the point where it interferes with other groups' right to demonstrate.<sup>124</sup>
79. When weighing the need to restrict a counter-demonstration, States should take into account the specific protection to be accorded to socially excluded sectors or groups in vulnerable situations. Demonstrators belonging to minorities, groups that are

<sup>118</sup> OSCE/ODIHR - Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2<sup>nd</sup> ed., 2010, p. 17, Guiding Principle 3.5: "Public assemblies are held to convey a message to a particular target person, group or organization. Therefore, as a general rule, assemblies should be facilitated within 'sight and sound' of their target audience."

<sup>119</sup> Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A/HRC/20/27, 21 May 2012, para. 40.

<sup>120</sup> ECtHR, *Lashmankin and Others v. Russia*. Applications [57818/09](#) and 14 others. Judgment of 29 May 2017.

<sup>121</sup> ECtHR, *Lashmankin and Others v. Russia*. Applications [57818/09](#) and 14 others. Judgment of 29 May 2017, para. 422.

<sup>122</sup> ECtHR, *Öllinger v. Austria*, application No. 76900/01, Judgment of 29 June 2006; ECtHR, *Plattform "Ärztetfür das Leben" v. Austria*, application No. 10126/82, Judgment of 21 June 1988, para. 32.

<sup>123</sup> Human Rights Council, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, 21 May 2012, A/HRC/20/27, para. 30; Human Rights Council, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, A/HRC/31/66, 4 February 2016, para. 24.

<sup>124</sup> ECtHR, *Plattform "Ärztetfür das Leben" v. Austria*, application No. 10126/82, Judgment of 21 June 1988, para. 32.

discriminated against, or in situations of vulnerability should be especially protected from groups that seek to threaten or intimidate them for exercising their rights.

80. The Commission has emphasized that if circumstances relating to time, mode, or space are considered to pose a danger to protestors or third parties, the authorities should state the reasons for their decisions with the goal of seeking a better alternative. In the event that the authority decides that it is appropriate to modify the circumstances of time and place, an adequate and effective remedy must be provided to challenge this decision, which must be adjudicated by an authority other than the one that issued the decision.<sup>125</sup> The procedure for reviewing decisions prohibiting a protest must be established in a manner that ensures that the decision is made prior to the planned date of the protest. Considering that there may be a short window of time, this may be achieved through interim measures.<sup>126</sup>

#### **4. The right to choose the mode of protest; Scope of the provision on “peaceful unarmed exercise”**

81. As for restrictions on modes of protest, “the right of assembly, as defined in international instruments and in the domestic laws that have the force of constitutional law in the countries of the region, is that it be exercised peaceably and without arms.”<sup>127</sup> Given the State's obligation to protect human rights in protest contexts, including the life and safety of demonstrators, this qualification in Article 15 of the American Convention must be interpreted as meaning that the State may restrict the participation in public demonstrations and protests of persons who commit acts of violence or who carry weapons.
82. The Commission recognizes that States have a duty to take the necessary measures to prevent acts of violence, to ensure the safety of persons, including demonstrators, and to maintain public order. Violent actions by demonstrators or third parties that pose a certain risk to the life or physical integrity of persons who may or may not be involved in the protest obliges the State to take action to prevent and avoid such occurrences, limiting the protest rights of perpetrators of violence.<sup>128</sup>
83. Nevertheless, the Commission has stated that the peaceful and unarmed condition provided for in the inter-American instruments as a requirement for the exercise of the right of assembly does not mean that a demonstration can be deemed non-peaceful based on the actions of a few people. When some individuals commit acts of violence in the context of a protest, they should be singled out; but other demonstrators retain their right to peaceful assembly. Consequently, no gathering should be considered unprotected.<sup>129</sup>

<sup>125</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15 December 31, 2015, para. 130.

<sup>126</sup> OSCE/ODIHR - Venice Commission, Guidelines on Freedom of Peaceful Assembly, 2<sup>nd</sup> ed., 2010, p. 17, Guiding Principle 3.5.

<sup>127</sup> IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57 December 31, 2009, para. 198.

<sup>128</sup> Human Rights Council, 25<sup>th</sup> Session, “Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development” A/HRC/RES/25/38, 11 April 2014, p. 3.

<sup>129</sup> United Nations. Human Rights Council, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, A/HRC/31/66, 4 February 2016, para. 9; Statement by Maina Kiai, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, at the conclusion of his visit to the Republic of Chile, 30 September 2015; Report of the UN High Commissioner for Human Rights on ‘effective measures and best practices to ensure the promotion and protection of human rights in the context of

84. The qualifier “peaceful” must be understood, in any case, in the sense that persons who commit acts of violence may see their right to demonstrate restricted, temporarily and individually. The Commission recognizes that the use of law enforcement can be an important factor in protecting the safety of demonstrators as well as bystanders. At the same time, the IACHR has also documented that the excessive use of force is often a major source of violations of these same rights.
85. This aspect is always a complex issue to resolve, especially in contexts of social or political unrest. As such, the use of force is viewed as “a last resort that, qualitatively and quantitatively limited, is intended to prevent a more serious occurrence than that caused by the State’s reaction” (see Chapter IV.1). Within that framework, characterized by **exceptionality**, both the Commission and the I/A Court HR have agreed that for the use of force to be justified one must satisfy the principles of **legality, absolute necessity, and proportionality**.
86. The Commission has reiterated the need for the restriction related to the peaceful mode of protest not to be used as a formula to arbitrarily and permanently restrict the right of assembly and demonstration. For example, the rights of demonstrators may not be restricted because of the mere creation of nuisances or disruptions to the rights of others. On this matter, the IACHR has stated that it “is mindful of the fact that the exercise of this right can sometimes be disruptive to the normal routine of daily life, especially in large urban centers; it may even cause problems or affect the exercise of other rights that the State has an obligation to protect and ensure, such as freedom of movement. However, such disruptions are part of the mechanics of a pluralistic society in which diverse and sometimes conflicting interests coexist and find the forums and channels in which to express themselves.”<sup>130</sup>
87. The IACHR has also indicated that, in the face of a possible clash between freedom of assembly and, for instance, freedom of movement, when the mode of protest involves cutting off or occupying part of a roadway or route, “it should be borne in mind that the right to freedom of expression is not just another right, but one of the primary and most important foundations of any democratic structure: the undermining of freedom of expression directly affects the central nerve of the democratic system.”<sup>131</sup>
88. Bandanas, masks, hoods, caps, backpacks, and other types of clothing and accessories are very common at public demonstrations. These items cannot be considered sufficient indicators of a threat of violence, nor can they be used as grounds for the dispersal, arrest, or repression of demonstrators. The IACHR has stressed that, in a democracy, States must act based on the lawfulness of protests or public demonstrations and on the assumption that they do not constitute a threat to public order. This entails an approach centered on strengthening political participation and building greater levels of citizen engagement.<sup>132</sup>

---

peaceful protests,’ UN Doc A/HRC/22/28 of 21 January 2013, para. 10; Amnesty International, *Use of Force – Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, p. 148 c).

<sup>130</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. 57 December 31, 2009, para. 198.

<sup>131</sup> Cf. IACHR, *Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2005*, Chapter V “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly,” para. 93.

<sup>132</sup> IACHR, *Annual Report 2015*, Ch. IV A, para. 64.

89. The Commission has stated that a social protest can occur in many different ways. In the region, some of them take the form of street closures, “cacerolazos” (pot-banging sessions), and vigils. Accordingly, “The conditions in which many of these demonstrations and demands occur are complex and require appropriate responses from the authorities for respecting and ensuring human rights.”<sup>133</sup>

---

<sup>133</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15 December 31, 2015, para. 131.



## **CHAPTER IV**

# **OBLIGATION TO PROTECT AND FACILITATE**



## IV. OBLIGATION TO PROTECT AND FACILITATE

90. At the specific time when a protest occurs, State intervention must pay special attention to the duties of protection and facilitation, in keeping with Articles 1 and 2 of the ACHR. Article 1 of the American Convention establishes the obligation of the States to respect the rights and freedoms recognized therein. This obligation includes “the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.”<sup>134</sup> In turn, Article 2 requires States to take measures “of two kinds: on the one hand, elimination of any norms and practices that in any way violate the guarantees provided under the Convention; on the other hand, the promulgation of norms and the development of practices conducive to effective observance of those guarantees.”<sup>135</sup>
91. This Commission has previously stated that “the overriding social interest in the right to take part in public demonstrations gives rise to a general presumption in favor of its exercise.”<sup>136</sup> This presumption must be established in the States’ legal systems, clearly and explicitly, and apply to all without discrimination.<sup>137</sup> These provisions must be clear in their formulations, consistent with each other, in line with international standards, and must always be interpreted in favor of those who wish to exercise this right.<sup>138</sup> If the legal provisions are not clear, they should be clarified or, where appropriate, interpreted in favor of those exercising the right to freedom of peaceful assembly and freedom of expression.<sup>139</sup>
92. The Human Rights Council of the United Nations has similarly urged the States “to promote a safe and enabling environment for individuals and groups to exercise their rights to freedom of peaceful assembly, of expression and of association, including by ensuring that their domestic legislation and procedures relating to the rights to freedom of peaceful assembly, of expression and of association are in conformity with their international human rights obligations and commitments, clearly and explicitly

<sup>134</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 166; I/A Court H.R., *Case of Godínez Cruz v. Honduras*, Judgment of January 20, 1989, Series C No. 5, para. 175.

<sup>135</sup> I/A Court H.R., *Case of Castillo Petrucci et al. v. Peru*. Judgment of May 30, 1999. Series C No. 52, para. 207; I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Competence. Judgment of November 28, 2003. Series C No. 104, para. 108; I/A Court H.R., *Case of Cantoral Benavides v. Peru*. Merits. Judgment of August 18, 2000. Series C No. 69, para. 178; I/A Court H.R., *Case of La Cantuta v. Peru*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 172.

<sup>136</sup> *Idem*.

<sup>137</sup> IACHR, Annual Report 2015, Chapter IV.A, “The Use of Force,” para. 65; Human Rights Council, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, 24 April 2013, A/HRC/23/39, para. 50; Human Rights Council, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, 21 May 2012, A/HRC/20/27, para. 26.

<sup>138</sup> Human Rights Council, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, A/HRC/31/66.

<sup>139</sup> Human Rights Council, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, 24 April 2013, A/HRC/23/39, para. 50.

establish a presumption in favor of the exercise of these rights, and that they are effectively implemented.”<sup>140</sup>

93. Ultimately, States must act on the basis of the lawfulness of protests and public demonstrations and on the assumption that they do not constitute a threat to public order, even in cases where they are unannounced.<sup>141</sup> The right to participate in public demonstrations should be permitted even in the absence of a legal regulation, and those who wish to demonstrate should not be required to obtain authorization to do so.<sup>142</sup> Spontaneous protests are also protected, so no meeting should be treated as unprotected.<sup>143</sup>
94. In countries where there are systems of prior notification or announcement, which can be justified on the basis of protecting this right, “this does not mean that the states only have the positive obligation to facilitate and protect those assemblies notice of which is given.”<sup>144</sup> In addition, the right to take part in public demonstrations should not be subject to undue bureaucratic regulation.<sup>145</sup>
95. The competent State institutions have a duty to design appropriate operational plans and procedures. Police action, as considered by the IACHR in its 2015 annual report, “should have as its main objective facilitating demonstrations and not containing or confronting the demonstrators. Hence, as a general rule police operations organized in the context of protests should be geared to guaranteeing the exercise of this right and to protecting the demonstrators and third persons who are present (...)”<sup>146</sup>
96. The IACHR has stressed that States, when determining their actions in the context of public manifestations, tend to subordinate the exercise of the right to social protest to the purported upholding of collective interests such as public order and social peace, based on the vagueness or ambiguity of these terms for justifying decisions that restrict rights. The notion of public order and social peace that is imposed appears to be concerned solely with guaranteeing order as an expression of the power of the state, and it accords priority to the rights and interests of those who may be negatively impacted by the protests.<sup>147</sup>
97. As the Commission has maintained, the actions of the State in the unfolding of protests involves everything from rerouting pedestrian and vehicular traffic in a certain area, to escorting those who are participating in the mass gathering or demonstration in order to guarantee their safety and make it possible for the

---

<sup>140</sup> Human Rights Council, *The promotion and protection of human rights in the context of peaceful protests*, A/HRC/25/L.20, 24 March 2014, para. 3; Human Rights Council, *The promotion and protection of human rights in the context of peaceful protests*, A/HRC/RES/25/38, 11 April 2014, para. 3 (emphasis added).

<sup>141</sup> Human Rights Council, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, 24 April 2013, A/HRC/23/39, para. 50.

<sup>142</sup> IACHR, Annual Report 2015, Chapter IV.A, “The Use of Force,” para. 65.

<sup>143</sup> Human Rights Council, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, A/HRC/31/66, 4 February 2016, para. 17.a.

<sup>144</sup> IACHR, Annual Report 2015, Chapter IV.A, “The Use of Force,” para. 66.

<sup>145</sup> IACHR, Annual Report 2015, Chapter IV.A, “The Use of Force,” para. 66.

<sup>146</sup> IACHR, Annual Report 2015, Chapter IV A, para. 68.

<sup>147</sup> IACHR, Annual Report 2015, Chapter IV A, para. 59.

activities involved to take place.<sup>148</sup> These actions should include measures to facilitate the timing of the dispersal of demonstrators, precautions to prevent accidents, and measures to assist accident victims or people with health issues during an event.

98. The State's obligations necessarily include the protection of the lives, physical integrity, dignity, and other rights of public servants responsible for operations carried out in the context of social protests. This requires, among other measures, the provision to security agents of adequate equipment, items for protection and intervention, and training commensurate with the complexity of the tasks they must perform.
99. The authorities must provide for and use various forums for dialogue and exchange with the demonstrators before and during the course of the protest. Accountability, recording the operation's activities, and access to records is a decisive element not only for the purpose of establishing subsequent liabilities but also for the protection of human rights during the course of protests. These obligations to respect, protect, and facilitate the right to protest include the prevention of actions that could harm the physical integrity of persons; this Commission has held that "When a demonstration or protest leads to situations of violence it should be understood that the state was not capable of guaranteeing the exercise of this right."<sup>149</sup>
100. The following key aspects of the management of a protest by State institutions are discussed below:
  1. The general use of the police force in the context of protests;
  2. The more specific regulations on the carrying and use of firearms, the use of so-called less lethal weapons and the procedures for conducting arrests;
  3. The police operations, protocols, and institutional structure of the security forces and the prohibition against the Armed Forces intervening in public demonstrations;
  4. Dialogue and negotiation bodies linked to the reduction of conflict and violence and the preservation of life and physical integrity. Actions to provide security to demonstrators and third parties, particularly when vulnerable or specially protected groups are involved;
  5. The duty to not criminalize leaders and participants in demonstrations and protests.

## 1. Use of force in the context of protests

101. The use of public force can be an important element in ensuring the right to protest and protecting the safety of demonstrators. On the other hand, it can also give rise to major violations of these same rights.
102. In its 2015 Annual Report, this Commission recalled, based on a number of reports<sup>150</sup> and on the case law of the inter-American system,<sup>151</sup> the irreversibility of the

<sup>148</sup> IACHR, Report on Citizen Security and Human Rights, 2009, para. 193.

<sup>149</sup> IACHR, Annual Report 2015, Chapter IV A, para. 68.

<sup>150</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124. Doc. 5 rev. 1, adopted on March 7, 2006, para. 64; IACHR: Report No. 90/14, Admissibility and Merits, Luis Jorge Valencia Hinojosa, Ecuador, November 4, 2014, para. 181; Report on Terrorism and Human Rights, October 22, 2002, para. 87; Report on Citizen Security and Human Rights, December 31, 2009, para. 114.

consequences that may result from the use of force. As such, the use of force is viewed as “a last resort that, qualitatively and quantitatively limited, is intended to prevent a more serious occurrence than that caused by the State’s reaction. Within that framework, characterized by **exceptionality**, both the Commission and the I/A Court HR have agreed that for the use of force to be justified one must satisfy the principles of **legality**, **absolute necessity**, and **proportionality**.”<sup>152</sup>

103. The IACHR has defined the principle of *legality* as the obligation of the State to “to enact laws and comply with international law on the subject” aimed at regulating the action of the agents of order in performing their functions.<sup>153</sup> For its part, the Inter-American Court, in referring to the principle of legality, has stated that the use of force “must be aimed at achieving a legitimate objective, and there must be a regulatory framework which takes account of the form of action in such a situation.”<sup>154</sup>
104. The principle of *absolute necessity* refers to the possibility of resorting to “the defensive and offensive security measures used should be those strictly necessary to carry out the lawful orders of a competent authority in the event of acts of violence or crime that imperil the right to life or the right to personal security.”<sup>155</sup> At the same time, according to the circumstances of the case, it is necessary to “verify whether other less harmful means exist to safeguard the life and integrity of the person or situation that it is sought to protect, according to the circumstances of the case.”<sup>156</sup> Specifically, it has also established that this requirement cannot be invoked when people do not pose a direct danger, “even when the failure to use force results in the loss of the opportunity to capture them.”<sup>157</sup>
105. The United Nations Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force “only when strictly necessary and to the extent required for the performance of their duty.”<sup>158</sup> The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials reaffirm the principle of *ultima ratio* by providing that officers, in the performance of their duties, shall, “as far as possible, apply non-violent means before resorting to the use of force and firearms.

<sup>151</sup> I/A Court H.R., *Case of Cruz Sánchez et al. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of April 17, 2015. Series C No. 292, para. 265; *Case of J. v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 330; *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, para. 85.

<sup>152</sup> IACHR, Annual Report 2015, Chapter IV A, para. 7.

<sup>153</sup> IACHR, Annual Report 2015, Chapter IV A, para. 8; IACHR, Report on Citizen Security and Human Rights, December 31, 2009, para. 97.

<sup>154</sup> I/A Court H.R., *Case of Cruz Sánchez et al. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of April 17, 2015. Series C No. 292 (only in Spanish), para. 265.

<sup>155</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2009, para. 116.

<sup>156</sup> I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, paras. 67-68; *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, para. 85.

<sup>157</sup> I/A Court H.R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 134; *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012. Series C No. 251, para. 85; ECtHR, *Kakoulli v. Turkey*, No. 38595/97. Judgment of 22 November 2005, para. 108.

<sup>158</sup> Code of Conduct for Law Enforcement Officials, adopted by United Nations General Assembly Resolution 34/169 of 17 December 1979.

They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”<sup>159</sup>

106. Finally, the Commission has understood the principle of *proportionality* as “moderation in the actions of law enforcement officials in an effort to minimize the harm and injuries that may result from their intervention, guaranteeing immediate assistance to the persons negatively impacted, and endeavoring to inform next-of-kin or loved ones of the situation as soon as possible.”<sup>160</sup> Agents who may legitimately make use of force should “apply a standard of differentiated use of force, determining the level of cooperation, resistance, or aggressiveness of the person involved and, on this basis, use tactics of negotiation, control or use of force, as appropriate.”<sup>161</sup> Circumstances such as “the level of intensity and danger of the threat; the attitude of the individual; the conditions of the surrounding area, and the means available to the agent to deal with the specific situation”<sup>162</sup> are determinants when it comes to evaluating the proportionality of the interventions by the authorities, as their display of force must at all times aim “to reduce to a minimum the harm or injuries caused to anyone.”<sup>163</sup>
107. The general principles on the use of force, applied to the context of protests and demonstrations, “require that the security operations be carefully and meticulously planned by persons with experience and training specifically for this type of situation and under clear protocols for action.”<sup>164</sup>
108. The decision whether or not to use any type of force requires consideration of the risks involved that may lead to an escalation of tensions.<sup>165</sup> In particular, some States have made progress in defining minimum criteria for all security forces, whose fundamental objective is not only to respect and protect the rights of the participants in a demonstration, but also to protect the life and physical integrity of all those involved.
109. It is important to note that the State has an obligation to protect participants in a demonstration against physical violence by third parties and non-state actors, including persons who may hold opposing views.<sup>166</sup> The use of force in demonstrations may prove necessary and proportional in cases where there are threats that pose a certain risk to the life or physical integrity of persons present, whether or not they are participating in the protest.
110. The principles of moderation, proportionality, and progressivity must be observed both in situations where the objective is to restrain and/or detain a person who is resisting the police authority’s lawful action, and in police operations involving

<sup>159</sup> UN, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 4.

<sup>160</sup> IACHR, Annual Report 2015, Chapter IV A, para. 12; IACHR, Report on Citizen Security and Human Rights, December 31, 2009, para. 119.

<sup>161</sup> IACHR, Annual Report 2015, Chapter IV A, para. 12; IACHR, Report on Citizen Security and Human Rights, December 31, 2009, para. 119.

<sup>162</sup> IACHR, Annual Report 2015, Chapter IV A, para. 12; Basic Principles on the Use of Force, Principle No. 9.

<sup>163</sup> I/A Court H.R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 136.

<sup>164</sup> IACHR, Annual Report 2015, Chapter IV A, para. 79.

<sup>165</sup> Amnesty International, Use of Force – Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials Guideline 7 e).

<sup>166</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, March 7, 2006, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, para. 50.

demonstrations or mass gatherings that may result in violence or affect the rights of third parties.<sup>167</sup>

111. The design of intervention plans should take into account the fact that the State institutions involved have often had conflicting relationships with demonstrators. The design of these operations must also respect aspects related to the socio-cultural values of those participating in the protest and/or their membership in groups that must be specially protected.
112. Some local regulations instruct personnel participating in protest-related operations to exercise the utmost tolerance towards non-lethal attacks.<sup>168</sup> The approach in this type of situation should be oriented toward facilitation, and not of containment or even confrontation.<sup>169</sup> In this regard, it has been reiterated that the rationale for dispersing a demonstration must be the duty to protect people.<sup>170</sup> Moreover, the mere dispersal of a demonstration does not, in itself, constitute a legitimate aim justifying the use of force by security forces.
113. States need to make progress in regulating their actions, especially the use of force and police action in the specific contexts of protest. These regulations should seek to include both the prevention and prohibition of violations committed through the abuse of firearms or less lethal weapons and devices, unlawful arrests, beatings, or any form of abuse of force that may be involved in a demonstration. They should also cover the use of force to protect rights associated with social protest through actions that facilitate the right to demonstrate, and prevent and deter harm to the safety or other rights of demonstrators or third parties at the hands of State or non-state actors.

## 2. Maximum restriction on firearms

114. As this Commission has underscored, the use of firearms is an extreme measure. They should not be used except where police institutions are unable to use non-lethal means to restrain or detain persons who threaten the life or safety of police officers or third parties.<sup>171</sup> This general principle governing the use of lethal force by the police has a particular application in the area of public protests or demonstrations.<sup>172</sup>
115. International protection mechanisms have repeatedly stressed that the general principles on the use of force, such as necessity and proportionality, make it clear that

<sup>167</sup> IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II.Doc. 57, December 31, 2009, para. 133.

<sup>168</sup> IACHR, Annual Report 2015, Chapter IV A, para. 80; South Africa: Police Standing Order 262 on Crowd Management, 2004.

<sup>169</sup> Amnesty International, Use of Force – Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, p. 150.

<sup>170</sup> IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II.Doc. 57, December 31, 2009, para. 133; IACHR, Annual Report 2015, Chapter IV A, para. 67.

<sup>171</sup> IACHR, Report on Citizen Security and Human Rights, 2009, para. 118; UN, OHCHR, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 1 April 2014, A/HRC/26/36, para. 58.

<sup>172</sup> IACHR, Annual Report 2015, Chapter IV A, para. 81; UN Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, "Use of force during demonstrations," A/HRC/17/28, 23 May 2011 para. 75. For additional development of these principles, see: Amnesty International, Use of Force – Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, pp 148 i).

there are no grounds for the use of lethal force to break up a protest or demonstration, or for firing indiscriminately into a crowd.<sup>173</sup>

116. This Commission also considers that potentially lethal force cannot be used merely to maintain or restore public order or to protect legal interests less valuable than life, such as property. Only the protection of life and physical integrity from imminent threats can be a legitimate aim for the use of such force.<sup>174</sup> As discussed by the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions:

*“The ‘protect life’ principle demands that lethal force may not be used intentionally merely to protect law and order or to serve other similar interests (for example, it may not be used only to disperse protests, to arrest a suspected criminal, or to safeguard other interests such as property). The primary aim must be to save life. In practice, this means that only the protection of life can meet the proportionality requirement where lethal force is used intentionally, and the protection of life can be the only legitimate objective for the use of such force. A fleeing thief who poses no immediate danger may not be killed, even if it means that the thief will escape.”<sup>175</sup>*

117. The use of firearms in the context of social protests is almost never justified by this criterion of proportionality. As the IACHR has rightly considered, this means that the states should implement mechanisms for effectively prohibiting recourse to the use of lethal force in public demonstrations.<sup>176</sup> Prohibiting officers who might come into contact with demonstrators from carrying firearms and lead ammunition has proven to be the best measure to prevent lethal violence and deaths in the context of social protests.<sup>177</sup> Accordingly, firearms and ammunition should be excluded from operations to control social protests.<sup>178</sup>

<sup>173</sup> IACHR, Annual Report 2015, Chapter IV A, para. 81. In its 25<sup>th</sup> Session, the United Nations Human Rights Council issued a resolution on “The promotion and protection of human rights in the context of peaceful protests” (paras. 11 & 9), in which it: “Affirms that nothing can ever justify ‘shoot to kill’ practices as well as indiscriminate use of lethal force against a crowd, acts which are unlawful under international human rights law,” and “Urges all States to avoid using force during peaceful protests, and to ensure that, where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force.”

<sup>174</sup> Human Rights Council, The promotion and protection of human rights in the context of peaceful protests, A/HRC/25/L.20, of 24 March 2014, art. 10; Human Rights Council, The promotion and protection of human rights in the context of peaceful protests, A/HRC/RES/25/38 of 11 April 2014, art. 10; United Nations Code of Conduct for Law Enforcement Officials and Interpretive Commentary (art. 3): “The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender.” In addition, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials state that: “Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life” (Principle 9).

<sup>175</sup> OHCHR, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 1 April 2014, A/HRC/26/36, paras. 72-73.

<sup>176</sup> IACHR, Annual Report 2015, Chapter IV A, para. 81, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, para. 201.

<sup>177</sup> IACHR, Annual Report 2015, Chapter IV A, para. 82; Report on the Situation of Human Rights Defenders in the Americas, 2006, para. 68 a); UN Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, “Use of force during demonstrations,” A/HRC/17/28, 23 May 2011 para. 75). Amnesty International has also noted that firearms should not be used as tactical tools in the containment of public assemblies (Amnesty International, Use of Force – Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, p. 148 i).

<sup>178</sup> IACHR, Annual Report 2015, Chapter IV A, para. 82.

118. Although operations may allow for the availability of firearms and lead ammunition somewhere outside the demonstration's radius of action in exceptional cases where there is a situation of real, serious, and imminent risk to the life or physical integrity of persons that warrants their use,<sup>179</sup> there should be explicit rules concerning who has the power to authorize their use in such extreme cases and the ways in which such authorization is to be documented.<sup>180</sup>
119. In some cases, it has been found that police officers carry weapons and/or ammunition of their own, without authorization or registration. The Commission considers that the States should clearly prohibit police officers from carrying weapons and/or ammunition other than those provided under the rules and regulations of the institution to which they belong, regardless of such privately-owned weapons being duly registered for general use.<sup>181</sup>

**a) Acquisition, use, and control of less lethal weapons**

120. The production, procurement, and use of so-called "less lethal weapons" have increased markedly, largely due to technological advances in this field. There is today a huge variety of so-called "non-lethal" or "less lethal" weapons available on the market, which are acquired by States and used by police and security personnel. These include different types of rubber bullets, tear gas, electric shock projectiles, rubber projectiles, hydrant trucks, and plastic bullets, sound and energy devices, among others. However, this development has not been accompanied by regulations that oversee and monitor the production, acquisition, and use of these types of weapons.<sup>182</sup>
121. A bright line cannot be drawn between lethal and non-lethal weapons: "it must be remembered that almost any use of force against the human person can under certain circumstances lead to loss of life or serious injury."<sup>183</sup> Empirical evidence shows that in many cases harm to physical integrity has been caused by the misuse of these types of weapons. This is the case of rubber bullets fired at close range and into the upper part of the body, tear gas fired directly at people, irritating gases used against children or the elderly, or electric shock devices used against people with heart conditions. Therefore, consideration should be given not only to the design or features of the weapon, but also to other factors relating to its use and control.

<sup>179</sup> IACHR, Annual Report 2015, Chapter IV A, para. 82; The United Nations Human Rights Council has called upon "...States, as a matter of priority, to ensure that their domestic legislation and procedures are consistent with their international obligations and commitments in relation to the use of force and are effectively implemented by officials exercising law enforcement duties, in particular applicable principles of law enforcement, such as the principles of necessity and proportionality, bearing in mind that lethal force may only be used to protect against an imminent threat to life and that it may not be used merely to disperse a gathering." Human Rights Council, Resolution A/HRC/25/L.20, 24 March 2014, para. 10.

<sup>180</sup> IACHR, Annual Report 2015, Chapter IV A, para. 82.

<sup>181</sup> IACHR, Annual Report 2015, Chapter IV A, para. 83.

<sup>182</sup> The gap in standards has been recognized by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, who stressed the need to "set out how the standards set by the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the relevant jurisprudence should be applied to the scenarios created by the new technology" (UN, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Note by the Secretary-General, A/69/265, 6 August 2014, para. 73).

<sup>183</sup> Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Note by the Secretary-General, A/69/265, 6 August 2014, para. 69.

122. The Commission has warned against the often indiscriminate impact of less lethal weapons in the context of social protests. Such is the case of tear gas and of the devices that shoot repeatedly which, on occasion, are used to shoot rubber projectiles covered with hard rubber, plastic, or soft rubber. The use of such weapons should be considered ill-advised since it is impossible to control the direction of their impact. The Commission considers it important to give impetus to studies to further available medical knowledge about the impacts on health and integrity of each of the existing weapons. Moreover, studies should be undertaken that specify how each type of weapon can be used safely.<sup>184</sup>
123. It has also been noted that in some countries regulation weapons available in security institutions include shotguns that can alternatively be loaded with lead, rubber, or flash bang ammunition cartridges.<sup>185</sup> These types of weapon is particularly elusive to current control mechanisms during operations and for the administrative and/or judicial reconstruction of their use. The availability of these shotguns means that the controls needed to exclude firearms be extended to ammunition as well.
124. States must establish adequate evidence to authorize the acquisition and incorporation of new weapons into their regulatory mechanisms, and have criteria for the type of multidisciplinary and independent experts who can do so without having conflicts of interest with commercial activities. Standards should be developed to regulate critical aspects of weapons safety. For instance, the composition and concentration of chemical irritants, shock levels in electrical devices, volume and frequency of new acoustic weapons, as well as the precision levels required for projectiles should all be regulated. In addition, commercial trade in this type of weaponry should be subject to controls and regulations of the same type as those applied to the conventional arms trade.<sup>186</sup>
125. States must implement specific training protocols and contents for officers aimed at the safe use of each particular weapon. The protocols should strengthen the prevention of inappropriate or abusive uses that could result in the injury or death of persons, and should provide examples of cases in which the use of these weapons is prohibited in certain contexts or against certain people where there are risks to physical integrity.<sup>187</sup> For instance, tear gas should not be used in enclosed spaces or against people who have no way to disperse or evacuate.<sup>188</sup> The use of non-lethal weapons should be preceded by formal warnings, which give people the opportunity to evacuate without causing panic or stampede situations. There should be an obligation to explicitly define who should authorize their use, and guidelines should be drawn up to assign liability for the incorrect use of each type of weapon or device in use.

---

<sup>184</sup> IACHR, Annual Report 2015, Chapter IV A, para. 84.

<sup>185</sup> It has been noted that this type of weapon has been used in some cases in Argentina during operations that have resulted in deaths, although their use and the problems of assigning responsibility that arise from their design are not exclusive to that country.

<sup>186</sup> See: Amnesty International & The Omega Foundation, *The Human Rights Impact of Less Lethal Weapons and Other Law Enforcement Equipment*, p. 8. Amnesty International Ltd. 2015.

<sup>187</sup> Consideration should be given to restricting the use of this type of weapon against children, pregnant women, persons with a physical disability or health impairment, and the elderly.

<sup>188</sup> Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Note by the Secretary-General, A/69/265, 6 August 2014, para. 71.

126. The Commission also believes it is important to pay attention to the development of unmanned, remote-controlled system technologies (e.g., drones). This new field of technological development can be used in the context of social demonstrations or in crowd control. According to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions: “The availability of advanced technology implies higher levels of obligation regarding the decisions on whether and how much force to use, and also accountability and monitoring with regard to the exercise of that discretion.”<sup>189</sup>
127. In light of the above, the Commission reiterates<sup>190</sup> that the law should clearly spell out the circumstances that justify the use of force in the context of the protests, as well as the acceptable level of force for addressing various threats. In particular, the states should implement mechanisms to effectively prohibit the use of lethal force in public demonstrations, and guarantee the adequate and proportionate use of less lethal weapons by drawing up protocols for action that are clear and respectful of the relevant international standards.

## **b) Arrests**

128. With regard to any arrests made by the security forces in the context of public demonstrations, this Commission has held that they must comply with all the requirements imposed by domestic laws and international standards.<sup>191</sup> In their joint report, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies maintained that the authority to arrest can play an important protective function in assemblies, by allowing law enforcement to remove from an assembly individuals who are acting violently. The term “arrest” refers to any deprivation of liberty, and is not limited to formal arrest under domestic law. It is critical that arrest powers are exercised consistently with international human rights standards, including those relating to the rights to privacy, liberty, and due process rights.<sup>192</sup>
129. The force used by police officers to immobilize or arrest someone at a demonstration must be strictly proportional to the intended objective and shall only be applied to the extent necessary according to the resistance offered by the person against whom it is to be used. The IACHR additionally recalls that the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas should be observed during arrests made at social demonstrations and protests. The deprivation of liberty has been defined as “any form of detention, imprisonment, institutionalization, or custody of a person in a public or private institution which that person is not

<sup>189</sup> Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Note by the Secretary-General, A/69/265, 6 August 2014, para. 67.

<sup>190</sup> IACHR, Annual Report 2015, Chapter IV A, para. 120.

<sup>191</sup> I/A Court H.R., *Case of Chaparro Álvarez and Lapo Iñiguez. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 51; *Case of Yvon Neptune v. Haiti*. Merits, Reparations and Costs. Judgment of May 6, 2008. Series C No. 180, para. 89; IACHR, Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II. Doc. 66. December 31, 2011. Para. 106; IACHR, Annual Report 2015, Chapter IV A, para. 121.

<sup>192</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 44.

permitted to leave at will, by order of or under *de facto* control of a judicial, administrative or any other authority, for reasons of humanitarian assistance, treatment, guardianship, protection, or because of crimes or legal offenses.”<sup>193</sup>

130. Hence, all persons detained at a public demonstration have the right to live in conditions of detention that are compatible with their personal dignity and the State must guarantee their right to life and to humane treatment. State authorities exercise total control over persons under their custody and therefore States are guarantors of the physical integrity of detainees.<sup>194</sup> Persons detained in social protests shall not be arrested or transferred with the intention of punishing, repressing, or discriminating against persons deprived of their liberty; nor shall they be carried out under conditions that cause them physical or mental suffering, are humiliating or facilitate public exhibition.<sup>195</sup>
131. The authorities may not compel persons detained in demonstrations to remain for an unreasonably long period of time under climatic conditions posing a risk to health, nor deprive them of access to food and water, nor of medical care in the event that they are injured<sup>196</sup> or belong to vulnerable or high-risk groups, such as the elderly, women, children, persons with disabilities, or persons with illnesses requiring special attention.<sup>197</sup>

<sup>193</sup> IACHR, Report on Citizen Security and Human Rights, 2009, para. 143; IACHR, “Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas,” approved by the Commission during its 131<sup>st</sup> regular period of sessions, held from March 3-14, 2008. See also: General Comment on Article 10 of the Declaration on the Protection of All Persons from Enforced Disappearance of the United Nations Working Group on Enforced or Involuntary Disappearances, E/CN.4/1997/34.

<sup>194</sup> IACHR, Report on Citizen Security and Human Rights, 2009, Art. 151.

<sup>195</sup> Cf. Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas: Principle I, “Humane Treatment - All persons subject to the jurisdiction of any Member State of the Organization of American States shall be treated humanely, with unconditional respect for their inherent dignity, fundamental rights and guarantees, and strictly in accordance with international human rights instruments. In particular, and taking into account the special position of the States as guarantors regarding persons deprived of liberty, their life and personal integrity shall be respected and ensured, and they shall be afforded minimum conditions compatible with their dignity. They shall be protected from any kind of threats and acts of torture (...), cruel, inhuman, or degrading treatment or punishment, sexual violence, corporal punishment, collective punishment, forced intervention or coercive treatment, from any method intended to obliterate their personality or to diminish their physical or mental capacities. Circumstances such as war, states of exception, emergency situations, internal political instability, or other national or international emergencies may not be invoked in order to evade the obligations imposed by international law to respect and ensure the right to humane treatment of all persons deprived of liberty”; Principle IX: “(...) The transfers shall not be carried out in order to punish, repress, or discriminate against persons deprived of liberty, their families or representatives; nor shall they be conducted under conditions that cause physical or mental suffering, are humiliating or facilitate public exhibition.” Approved by the Commission during its 131<sup>st</sup> regular period of sessions, held from March 3-14, 2008.

<sup>196</sup> In the case of persons injured by security forces during protests, it should be noted that the State has a special duty to provide health care, as described in this report in the section on the planning of operations. See, United Nations, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 5.

<sup>197</sup> Cf. Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas: Principle X: “Persons deprived of liberty shall have the right to health, understood to mean the enjoyment of the highest possible level of physical, mental, and social well-being, including amongst other aspects, (...) measures to meet the particular health needs of persons deprived of liberty belonging to vulnerable or high risk groups, such as: the elderly, women, children, persons with disabilities, people living with HIV-AIDS, tuberculosis, and persons with terminal diseases”; Principle XI: “Food - Persons deprived of liberty shall have the right to food in such a quantity, quality, and hygienic condition so as to ensure adequate and sufficient nutrition, with due consideration to their cultural and religious concerns, as well as to any special needs or diet determined by medical criteria. Such food shall be provided at regular intervals, and its suspension or restriction as a disciplinary measure shall be prohibited by law. Drinking Water: Every person deprived of liberty shall have access at all times to sufficient drinking water suitable for consumption. Its suspension or restriction as a disciplinary measure shall be prohibited by law.”

132. Similarly, no participant in social protests may be subjected to arbitrary arrest or detention. Article 7 of the American Convention provides that “No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto,”<sup>198</sup> and that “No one shall be subject to arbitrary arrest or imprisonment.”<sup>199</sup>
133. In its Report on Citizen Security, this Commission stated that “The guarantee of the lawfulness of an arrest established in Article 7 envisages substantive and other formal or procedural aspects. The substantive aspect requires that persons may only be deprived of their liberty in cases and circumstances laid down by the law. The formal or procedural aspect requires that in the arrest of persons fulfilling any of the circumstances established by the law, the rules during the process of detention are observed.”<sup>200</sup>
134. The Convention also provides that “Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him,”<sup>201</sup> and that “Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time.”<sup>202</sup>
135. With regard to the need for States to provide all necessary means to ensure that detained persons and their family members receive accurate information regarding the grounds for detention and the location of the detention facility,<sup>203</sup> the Inter-American Court has established that “the detainee and those with legal custody or representation of the detainee have the right to be informed of the causes and reasons for his or her detention at the time it occurs, which ‘constitutes a mechanism to avoid illegal or arbitrary detentions from the very moment of imprisonment and, at the same time, ensures the individual’s right to defense.’”<sup>204</sup> In the case of persons detained at demonstrations, such records should be publicly accessible.
136. In addition, States must put in place mechanisms to ensure special protection for persons under the age of 18, in particular with regard to immediate communication to the competent judge and the parents or guardians, as well as the performance of a medical examination certifying their health status at the time of detention.<sup>205</sup>
137. The Inter-American Court has held that detentions must be reviewed by a judge without delay. This oversight is a measure designed to prevent arbitrary or unlawful arrests, taking into account that in a State governed by the rule of law it is up to the judge to guarantee the detainee’s rights, to authorize the adoption of precautionary

---

<sup>198</sup> American Convention on Human Rights, art. 7.2.

<sup>199</sup> American Convention on Human Rights, art. 7.3.

<sup>200</sup> IACHR, Report on Citizen Security and Human Rights, 2009, Art. 145.

<sup>201</sup> American Convention on Human Rights, art. 7.4.

<sup>202</sup> American Convention on Human Rights, art. 7.5.

<sup>203</sup> IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, Chapter V, C. “Right to Personal Liberty and Security”; IACHR, Annual Report 2015, Chapter IV A, para. 122.

<sup>204</sup> I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Judgment of June 7, 2003. Series C No. 99, note 4, para. 96.

<sup>205</sup> IACHR, Report on Citizen Security and Human Rights, 2009, para. 232, “Specific recommendations,” p. 108.

or enforcement measures—when strictly necessary—and to ensure, in general, that the accused is treated in a manner consistent with the presumption of innocence. The judge must hear the detainee personally and assess all the explanations that the latter provides, so as to decide whether it is in order to release him or to maintain the deprivation of liberty. Otherwise, it would be tantamount to stripping the judicial review established in Article 7(5) of the Convention of its effectiveness.<sup>206</sup>

138. In particular, States should refrain from mass, collective, or indiscriminate arrests in the context of social protest. The Inter-American Court has found that police tactics involving collective arrests, such as so-called “*razzias*”<sup>207</sup> “are incompatible with respect for fundamental rights, including presumption of innocence, existence of a court order for detention—except in situations of flagrancy—and the obligation to notify those in charge of the minors.”<sup>208</sup>
139. In another precedent on mass arrests, the Inter-American Court also held that “a massive and programmed arrest of people without legal grounds, in which the State massively arrests people that the authority considers may represent a risk or danger to the security of others, without substantiated evidence of the commission of a crime, constitutes an illegal and arbitrary arrest.”<sup>209</sup>
140. The Commission reiterates that also in relation to operations carried out in the context of protests, States should adapt the domestic legal system and institutional procedures and practices so that they are able to prevent and, where necessary, investigate and punish cases of arbitrary detentions by agents of the State. This involves, *inter alia*, the following obligations:<sup>210</sup>
  - i. stipulating that no person shall be deprived of his or her liberty except under the circumstances that the law specifically prescribes;
  - ii. guaranteeing that persons in the custody of State authorities will receive decent treatment;
  - iii. incorporating into its domestic laws the obligation of State agents to immediately inform the person detained of the reasons for his or her detention;
  - iv. immediately reporting the detention to the competent judge for a determination of the detained person’s rights;
  - v. informing the detained person’s next of kin and loved ones of his or her whereabouts and the reasons for the detention;
  - vi. guaranteeing the detained person the services of legal counsel from the moment of his or her arrest; and
  - vii. organizing a public record of persons taken into custody.

### c) Evictions

<sup>206</sup> I/A Court H.R., *Case of Bayarri v. Argentina*. Preliminary Objection, Merits, Reparations and Costs. Judgment of October 30, 2008. Series C No. 187, para. 65.

<sup>207</sup> Police operations aimed at surrounding a property, a street, a neighborhood or an event, preventing the movement of people who are trapped within this enclosure and depriving them of their liberty or transporting them to police facilities. I/A Court H.R., *Case of Bulacio v. Argentina*. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 56.

<sup>208</sup> I/A Court H.R., *Case of Bulacio v. Argentina*. Judgment of September 18, 2003, para. 137.

<sup>209</sup> I/A Court H.R., *Case of Servellón García et al. v. Honduras*. Merits, Reparations and Costs. Judgment of September 21, 2006. Series C No. 152, para. 93.

<sup>210</sup> IACHR, Report on Citizen Security and Human Rights, 2009, para. 232, “Specific recommendations,” p. 108.

141. Some social protests take place in a context of prior rights violations and may include actions of resistance to State action, in which case demonstrators are particularly exposed to police repression. In this regard, the Inter-American Commission has underscored that the authorities must provide appropriate responses to the complex conditions under which many of the demonstrations and demands take place in the region.<sup>211</sup>
142. As previously stated, forms of protest are varied and include, but are not limited to, occupations—whether of a public or private building or school campus<sup>212</sup>—and roadblocks. The State often responds to such actions with eviction operations.
143. In many cases forced evictions take place in the context of public or even private undertakings and are resisted by the inhabitants, peasants, indigenous people, or workers who occupy the place. The high concentration of land ownership in some countries of the region has also resulted in the mobilization of social sectors seeking better distribution of agricultural land, which has provoked violent reactions from large landowners who, in some cases, have enjoyed the acquiescence and complicity of local officials.<sup>213</sup>
144. This Commission has repeatedly stated that, in accordance with international norms and standards, States must restrict forced evictions and are obligated to take measures to protect persons and communities harmed by such operations,<sup>214</sup> as cases of forced evictions are “*prima facie* incompatible” with the principles of international law.<sup>215</sup> In the event that they are carried out, the necessary measures must be taken to minimize their impact on the affected population,<sup>216</sup> in particular with respect to vulnerable groups such as children, persons with disabilities, older adults, women, and indigenous peoples, among other marginalized groups and sectors.<sup>217</sup>
145. Since it generally involves an intensified use of force, the order in which such operations are to be carried out and the manner in which they are to be carried out

<sup>211</sup> Cf. IACHR, Report on the Situation of Human Rights Defenders in the Americas, 2006, para. 59.

<sup>212</sup> See, e.g., thematic hearing “Brazil: Student protests in Sao Paulo.” IACHR, 157<sup>th</sup> Session (April 2016).

<sup>213</sup> See, e.g., IACHR Report No. 25/09, Case 12.310, Merits, Sebastiao Camargo Filho v. Brazil. March 19, 2009.

<sup>214</sup> American Convention (Articles 21 & 26), the American Declaration (Articles IX, XI, and XXIII), the International Covenant on Economic, Social, and Cultural Rights (art. 11); and other instruments and declarations, such as: General Comments No. 4 (1991) and No. 7 (1997) of the Committee on Economic, Social and Cultural Rights; the Guiding Principles on Internal Displacement; the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in Resolution 60/147; UN Basic Principles and Guidelines on Development-based Evictions and Displacement.

<sup>215</sup> UN. ESCR Committee. General Comment No. 4 (1991), para. 18. See also: ESCR Committee. General Comment No. 7 (1997) (E/1998/22). [Annex IV, para. 18](#).

<sup>216</sup> States must provide compensation and alternative accommodation, or restitution, except in cases of *force majeure*; in addition to guaranteeing “as a minimum” and “without discrimination”: “(a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities. States should also ensure that members of the same extended family or community are not separated as a result of evictions.” UN Basic Principles and Guidelines on Development-based Evictions and Displacement. Annex I to the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, para. 52.

<sup>217</sup> IACHR, Annual Report 2015, Ch. IV A, para. 166.

must meet specific criteria for guaranteeing rights, particularly when the right to social protest is involved. States should assess these circumstances in such a way that their response to protest situations can be geared, in each case, toward protecting persons in vulnerable situations, including specific measures and guidelines for supervising the use of force by security forces. In no case should State intervention lead to the violation of other rights, such as the right to life and physical integrity, the rights of participation in public affairs, freedom of expression, freedom of assembly and association, or the right to housing, among others.

146. The Commission has stated that when executing eviction or arrest warrants for persons in an occupation, police officers cannot act with unlimited discretion in carrying out their law enforcement duties. The occupation of another's property and the existence of arrest warrants by virtue of that fact cannot, by themselves, justify using lethal force or jeopardizing people's physical integrity. The Commission has stressed that crimes against property do not necessarily include an element of violence. The use of lethal force merely to execute arrest warrants when acts of violence are not involved is unnecessary and disproportionate.<sup>218</sup> It has further considered that the fact of negotiating with occupants for just a few hours before undertaking a violent raid is not sufficient to establish that it is impossible to enforce the law without resorting to the use of extreme force.<sup>219</sup>
147. In the case of school takeovers and occupations as a way for students to voice their criticisms, demands, and complaints to State authorities, the Commission has stressed that these are legitimate forms of exercising the right to social protest, particularly in contexts where children and adolescents lack other channels to express their grievances about policies that affect them.<sup>220</sup>
148. The Commission considers that guaranteeing the right to protest of children and adolescents means that forced eviction from a building occupied as part of a social action must be carried out by means of an express order based on a serious risk to the life or physical integrity of the person and where no other less harmful measures are available to protect those rights. The special duty of protection that the State has in relation to this group requires that dialogue and negotiation be the priority and predominant method of action of State agents.<sup>221</sup> Even when the authorities make a lawful and legitimate decision to vacate a building, the eviction order must be clearly communicated and explained, to allow the demonstrators to understand and comply, giving them sufficient time to disperse without resorting to police force.<sup>222</sup>
149. Resistance to an eviction may, in some cases, constitute a form of protest when the operation amounts to a violation of the right to housing. The Committee on Economic, Social, and Cultural Rights has considered that "Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons

<sup>218</sup> Cfr. IACHR, Report No. 57/02, Case of Finca la Exacta v. Guatemala. Merits. October 21, 2002, paras. 38-41.

<sup>219</sup> Cfr. IACHR, Report No. 57/02, Case of Finca la Exacta v. Guatemala. Merits. October 21, 2002, para. 54.

<sup>220</sup> Cfr. IACHR thematic hearing "Brazil: Student protests in Sao Paulo." IACHR, 157<sup>th</sup> Session (April 2016).

<sup>221</sup> Cfr. IACHR thematic hearing "Brazil: Student protests in Sao Paulo." IACHR, 157<sup>th</sup> Session (April 2016).

<sup>222</sup> Amnesty International, "Good Practice for Law Enforcement Officials Policing Demonstrations," available at: [http://www.amnestyusa.org/sites/default/files/good\\_practice\\_for\\_law\\_enforcement\\_for\\_policing\\_demonstrations\\_2.pdf](http://www.amnestyusa.org/sites/default/files/good_practice_for_law_enforcement_for_policing_demonstrations_2.pdf)

should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.”<sup>223</sup>

150. In such cases, evictions can only be justified in exceptional situations, with the caveat that they should not result in people becoming homeless or exposed to violations of other human rights.<sup>224</sup> In the event that children, elderly persons, indigenous people, or other vulnerable groups or persons are present, States must exhaust all existing measures for the peaceful channeling of conflicts, dialogue, and negotiation, in keeping with the principles of absolute necessity and proportionality in the use of force.
151. In the case of a violent eviction of a landless people’s camp by private actors, the Inter-American Court also stressed that when authorities have knowledge of a situation of real risk to an individual or group of individuals due to the acts of third parties or individuals, they have a responsibility to prevent or avert that risk.<sup>225</sup>

#### **d) Forced dispersal or break-up**

152. This Commission has stated that certain regulations enabling the execution of police operations aimed at dispersing or restricting protests can often lead to a number of human rights violations.<sup>226</sup>
153. This is the reason why the dispersal or break up of demonstrations by force—which entails direct interference with the legitimate exercise of a right and may affect the life or safety of persons—can only be permitted in very exceptional cases, by means of an express order based on a serious risk to the life or physical integrity of persons and where no other less harmful measures are available to protect those rights.<sup>227</sup>
154. Forced dispersal or break-up is often defended on the grounds that there is a need to free up traffic on public roads. In this context, it is appropriate to reiterate the salient point made in chapter 4.1 of this report, that the right to protest is one of the cornerstones of any democratic structure.<sup>228</sup> Demonstrations should be allowed to cause a certain level of disruption to daily life, for example in relation to traffic and commercial activities, so as not to deprive the freedom of peaceful assembly of its essence.<sup>229</sup> Moreover, imposing the requirement of prior authorization to hold

<sup>223</sup> UN. ESCR Committee. General Comment No. 4 on “the right to adequate housing” (1991), para. 8 a).

<sup>224</sup> ESCR Committee. General Comment No. 7 on “the right to adequate housing,” para. 16. *Cited in:* IACHR, Annual Report 2015, Ch. IV A, para. 166.

<sup>225</sup> IACHR, *Sebastião Camargo Filho v. Brazil*, Report No. 25/09, 2009, paras. 80 & 83.

<sup>226</sup> IACHR, Annual Report 2015, Chapter IV A, para. 67.

<sup>227</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, paras. 61-63.

<sup>228</sup> IACHR, Annual Report of the Inter-American Commission on Human Rights 2005, Volume III, Report of the Office of the Special Rapporteur for Freedom of Expression, February 27, 2006, OEA/Ser.L/V/II.124 Doc. 7, Chapter V, “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly,” para. 93.

<sup>229</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 32. See also: IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para.198; ECtHR, *Kuznetsov v. Russia*, 23 October 2008, para. 44.

gatherings and demonstrations cannot be an argument for allowing the automatic dissolution, by the use of force, of those public demonstrations for which permission has not been granted by the authorities.<sup>230</sup>

155. When the authorities make a lawful and legitimate decision to break up a protest, the order to disperse must be clearly communicated and explained, to allow the demonstrators to understand and comply, giving them sufficient time to disperse without resorting to police force.<sup>231</sup> The IACHR considers that the indiscriminate persecution of demonstrators following the dispersal of a protest exacerbates tension and is not justified by the criteria of necessity and proportionality in the use of force.

### 3. Police operations, protocols, and institutional structure of the security forces and exclusion of the armed forces

156. Proper use of the force necessary to respect, protect, facilitate, and promote the right to social protest requires the organization of all the structures through which government power is exercised in such a way that they are able to legally ensure the free and full exercise of human rights.<sup>232</sup> In turn, Article 2 requires States to take measures “of two kinds: on the one hand, elimination of any norms and practices that in any way violate the guarantees provided under the Convention; on the other hand, the promulgation of norms and the development of practices conducive to effective observance of those guarantees.”<sup>233</sup> It is understood that the protection of these rights entails not only the obligation of the State not to interfere with their exercise, but also the duty to take, under certain circumstances, positive measures to ensure them.<sup>234</sup>
157. The holding of meetings, demonstrations, and protests is a central activity of many associations and organizations. In this regard, States have the duty to provide the necessary means for them to conduct their activities freely; to protect them when they are threatened in order to prevent attacks on their life and safety; to refrain from imposing obstacles that might hinder their work; and to investigate seriously and effectively the violations committed against them, thus combating impunity.<sup>235</sup>
158. As part of their obligations, States must design specific protocols of action for security forces operating in situations of social protest and public demonstrations. The relevance of developing specific rules of action derives from two empirical findings: First, the way in which political authorities and police institutions work with regard to their actions in public demonstrations often follows a logic that is distinct from

<sup>230</sup> IACHR, Annual Report 2015, Chapter IV A, para. 69.

<sup>231</sup> Amnesty International, “Good Practice for Law Enforcement Officials Policing Demonstrations,” available at: [http://www.amnestyusa.org/sites/default/files/good\\_practice\\_for\\_law\\_enforcement\\_for\\_policing\\_demonstrations\\_2.pdf](http://www.amnestyusa.org/sites/default/files/good_practice_for_law_enforcement_for_policing_demonstrations_2.pdf)

<sup>232</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 166; I/A Court H.R., *Case of Godínez Cruz v. Honduras*, Judgment of January 20, 1989, Series C No. 5, para. 175.

<sup>233</sup> I/A Court H.R., *Case of Castillo Petruzzi et al. v. Peru*. Judgment of May 30, 1999. Series C No. 52, para. 207; I/A Court H.R., *Case of Baena Ricardo et al. v. Panama*. Competence. Judgment of November 28, 2003. Series C No. 104, para. 108; I/A Court H.R., *Case of Cantoral Benavides v. Peru*. Merits. Judgment of August 18, 2000. Series C No. 69, para. 178; I/A Court H.R., *Case of La Cantuta v. Peru*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 172.

<sup>234</sup> IACHR, Report on Citizen Security and Human Rights, 2009, para. 192; IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, 2011, para. 133.

<sup>235</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II. Doc. 66. December 31, 2011, para. 161.

other routines. These are operations with particular orders and design, for which it is necessary to have action protocols that systematize the standards applicable to the use of force in said situations. Second, these are circumstances involving practices that may violate a number of fundamental rights, and the definition of clear rules of action therefore may lead to the development of more appropriate oversight mechanisms and bodies.

159. These criteria and standards of action organize police operations and regulate the use of force. As the Commission has previously maintained, these directives should be aimed at enabling police officers to act “with the certainty that their job is to protect the participants in a public meeting or demonstration or mass gathering so long as they are exercising their right.”<sup>236</sup> This development of national and local laws contributes to the perception, both by security officers and the general population, of the scope of police powers, and hence to the establishment of conditions for proper oversight and accountability.<sup>237</sup>
160. The planning of operations must take into account, in particular, the duty of States to protect the physical integrity of demonstrators and nearby third parties during a protest, including in relation to acts committed by private or non-state actors.<sup>238</sup> The protection of the life and physical integrity of police officers should also be considered. Threats or actions of other demonstrators or third parties that pose a certain risk to life, or to the physical integrity of persons—whether or not they are participating in the protest—requires the State to take action to prevent them. In this case, the use of force may be necessary, within the limits of legality and proportionality.<sup>239</sup>
161. States must, in any event, do everything in their power to minimize harm and injury, whether caused by State agents or by third parties. In particular, it should include an assessment of the impacts of all measures taken on the physical integrity of persons. The Commission understands that the principle of pre-eminence of the right to life and physical integrity means, for example, that operations should provide sufficient and safe pathways for the dispersal of demonstrators and third parties present. Police operations should facilitate and refrain from obstructing major dispersal routes, including access to means of transport, such as train stations or underground transport.
162. Operations planning should also make provisions ensure that medical assistance is provided in cases where persons are injured or killed in the course of a demonstration, whatever the cause and whoever is responsible. The officers in charge of the operation should prioritize medical care and should also provide accurate and timely information about the events to the relatives or close friends of

<sup>236</sup> IACHR, Report on Citizen Security and Human Rights, 2009, para. 193; IACHR, Annual Report 2015, Chapter IV A, para. 79.

<sup>237</sup> UN, OHCHR, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 1 April 2014, A/HRC/26/36, para. 29.

<sup>238</sup> Report on Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia, OEA/Ser.L/V/II.Doc. 34, June 28, 2007, para. 43; IACHR, Report on the Situation of Human Rights Defenders in the Americas, 2006, para. 63.

<sup>239</sup> UN, OHCHR, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 1 April 2014, A/HRC/26/36, para. 72

those affected. States should, as a preventive measure, ensure that medical services and/or other health measures are provided during the demonstration.<sup>240</sup>

163. The Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary, or arbitrary executions on the proper management of assemblies makes clear that the State's obligation to facilitate includes the responsibility to provide basic services, including traffic management, medical assistance, and clean-up services. Organizers should not be held responsible for the provision of such services, nor should they be required to contribute to the cost of their provision.<sup>241</sup>
164. A human rights approach to these protocols and to the design of operations also requires attention to the security and rights of State agents, including members of the police.<sup>242</sup> Equipment is essential for the protection of the rights of demonstrators, third parties, and police officers. On the basis of a risk assessment, equipment for law enforcement officials deployed during assemblies should include both appropriate personal protective equipment, and when necessary, officers should be appropriately protected with equipment, such as shields, helmets, and stab-and/or bulletproof jackets, with a view to decreasing the need for any use of weapons.<sup>243</sup> Police officers must be equipped and trained in such a way that any provocations or attacks they may have to tolerate in the course of their activities do not affect their dignity or professional performance. States have an obligation to protect and ensure the professional rights of the members of its police force and to provide them with the training, infrastructure and equipment needed to perform their duties properly.<sup>244</sup>
165. In the design and implementation of operations, special attention should be paid to the disproportionate and illegitimate ways in which the use of force may affect certain individuals and/or groups depending on their particular characteristics, such as women,<sup>245</sup> children and adolescents,<sup>246</sup> persons with disabilities, and older adults. Accordingly, protocols for police action and the implementation and oversight of operations should contain provisions and establish special measures to prevent discriminatory and aggravated effects. In particular, States must safeguard the

---

<sup>240</sup> UN, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 5. The State's obligation to facilitate includes the responsibility to provide basic services, including traffic management, medical assistance, and clean-up services. Organizers should not be held responsible for the provision of such services, nor should they be required to contribute to the cost of their provision.

<sup>241</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 40

<sup>242</sup> IACHR, Report on Citizen Security and Human Rights, 2009, para. 224.

<sup>243</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, paras. 53-54.

<sup>244</sup> IACHR, Report on Citizen Security and Human Rights, 2009, para. 224.

<sup>245</sup> In its Resolution on the promotion and protection of human rights in the context of peaceful protests, the Human Rights Council "Urges States to pay particular attention to the safety and protection of women and women human rights defenders from acts of intimidation and harassment, as well as gender-based violence, including sexual assault, in the context of peaceful protests" (A/HRC/25/L.20).

<sup>246</sup> In its Resolution on the promotion and protection of human rights in the context of peaceful protests, the Human Rights Council "Reaffirms that States must take all necessary measures to ensure the safety and protection of children, including while they exercise their rights to freedom of peaceful assembly, expression and association, including in the context of peaceful protests" (A/HRC/25/L.20).

physical integrity of minors, as established in the UN Convention on the Rights of the Child.<sup>247</sup>

166. At the same time, the Inter-American Court has pointed out the relationship between the activity of civil society organizations and associations and the exercise of political rights established in Article 23 of the ACHR, especially those groups that represent the interests of marginal sectors or those who face difficulties in exercising their rights.<sup>248</sup>
167. Similarly, provision should be made for specific actions for the special protection and care of persons belonging to groups that must be specially protected or require special care. States are further under the obligation to respect and guarantee the free and full exercise of the right to protest and to participate in public demonstrations without discrimination on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status (art. 1 ACHR). Taking into account the diversity of identities and groups expressing themselves in large social demonstrations and protests, officers should make sure that their verbal communication, body language, gestures, and any type of indirect communication are not perceived by the organizers and participants as intimidating, offensive, or insulting.<sup>249</sup>
168. Where necessary, arrangements should be made for the intervention of specially organized sections with selected officials who undergo ongoing training to intervene in large demonstrations and At the same time, the manner in which these departments coordinate and communicate with other sections of the security institutions and with other State agencies should be regulated, as should the respective democratic oversight of the operations.<sup>250</sup>
169. The selection, education, and training of the government personnel and police officers involved must take into account the complexity and variety of the tasks required of them. The selection of personnel with the necessary qualities, initial training, and continuous retraining are essential for the development of communication skills, use of force, use of deterrent and defensive equipment,

---

<sup>247</sup> The Convention on the Rights of the Child stipulates that the authorities of the State shall, in all actions taken by them, take into account the best interests of the child and undertake to “ensure the child such protection and care as is necessary for his or her well-being, taking into account [their] rights.” See: Convention on the Rights of the Child, art. 3.

<sup>248</sup> I/A Court H.R., *Case of Yatama v. Nicaragua*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No. 127.

<sup>249</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 38.

<sup>250</sup> IACHR, Report on Citizen Security and Human Rights, 2009, para. 56: “The member states must put together reliable indicators so that they are able to constantly evaluate the following, *inter alia*: (1) human resources, from the quantitative and qualitative standpoints; (2) the mechanisms for selecting and providing basic and specialized training to the civil servants in the institutions in question and their career service; (3) the working conditions and pay of these civil servants, and (4) the equipment, means of transportation and communications available to perform the assigned functions.”

organization of functions, hierarchical division, and registration and supervision required for participation in these operations.<sup>251</sup>

170. As discussed more extensively in the accountability chapter of this report, the design of operations should include: a detailed record of orders, participating officials, respective responsibilities, and actions for the purposes of prevention, subsequent assessment of actions taken, and any judicial and administrative investigations into any situation involving abuse. The Commission believes that, where appropriate, provision should be made for the protection of the scene of the crime as a fundamental part of the concept of due diligence.<sup>252</sup> The policy maker and/or police officer in charge of the operation must ensure the preservation of the scene and the collection and preservation of all evidence. Of particular importance is the preservation of the communications of the personnel involved in the operation<sup>253</sup> and of all the audio and video recordings produced by the security institutions present in their original formats, both directly related to the particular sequence of events and to the entire operation at its various levels.
171. The recording of orders and activities, as well as the visible identification of personnel and equipment is not only effective for the purposes of possible administrative and judicial investigations, but is also fundamental for the prevention of abuses and the intentional or accidental use of improper equipment.
172. In all cases involving the use of force, and in particular the use of weapons—whether justified or not—the policy makers and/or police officers responsible for the operation must take a number of measures to reduce the harm caused by the extreme measure they have taken and to submit such action to administrative and/or judicial review. This requires the proper recording of any incident involving the use of weapons, whether or not it affects the safety of any person.
173. Given the imperative social interest in the exercise of the rights involved in the contexts of protest for peaceful demonstrations for the democratic life of a nation, the Commission considers that in this specific sphere those considerations are all the more important for ruling out the participation of military and armed forces in such situations.<sup>254</sup>
174. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has expressed particular concern over the adverse effects of categorizing certain groups of demonstrators as “domestic extremists.”<sup>255</sup> In some countries, the broad characterization, by different State agencies, of people who participate or

<sup>251</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, 2006, paras. 115, 120 & 193. Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, paras. 42, 52, & 55.

<sup>252</sup> The Inter-American Court of Human Rights has held that, “The failure to protect the scene of a crime properly can impair the investigation, since this is an essential element to enable it to be successful” (I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*, *supra* nota 4, para. 166), and the UN Human Rights Council has urged “States to investigate any death or significant injury committed during protests, including those resulting from the discharge of firearms or the use of non-lethal weapons by officials exercising law enforcement duties” (CDH ONU, A/HRC/25/L.20, para. 12).

<sup>253</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, 2006, para. 68 c).

<sup>254</sup> IACHR, Annual Report 2015, Chapter IV A, para. 38

<sup>255</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, on his mission to the United Kingdom (14-23 January 2013) (A/HRC/23/39/Add.1).

- organize protests as supposed threats to security has created the conditions to allow the Armed Forces to participate in security operations or prior intelligence activities.
175. Police corps hold an “irreplaceable” mission for the proper functioning of the democratic system and to ensure the safety of the population; in addition, the IACHR has stated that due to their “national coverage and variety of its functions, it is one of the state institutions that are most frequently related to citizens.”<sup>256</sup>
  176. The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions has said that “The modern State [...] cannot function without the police. The human rights system as such also cannot be effective without the police and, in some cases, without the use of force [since they] play an important role in protecting society from violence, enforcing justice, and securing the rights of people.”<sup>257</sup>
  177. In this sense, the Commission has indicated that domestic situations of security and violence should be handled by a civilian police force, effective and respectful of human rights, and not by turning to the armed forces, who are trained and equipped for other types of external conflict.<sup>258</sup> “The history of the hemisphere shows that, broadly speaking, the intervention of the armed forces in internal security matters is accompanied by violations of human rights in violent circumstances. Therefore, practice teaches us that it is advisable to avoid the intervention of the armed forces in matters of internal security since it carries a risk of human rights violations.”<sup>259</sup>
  178. The IACHR has emphasized that the police bodies and armed forces are “two substantively different institutions, insofar as the purposes for which they were created and their training and preparation are concerned.”<sup>260</sup> As such, the clear and precise separation between domestic security as a function of the Police and national defense as a function of the Armed Forces is fundamental.<sup>261</sup>
  179. The Inter-American Court reiterated this opinion in its decision in the case of *Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, holding that: “the States must restrict to the maximum extent the use of armed forces to control domestic disturbances, since they are trained to fight against enemies and not to protect and control civilians, a task that is typical of police forces.”<sup>262</sup>
  180. Another phenomenon that hinders the establishment of a citizen security policy is the militarization of police forces. Police bodies, in their interventions aimed at preserving internal order, would appear to have recourse to the use of force as a first

---

<sup>256</sup> IACHR, Annual Report 2015, Chapter IV A, para. 36; Report on the Situation of Human Rights in Venezuela, 2003, chapter III, “State Security: The Armed Forces and the Police,” para. 294; Report on Citizen Security and Human Rights, OEA/Ser.L/V/II., Doc. 57, December 31, 2009, para. 77.

<sup>257</sup> UN, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, A/HRC/26/36, 1 April 2014, para. 22.

<sup>258</sup> IACHR, Annual Report 2015, Chapter IV A, para. 37.

<sup>259</sup> IACHR, Annual Report 2015, Chapter IV A, para. 37; Report on Citizen Security and Human Rights, 2009, pp. 42-43.

<sup>260</sup> IACHR, Annual Report 2015, Chapter IV A, para. 49; Report on the Situation of Human Rights in Venezuela, 2003, Chapter III, “State Security: The Armed Forces and the Police,” para. 272.

<sup>261</sup> IACHR, Report on Citizen Security and Human Rights, 2009, pp. 42-43.

<sup>262</sup> I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 78.

resort, which is characteristic of military formations.<sup>263</sup> As the IACHR noted with respect to the police in the United States, “[...] The main concerns related to excessive or arbitrary use of force is focused on militarization of the police in terms of the equipment used, the type of training they receive, the action protocols they use, and the difficulty with which police officers who are guilty of abuse or excessive use of force are held criminally liable and prosecuted.”<sup>264</sup>

#### 4. Dialogue and negotiation bodies

181. The Commission has emphasized that, regardless of the format adopted by those who exercise this right, the action of the police should have as its main objective facilitating demonstrations and not containing or confronting the demonstrators. For this reason, police operations should be oriented towards guaranteeing the exercise of this right.<sup>265</sup> It has similarly reiterated that “the State’s obligation is to ensure the processing of the demands and the underlying social and political conflicts so as to channel the claims.”<sup>266</sup>
182. The IACHR recommends the promotion of spaces for communication and dialogue prior to demonstrations, and the engagement of liaison officers with demonstrators, in order to coordinate the unfolding of demonstrations and protests and public security operations, avoiding conflict situations.<sup>267</sup> Consensus has been strengthened among experts and international institutions,<sup>268</sup> governmental agencies, and civil society that dialogue and negotiation-focused approaches are more effective in managing protests and preventing acts of violence.<sup>269</sup>
183. In this regard, the political authority must provide the appropriate mechanisms for genuine channels of communication with demonstrators in order to manage, first, the procedural aspects of the protest action (use of public space, duration, etc.) and, second, to direct complaints to the relevant institutional channels in order to identify opportunities for communicating and coordinating with the interested authorities.
184. These means of coordinating and responding to demands are essential when it comes to marginalized, vulnerable groups with limited access to existing channels of political representation.<sup>270</sup> These political channels, moreover, should allow for the

<sup>263</sup> IACHR, Annual Report 2015, Chapter IV A, para. 40.

<sup>264</sup> IACHR, Annual Report 2015, Chapter IV A, para. 40; Report on Violence, Children, and Organized Crime. OAS/Ser.L/V/II.Doc. 40/15, November 2, 2015, para. 191.

<sup>265</sup> IACHR, Annual Report 2015, Chapter IV A, para. 68.

<sup>266</sup> IACHR, Annual Report 2015, Chapter IV A, para. 68; Amnesty International, Use of force — Guidelines for implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, August 2015, p. 150.

<sup>267</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, 2006, para.68 e).

<sup>268</sup> The UN Human Rights Council has underscored “the important role that communication between protestors, local authorities and officials exercising law enforcement duties can play in the proper management of assemblies, such as peaceful protests, and calls on States to establish appropriate channels in that regard” (A/HRC/25/L.20).

<sup>269</sup> The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, has called for a “negotiated” approach to social protest, including the active use of communication, negotiation, cooperation, information gathering, and an emphasis on preventive police policies ( A/HRC/17/28), and Amnesty International has stressed that dialogue with demonstrators plays an important role in reducing levels of violence (Amnesty International, Use of Force – Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials).

<sup>270</sup> Charter of the Organization of American States. Article 45(f) & (g). I/A Court H.R., *Case of Yatama v. Nicaragua*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No. 127. Concurring opinion of J. García Ramírez 25, 27; Concurring opinion of J. Diego García Sayán, 31.

filing of complaints related to irregularities and non-compliance with legal and regulatory provisions on the part of police and security forces.

## **5. The duty to not criminalize leaders and participants in demonstrations and protests**

185. The application of criminal law to the acts of participants in a demonstration constitutes a serious restriction with far-reaching consequences for freedom of expression, as well as the rights of assembly, association, and political participation, which under the principles developed above can only be used on a very exceptional basis and is subject to a heightened level of scrutiny.

186. In its Second Report on the Situation of Human Rights Defenders in the Americas, the Commission noted that “During the last years, there is a growing trend in some countries to bring criminal charges against people who participate in social protests,”<sup>271</sup> and in another report on the Criminalization of the Work of Human Rights Defenders, the IACHR noted that social protests are one of the most common contexts in which this serious problem arises.

187. Similarly, in its 2005 Annual Report, the Office of the Special Rapporteur for Freedom of Expression of the IACHR maintained that:

“(…) in principle, criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly. In other words, it must be examined whether the application of criminal sanctions is justified under the standard, established by the Inter-American Court, that said restriction (criminalization) satisfies a pressing public interest necessary for the operation of a democratic society. It is also necessary to examine whether the imposition of criminal sanctions is, in fact, the least harmful means to restrict the freedom of expression, exercised through the right of assembly, in turn exercised through a demonstration on a thoroughfare or in a public space.”<sup>272</sup>

188. The criminalization of social protest consists in the use of the punitive power of the State to deter, punish, or prevent the exercise of the right to protest,<sup>273</sup> and in some cases, to social and political participation more broadly, through the arbitrary, disproportionate, or repeated use of the criminal justice system against demonstrators, activists, and social or political leaders for participating in or allegedly organizing a social protest, or for being part of the organizing or convening group or entity. As the Inter-American Commission has pointed out, its effects often include arbitrary and prolonged prosecution for misdemeanor or criminal offenses, the imposition of fines, and/or arbitrary arrests with or without a conviction.

<sup>271</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66 December 31, 2011, para. 107.

<sup>272</sup> IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2005. Chapter V, “Public Demonstrations as an Exercise of Freedom of Expression and Freedom of Assembly,” para. 96. Similarly, see: IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2002, Ch. IV, para. 35.

<sup>273</sup> Cf. IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 12.

189. The Commission has repeatedly observed that the prosecution of human rights defenders is a common trend in Latin America. This misuse of the criminal law occurs more frequently where there are tensions or conflicts of interest, including in the context of social protest, during or after the staging of a demonstration, blockade, sit-in, or mobilization, for the simple fact of having participated in these acts.<sup>274</sup>
190. The IACHR has underscored in this regard that the people who promote and lead demonstrations are often the hardest hit, and are used to send a message to other people and organizations that participate in the protests.<sup>275</sup> Some cases have gone so far as to accuse social leaders of acts carried out in demonstrations where they were not even present. This reveals an application of the criminal law that is explained less by the aim of regulating the use of public space and guaranteeing the rights of third parties, than by a persecutory and restrictive purpose that seeks to curtail the social and political activity of these people and their organizations.
191. Criminal proceedings and judgments, as well as administrative penalties or fines and pecuniary reparations, have a systemic effect on the general conditions for peaceful protest as an exercise of freedom of expression. In addition to the individual and institutional (regarding organizations) dimension of the impact of these measures, criminalization has a “chilling effect” on society as a whole, and may lead to the prevention or inhibition of this type of expression.<sup>276</sup> As the Office of the Special Rapporteur for Freedom of Expression has maintained, criminalization has collective and social effects:
192. “It should be recalled that (...) criminalization could have an intimidating effect on this form of participatory expression among those sectors of society that lack access to other channels of complaint or petition, such as the traditional press or the right of petition within the state body from which the object of the claim arose. Curtailing free speech by imprisoning those who make use of this means of expression would have a dissuading effect on those sectors of society that express their points of view or criticisms of the authorities as a way of influencing the processes whereby state decisions and policies that directly affect them are made.”<sup>277</sup>
193. The criminalization of persons participating in or leading public demonstrations not only has an impact on the right to freedom of expression and assembly, but also has serious and systemic effects on the exercise of the rights to freedom of association and political participation. In particular, criminalization has a number of repercussions on the free operation and coordination of the organizations, political parties, trade unions, networks, movements, or other groups to which the accused persons belong.
194. By affecting the free development of political activities and the maximum plurality of speech on issues of public interest, this abuse of the criminal law can constitute a serious infringement of political rights (Articles 23 of the ACHR and 24 of the Declaration) given that, as this Commission has held, “governments have, in the face of political rights and the right to political participation, the obligation to permit and

<sup>274</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 4.

<sup>275</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, 2006, para. 218.

<sup>276</sup> IACHR, “*Matter of Fernando Alcibiades Villavicencio Valencia et al., Ecuador*,” Precautionary Measure No. 30-14. March 24, 2014, paras. 34-36.

<sup>277</sup> IACHR, *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*, 2002, Ch. IV, para. 35.

guarantee: the organization of all political parties and other associations, unless they are constituted to violate human rights; open debate of the principal themes of socioeconomic development; the celebration of general and free elections with all the necessary guarantees so that the results represent the popular will.”<sup>278</sup> Attacks on these organizations may also be contrary to the obligations imposed by Article 45 (c), (f) and (g) of the Charter of the Organization of American States.<sup>279</sup>

195. The criminalization of the right to protest is often the result of applying criminal definitions that, because of their vagueness or ambiguity, violate the principle of legality and inter-American standards. In other cases, conduct that is part of a social protest is penalized directly, such as criminal penalties for lack of prior authorization or contempt (*desacato*). It also tends to occur through a formalistic application of criminal concepts, which isolates the behaviors it seeks to punish from the context in which they occur (the exercise of the right to social protest), and develops a literal interpretation of the criminal texts that contradicts constitutional norms, or unduly extends the scope of application of the criminal provision.
196. The set of criminal definitions used to criminalize protest is similar in the different countries of the region. Some of the most common offenses charged in this context are: obstruction of public roads; resistance to authority and crimes of indecency and contempt; disturbance of public peace or public order; advocacy of crime; damage to public or private property; sabotage; trespass and unlawful occupation of property; criminal conspiracy and instigation to commit a crime; incitement to rebellion; sedition and mayhem; riot; extortion or aggravated coercion; and even crimes of terrorism.
197. Criminalization may also be the product of criminal proceedings based on circumstances for which there is no evidence or where the evidence is directly false and which lead to the authorization of measures that are distressing to individuals, their families, and organizations, such as the unwarranted ordering of pretrial detention, seizures, raids, and often violent searches.

**a) The creation of broad, vague, or ambiguous criminal offenses in violation of the principle of legality**

---

<sup>278</sup> IACHR, Annual Report 2002, Ch. IV, Cuba, para. 12.

<sup>279</sup> Charter of the Organization of American States. Article 45: The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms: [...] c) Employers and workers, both rural and urban, have the right to associate themselves freely for the defense and promotion of their interests, including the right to collective bargaining and the workers' right to strike, and recognition of the juridical personality of associations and the protection of their freedom and independence, all in accordance with applicable laws; [...] f) The incorporation and increasing participation of the marginal sectors of the population, in both rural and urban areas, in the economic, social, civic, cultural, and political life of the nation, in order to achieve the full integration of the national community, acceleration of the process of social mobility, and the consolidation of the democratic system. The encouragement of all efforts of popular promotion and cooperation that have as their purpose the development and progress of the community; g) Recognition of the importance of the contribution of organizations such as labor unions, cooperatives, and cultural, professional, business, neighborhood, and community associations to the life of the society and to the development process.”

198. In its report on the criminalization of human rights defenders in the Americas, the Commission stressed that the formulation of criminal offenses contrary to the principle of legality can give rise to processes of criminalization.<sup>280</sup> It noted that, although it is up to the State in the exercise of its crime policy to determine which acts are to be classified as crimes, Article 9 of the American Convention enshrines the principle of legality and entails elements that must be observed by States when exercising their power to define criminal offenses.<sup>281</sup>
199. The principle of legality requires the legislature to enact a provision in accordance with the procedure required by the domestic law of each State (procedural legality);<sup>282</sup> and that criminal definitions are formulated unambiguously, in strict, precise, and unequivocal terms, which clearly define the punishable acts as crimes, establishing their specific elements and the factors that distinguish them from other punishable acts under other criminal concepts (substantive legality).<sup>283</sup>
200. The Inter-American Court has stated that, “Ambiguity in describing crimes creates doubts and the opportunity for abuse of power, particularly when it comes to ascertaining the criminal responsibility of individuals and punishing their criminal behavior with penalties that exact their toll on the things that are most precious, such as life and liberty.”<sup>284</sup> Furthermore, this type of ambiguity may lead to a number of restrictions on due process guarantees since, depending on whether one offense or another is involved, there is a variation in the penalty to be imposed.<sup>285</sup> The Court has held that in these situations there is a lack of certainty about the criminal acts, their elements, the objects or interests against which they are committed, and the effects on society as a whole.<sup>286</sup>
201. This is notably the case with counter-terrorism laws. The United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has stated that, “The adoption of overly broad definitions of terrorism therefore carries the potential for deliberate misuse of the term—including as a response to claims and social movements of indigenous peoples—as well as unintended human rights abuses. Failure to restrict counter-

<sup>280</sup> Cf. IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 57.

<sup>281</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 241.

<sup>282</sup> I/A Court H.R., *The Word “Laws” in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 29.

<sup>283</sup> IACHR, *Second Report on the Situation of Human Rights in Peru (2000)*, OEA/Ser.L/V/II.106, Doc. 59 rev. 2, June 2, 2000, paras. 80, 168; IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002, para. 225; I/A Court H.R., *Case of Castillo Petruzzi et al. v. Peru*. Merits, Reparations and Costs. Judgment of May 30, 1999. Series C No. 52, para. 121; *Case of Cantoral Benavides v. Peru*. Judgment of August 18, 2000. Series C No. 69, para. 157; *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 174; *Case of De La Cruz Flores v. Peru*. Judgment of November 18, 2004. Series C No. 115, para. 79; *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, para. 188; *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, para. 55.

<sup>284</sup> I/A Court H.R., *Case of Castillo Petruzzi et al. v. Peru*. Judgment of May 30, 1999. Series C No. 52, para. 121; *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 174.

<sup>285</sup> I/A Court H.R., *Case of Castillo Petruzzi et al. v. Peru*. Judgment of May 30, 1999. Series C No. 52, para. 119; I/A Court H.R., *Case of Lori Berenson Mejía v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2004. Series C No. 119, para. 119.

<sup>286</sup> I/A Court H.R., *Case of Lori Berenson Mejía v. Peru*. Judgment of November 25, 2004, para. 117.

terrorism laws and implementing measures to the countering of conduct which is truly terrorist in nature also pose the risk that, where such laws and measures restrict the enjoyment of rights and freedoms, they will offend the principles of necessity and proportionality that govern the permissibility of any restriction on human rights.”<sup>287</sup>

202. The Inter-American Court has established that, when defining offenses of a terrorist nature, the principle of legality requires that a necessary distinction be made between such offenses and ordinary offenses, so that every individual and also the criminal judge have sufficient legal elements to know whether an act is punishable under one offense or the other. This is especially important with regard to terrorist offenses because they merit harsher prison sentences, as well as ancillary penalties and disqualifications with major effects on the exercise of other fundamental rights.<sup>288</sup>

**b) Criminal definitions that violate inter-American standards by punishing activities typical of social protest**

203. This report has already pointed out that the provision of criminal penalties for failure to comply with a requirement that contravenes international law, such as prior authorization, is incompatible with the obligations arising from the American Convention because it violates the prohibition of prior censorship.<sup>289</sup>

204. The Commission has also received information on the use of the criminal offense of contempt (*desacato*) to arrest and prosecute demonstrators when they respond verbally to police violence during protests. The Commission and the Inter-American Court have been emphatic in maintaining that critical expressions referring to public officials enjoy greater protection under the inter-American human rights system.<sup>290</sup>

<sup>287</sup> UN General Assembly, Human Rights Council, A/HRC/16/51, Report of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, 22 December 2010, paras. 26-27.

<sup>288</sup> I/A Court H.R., *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*. Merits, Reparations and Costs. Judgment of May 29, 2014. Series C No. 279, para. 163.

<sup>289</sup> ACHR, Art. 13.2: “The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability (...)”; The Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, has indicated that the failure of organizers to give prior notice to the authorities should not result in the imposition of criminal or administrative penalties resulting in fines or imprisonment, especially in the case of spontaneous assemblies where the organizers are unable to comply with the requisite notification requirements, or where there is no existing or identifiable organizer (A/HRC/20/27, 21 May 2012, para. 29).

<sup>290</sup> IACHR, Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995; IACHR. Annual Report 2004. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter VI (“Desacato” Laws and Criminal Defamation). OEA/Ser.L/V/II.122. Doc. 5 rev. 1. February 23, 2005, paras. 155 *et seq.*; IACHR. Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, pp. 245 *et seq.*; I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Merits, Reparations and Costs. Judgment of February 6, 2001. Series C No. 74; *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107; *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111; *Case of Palamara Iribarne v. Chile*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 135; I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008 Series C No. 177. Technical note on the international parameters regarding freedom of

205. In that regard, States may not detain or prosecute a demonstrator merely for expressing criticism, verbal condemnation, or insults to a State agent in a situation of conflict or social protest. In fact, it bears recalling that the mere criminalization of contempt (*desacato*) is an infringement of the right to freedom of expression protected under Article 13 of the American Convention and Article IV of the American Declaration of the Rights and Duties of Man.<sup>291</sup>
206. In particular, when social protest falls within the scope of speech that criticizes or condemns public officials and authorities or refers to matters of public interest, it is especially protected by Article 13 of the ACHR. The Inter-American Commission has asserted that in cases where there is "...a criminal conviction or an arrest warrant which, in principle, results from the exercise of a fundamental right in a specially protected area which, in turn, is one of the bases for the proper functioning of any democracy (...)," it can be concluded that: (i) "there is an obvious connection between the protected conduct (the exercise of freedom of expression and the right to lodge complaints against authorities) and the conviction or arrest warrant" and that (ii) "the execution of the criminal sentence would have multiple adverse effects because it could affect not only the personal freedom but also the right to freedom of expression of the detainee, his peers, and society as a whole."<sup>292</sup>
- c) The formalistic and broad application of the criminal law to criminalize social protest**
207. Criminalization also tends to occur through the abusive or widespread application of criminal concepts or forms of criminal participation, which is also characterized by a narrow, biased, or decontextualized interpretation of the facts.
208. The Commission stresses that States should stop applying criminal definitions that characterize conduct commonly observed in protests as criminal acts, such as roadblocks or disorderly acts that, in themselves, do not affect interests such as the life, safety, or freedom of persons;<sup>293</sup> in the context of protests, these acts constitute forms of exercising the rights to freedom of expression, assembly, and association.<sup>294</sup>

---

expression and crimes against honor and the adequacy of the provisions regarding crimes against honor present in the draft amendment of the Brazilian Criminal Code. November 4, 2013, in: IACHR, Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter 88 (Evaluation of the State of Freedom of Expression in the Hemisphere), para. 125. November 4, 2013; IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 101.

<sup>291</sup> Principle 11 of the Declaration of Principles on Freedom of Expression adopted by the IACHR provides that: "Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as "desacato laws," restrict freedom of expression and the right to information"; IACHR, Declaration of Principles on Freedom of Expression Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=26&IID=1>; Similarly, see: IACHR, Annual Report 1994. Chapter V: Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995; IACHR, Annual Report 2004. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter VI ("Desacato" Laws and Criminal Defamation). OEA/Ser.L/V/II.122. Doc. 5 rev. 1. February 23, 2005, paras. 155 *et seq.*; IACHR, Annual Report 2009. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression). OEA/Ser.L/V/II. Doc. 51. December 30, 2009. pp. 245 *et seq.*; IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 103.

<sup>292</sup> IACHR, "Matter of Fernando Alcibiades Villavicencio Valencia et al., Ecuador." Op. Cit., paras. 24 -25 (emphasis added).

<sup>293</sup> IACHR, *A Hemispheric Agenda for the Defense of Freedom of Expression*, Office of the Special Rapporteur for Freedom of Expression, OEA/Ser.L/V/II IACHR/RELE/INF. 4/09, of February 25, 2009, para. 71.

<sup>294</sup> IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2002, Ch. IV, para. 35.

209. As highlighted in the chapter on restrictions, justice authorities should make certain that any limitation on the exercise of the right is necessary for the functioning of a democratic society. For instance, in weighing the right to freedom of movement against the right to social protest, “it should be borne in mind that the right to freedom of expression is not just another right, but one of the primary and most important foundations of any democratic structure: the undermining of freedom of expression directly affects the central nerve of the democratic system.”<sup>295</sup> On this issue, the IACHR has maintained that “(...) in principle, criminalization *per se* of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly.”<sup>296</sup>
210. The Commission has also observed the manipulation of criminal law to arbitrarily detain and bring unfounded criminal proceedings against persons who participate in, call for, or organize public demonstrations. The Commission has stated that criminal offenses related to maintaining public order, such as “incitement to rebellion,” “terrorism,” “sabotage,” “incitement to crime,” and “attack or resistance to public authority,” tend to be arbitrarily applied by the authorities to criminalize the work of human rights defenders.<sup>297</sup> In general, justice authorities have a duty to refrain from applying these criminal definitions to acts typically carried out in these contexts.
211. The Office of the Special Rapporteur for Freedom of Expression of the IACHR has underscored that, “The criminalization of speech relating to terrorism should be restricted to instances of intentional incitement to terrorism, understood as a direct call to engage in terrorism which is directly responsible for increasing the likelihood of a terrorist act occurring, or to actual participation in terrorist acts (for example by directing them).”<sup>298</sup> This Commission has in turn stated that the same standard should apply to cases where there is an intention to accuse a person for offenses such as treason or rebellion, or the dissemination of ideas or information that is uncomfortable for government authorities.<sup>299</sup>
212. Broad interpretations of forms of criminal involvement such as “instigation to commit crimes” also deserve to be challenged. This concept has been used to criminalize social leaders on the grounds that they organized protests for which—since they were not present—they could not be prosecuted as direct perpetrators.
213. The IACHR has also noted that the criminal definitions of unlawful occupation enshrined in the Guatemalan criminal code have reportedly been used excessively and unjustifiably against indigenous peoples and peasants who occupy lands whose ownership is in dispute with landowners or companies. The statutory definition of unlawful occupation does not clearly define the adverb “illegally, for any purpose,” nor does it clearly describe the requisite intent of the perpetrator needed to meet the

<sup>295</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, Para. 126.

<sup>296</sup> IACHR, Annual Report 2007, Chapter IV, para. 266.

<sup>297</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 6.

<sup>298</sup> IACHR, Annual Report 2013, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, OEA/Ser.L/V/II.149 Doc.50, December 31, 2013, para. 391.

<sup>299</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 144.

elements of the crime. Consequently, indigenous people and peasants who—although lacking formal title—have for years been in possession of the lands they consider to be their ancestral or rightful property, have often been criminally prosecuted.<sup>300</sup>

#### **d) Failure to observe fundamental guarantees**

214. In addition to issues of legality or the interpretation of criminal definitions, the various actors involved in the criminal proceedings often commit violations such as fabricating false evidence, holding defendants in pretrial detention, or taking other excessive procedural measures. In its 2011 Annual Report, the Commission underscored the tendency of some judges, prosecutors, ministers, and law enforcement officers to manipulate the punitive power of the State for purposes of criminalization.<sup>301</sup> The authorities in charge of investigating the crime—perhaps due to a lack of precision in the criminal codes themselves, or due to a lack of diligence in the investigation—proceed with the criminal indictment before gathering the necessary evidence to verify that the unlawful conduct has occurred.<sup>302</sup> There have also been complaints of prosecutors obtaining false statements from witnesses receiving State benefits, and of failing to individually identify each defendant’s role in the alleged facts when establishing the circumstances of time, place, and manner.<sup>303</sup>
215. The IACHR has noted in particular that in some cases human rights defenders been charged with crimes like robbery, murder, and kidnapping based on false and fabricated evidence, and in the absence of any unlawful or guilty conduct.<sup>304</sup> Similarly, in contexts of social protest, the authorities have accused demonstrators of crimes such as property damage, coercion, threats, kidnapping, or terrorism, sometimes adapting the criminal definitions so that they can be applied to the acts of demonstrators they wish to punish in order to justify their arrest.<sup>305</sup> It is also common in protest contexts for prosecutors to overcharge demonstrators in order to justify the use of pretrial detention.<sup>306</sup>
216. The Inter-American Court has held that prosecutors must ensure the proper application of the law and the search for the truth about the events that occurred, acting with professionalism, good faith, and procedural fairness, considering both elements that can prove the crime and the guilt of the accused, as well as any exculpatory evidence that mitigates his or her criminal responsibility.<sup>307</sup> Clear evidence of guilt is a prerequisite for criminal punishment, in such a way that the

<sup>300</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, 2011. OEA/Ser.L/V/II. Doc.66, p. 37.

<sup>301</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 55.

<sup>302</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 58.

<sup>303</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 61.

<sup>304</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 180.

<sup>305</sup> The same dynamic has been identified in the more general framework of the criminalization of human rights work. Cf. IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 180.

<sup>306</sup> Cf. IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 200.

<sup>307</sup> I/A Court H.R., *Case of Tristán Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, para. 165.

burden of proof falls on the prosecution and not on the accused. Thus, the lack of presentation of convincing evidence of responsibility in a guilty verdict is a violation of the principle of presumption of innocence, which is essential for the effective realization of the right to a defense.<sup>308</sup>

217. The violation of the presumption of innocence and due process in criminal proceedings affects not only the human rights defenders who are criminally prosecuted, who must spend their time and resources on their legal defense, neglecting his or her work or that of his or her organization; criminalization also has a chilling and crippling effect on other human rights defenders who, for fear of retaliation, may stop working to promote and protect human rights.<sup>309</sup>
218. In particular, the Commission considered that lengthy criminal proceedings particularly affect human rights defenders and have a discouraging effect on their ability to defend human rights.<sup>310</sup> No human rights defender may be subject to a criminal proceeding indefinitely; such a situation would infringe on the guarantee of a reasonable time period. This guarantee, in addition to being a basic element for the right to a trial in accordance with the rules of due process, is especially essential to prevent unwarranted criminal proceedings from preventing defenders from doing their work.<sup>311</sup>
219. At the same time, police officers and members of the security forces are active participants in criminalization processes. They are generally in charge of conducting investigative activities and carry out searches and arrests; in many cases, they also serve as witnesses in court. There have been numerous complaints of arbitrary arrests, false testimony and evidence, and the unjustified collective attribution of conduct in criminal proceedings related to social protests.
220. The Commission stresses that when justice authorities find themselves faced with manifestly unfounded criminal accusations and complaints and the protection of the right to protest is involved, they have an obligation to investigate the source or sources of this type of arbitrary complaint and impose the appropriate penalties. This duty includes the obligation to ensure that no violation goes unpunished, thereby preventing future abuses. The Commission recalls that the obligation of States to investigate conduct affecting the rights protected in the American Convention and the American Declaration remains, irrespective of the agent who may eventually be held responsible for the violation.<sup>312</sup>

---

<sup>308</sup> I/A Court H.R., *Case of López Mendoza v. Venezuela*. Merits, Reparations, and Costs. Judgment of September 1, 2011. Series C No. 233, para. 128.

<sup>309</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 227.

<sup>310</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 179.

<sup>311</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 181.

<sup>312</sup> I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 143; *Case of Heliodoro Portugal v. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008. Series C No. 186, para. 144; *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 101.

221. Finally, the Commission underscored in its 2015 Annual Report that the use, in criminal cases, of precautionary measures such as the prohibition of public assembly or demonstration may constitute a strategy to prevent participation in public demonstrations and therefore a misuse of the criminal law.<sup>313</sup>

#### e) Prohibition of arbitrary arrests

222. Criminalization, understood as the abusive or arbitrary use of the criminal law against demonstrators, often begins or occurs through arbitrary arrests of demonstrators during the course of protests. It is very common for mass detentions of human rights defenders to take place, especially in contexts of social protest. Many times when carrying out such arbitrary detentions, the persons affected are released within a few hours, but in other cases they remain preventively deprived of their liberty for unreasonable periods of time.<sup>314</sup>

223. The right to personal freedom and safety and the right to freedom from arbitrary arrest or detention are established in Article XXV of the American Declaration and in Article 7 of the American Convention on Human Rights. The IACHR has underscored that the exercise of personal liberty and its full guarantee that it will not be restricted by unlawful action is a basic need for the full exercise of human rights defense.<sup>315</sup>

224. Therefore, the Commission considers it vitally important to re-emphasize that arrests made by security forces in connection with social protests must strictly comply with all requirements imposed by domestic laws and international standards.<sup>316</sup>

225. The IACHR recalls that the general requirements of the system for the prevention of arbitrary arrests also apply in protest contexts. First, no one may be deprived of liberty except for reasons expressly defined in the law, or in a manner contrary to the procedures objectively defined therein. In accordance with these principles, no one may be arrested except on the grounds established under domestic law, and subject strictly to all procedural formalities which judicial and police authorities are required by law to follow. In addition, States should ensure that no person is subjected to detention or imprisonment based on reasons and methods which, even if deemed legal, may be considered incompatible with respect for fundamental individual rights because they are, *inter alia*, unreasonable, unpredictable, or disproportionate.<sup>317</sup>

226. The Commission has found that, “A detention is arbitrary and unlawful if not done on the grounds and by the formalities prescribed by law, when executed without observing the procedures that the law prescribes, and when there has been an abuse of the powers of arrest, i.e., when the arrest is made for purposes other than those that the law prescribes and requires. The Commission has also held that a detention for improper purposes is itself a punishment constituting a sort of sentence without

<sup>313</sup> Cf. IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 210.

<sup>314</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 183.

<sup>315</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, 2006, para. 48.

<sup>316</sup> IACHR, Annual Report 2015, para. 121.

<sup>317</sup> Cfr. I/A Court H.R., *Case of Durand and Ugarte v. Peru*. Judgment of August 16, 2000. Series C No. 68, paras. 52-56, para. 85; *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63; *Case of Suárez Rosero*, Judgment of November 12, 1997. Series C No. 35, para. 43; *Case of Gangaram Panday*, Judgment of January 21, 1994. Series C No. 16, para. 47.

trial, or an unlawful penalty that violates the guarantee against imposition of punishment without benefit of trial, [and that] the term ‘arbitrary’ is synonymous with ‘irregular, abusive, contrary to law.’”<sup>318</sup> Similarly, the deprivation of a person’s liberty must be based on a specific act justifying the arrest. Such a specific act must be criminal, as established by law, and the arrest therefore cannot be based on the danger that a person may commit a crime.<sup>319</sup>

227. According to the inter-American standards, a detention may be lawful and yet arbitrary and contrary to Article 7.3 of the Convention. The Inter-American Court has held that all detentions must meet the following criteria: i) the purpose of measures that deprive or restrict a person’s liberty is compatible with the Convention; ii) the measures adopted are appropriate for complying with the intended purpose; iii) the measures are necessary, in the sense that they are absolutely indispensable for achieving the intended purpose and that no other measure less onerous exists, in relation to the right involved, to achieve the intended purpose, and iv) the measures are strictly proportionate.<sup>320</sup>
228. An arrest based exclusively on the act of participating in a protest or public demonstration does not meet the requirements of reasonableness and proportionality established by international standards. The deprivation of liberty during a demonstration has the immediate effect of preventing the detainee from exercising the right to protest and has a chilling effect on participation in public demonstrations, all of which affects the enjoyment and exercise of the right to social protest.
229. States should also refrain from conducting mass, collective, or indiscriminate arrests at public demonstrations. The Inter-American Court has ruled that, “a massive and programmed arrest of people without legal grounds, in which the State massively arrests people that the authority considers may represent a risk or danger to the security of others, without substantiated evidence of the commission of a crime, constitutes an illegal and arbitrary arrest.”<sup>321</sup> These types of practices are incompatible with respect for fundamental rights, including presumption of innocence, existence of a court order for detention—except in situations of flagrancy.<sup>322</sup>
230. The Commission also notes with concern the existence of cases in which lawyers have been attacked and arbitrarily detained for representing clients accused of or detained in the context of social protests. Principle 16 of the United Nations Basic Principles on the Role of Lawyers provides that “Governments shall ensure that lawyers (...) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.” Furthermore, Principle 18 states that

<sup>318</sup> IACHR, Report No. 35/08, Case 12.019, Admissibility and Merits, Antonio Ferreira Braga, Brazil, July 18, 2008, para. 68.

<sup>319</sup> United Nations Working Group on Arbitrary Detention. Opinions adopted by the Working Group on Arbitrary Detention at its 69<sup>th</sup> session (22 April - 1 May 2014), A/HRC/WGAD/2014/9, para. 24.

<sup>320</sup> I/A Court H.R., *Case of Vélez Loor v. Panama*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2010 Series C No. 218, para. 166.

<sup>321</sup> I/A Court H.R., *Case of Servellón García et al. v. Honduras*. Judgment of September 21, 2006, para. 93.

<sup>322</sup> I/A Court H.R., *Case of Bulacio v. Argentina*. Merits, Reparations, and Costs. Judgment of September 18, 2003, para. 137.

“Lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions,” and Principle 20 establishes that “Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.” For its part, the International Bar Association has affirmed that, “No lawyer shall suffer or be threatened with penal, civil, administrative, economic or other sanctions or harassment by reason of his or her having legitimately advised or represented any client or client’s cause.”<sup>323</sup>

231. All detainees and their relatives also have the right to receive—and the State has an obligation to provide— accurate information regarding the reasons for detention and the place where detainees will be taken, in simple, non-technical language. This right, as the Inter-American Court has stressed, “is a mechanism to avoid illegal or arbitrary detentions, from the very moment when a person is deprived of his or her liberty. It also ensures the right to defense of the detainee.”<sup>324</sup>

#### **f) Intelligence**

232. A particularly serious aspect of the criminalization of protest is the State practice, reported in several countries in the region, of conducting espionage, monitoring, infiltration, and a variety of covert intelligence activities against demonstrators, public figures, leaders, lawyers, human rights defenders, organizations, and their media, and against social or political movements that participate in or organize public demonstrations or are linked in various ways—closely or not—to these events.
233. While the objective of the State’s intelligence activities is to provide its authorities with input for decision-making in areas such as national defense and crime policy, their orientation towards social leaders and organizations engaged in activities that are fundamental to democratic life seriously affects freedom of expression, as well as the rights to assembly, association, and political participation. These covert activities are usually disproportionate and excessive in relation to the legal interests to be protected or the effects to be prevented, and constitute a discriminatory practice against social movements for criticizing some aspect of public policy.
234. In its 2015 Report on the Criminalization of the Work of Human Rights Defenders, the Inter-American Commission noted that criminal cases are preceded on occasion by secret preliminary investigations. These investigations “may include intelligence activities or collecting intelligence reports by the army or police, prior to, as part of, or even in the absence of a criminal investigation against a human rights defender.”<sup>325</sup> In fact, politically motivated cases of illegal espionage persist in the region. Victims include human rights defenders and organizations of various kinds, such as trade unions, social movements, and the media.
235. Illegal espionage practices pursue different objectives and may affect the rights of protesters in a number of ways, such as the presence of undercover agents in a specific situation such as protests and the activities leading up to them, as well as sustained infiltration and other espionage actions in political parties, or in a

<sup>323</sup> International Bar Association, *IBA Standards for the Independence of the Legal Profession*, 1990.

<sup>324</sup> I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Judgment of June 7, 2003. Series C No. 99, para. 82.

<sup>325</sup> IACHR, *Criminalization of the Work of Human Rights Defenders*, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 59.

particular organization or movement over a period of time under a false identity. The Office of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has expressed its concern over “the use of embedded undercover police officers in groups that are non-violent and take peaceful direct action by exercising their right to freedom of peaceful assembly.”<sup>326</sup>

236. These practices often include filming and/or photographing demonstrators, resulting in data registries on individuals or organizations. Their telephone conversations or their private communications through digital media may also be monitored. Cases in which these clandestine records are used to produce documents, files, and databases in intelligence, security, and justice institutions that stigmatize political parties, organizations, and social movements are particularly serious. This kind of information has even become part of judicial proceedings in cases that criminalize demonstrators and social leaders.
237. The Commission takes the view that the monitoring of the regular activities of political and social organizations and the recording and storage of information obtained by means of their infiltration is unlawful and contrary to inter-American standards, and violates the rights to freedom of assembly and association and political participation. What’s more, they constitute undue interference in a sphere of private life. Requiring that actions of this type be approved by court order allows for their external oversight.
238. The Commission has also considered on previous occasions that participation in security operations by plainclothes police or without their respective identification presents problems for the administrative and/or judicial review of possible irregularities and/or violations of rights. The lack of proper identification is an additional obstacle to the assignment of responsibility in contexts where reconstructing the events is complex in itself. The reconstruction of the facts and the value of audiovisual records and testimony as evidence is severely limited if it is not possible to identify the officers directly involved as State agents and with their personal identity.<sup>327</sup>
239. The uniform and identification of security officers in a protest have a preventive function, since officers act with a higher expectation of accountability.

#### **g) Stigmatization and criminalization in the speech of political leaders**

240. Often, the misuse of the criminal law is preceded by statements made by public officials in which human rights defenders are accused of committing crimes and there is no ongoing proceeding or judicial decision to confirm these allegations.<sup>328</sup>
241. The Inter-American Commission has established that, based on the presumption of innocence, “States must refrain from public incrimination of a defender whose

<sup>326</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, on his mission to the United Kingdom (14-23 January 2013) A/HRC/23/39/Add.1, para. 24.

<sup>327</sup> IACHR, Annual Report 2015, ch. 4A, para. 225.

<sup>328</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 6.

alleged crimes have not been legally proven. The governments should not tolerate any effort on the part of State authorities to cast in doubt the legitimacy of the work of human rights defenders and their organizations. The IACHR has indicated that public officials must refrain from making statements that stigmatize human rights defenders or that suggest that human rights organizations act improperly or illegally, merely because of engaging in their work to promote and protect human rights.”<sup>329</sup>

242. Given the State’s obligation to guarantee, respect, and promote human rights, it is the duty of public officials to ensure that when they exercise their freedom of expression they are not causing fundamental rights to be ignored,<sup>330</sup> which includes not harming or inhibiting the right to social protest. They must also make sure that their expressions do not constitute “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute [to] public deliberation through the expression and [dissemination] of their thoughts.”<sup>331</sup>
243. The Inter-American Court, in turn, has stated that “public officials, particularly the top Government authorities, need to be especially careful so that their public statements do not amount to a form of interference with or pressure impairing judicial independence and do not induce or invite other authorities to engage in activities that may abridge the independence or affect the judge’s freedom of action.”<sup>332</sup>
244. The Inter-American Court has stated that the demands of independence and impartiality also extend to the non-judicial bodies responsible for the investigation prior to the judicial proceedings;<sup>333</sup> “in the absence of these requirements, the State cannot subsequently exercise effectively and efficiently its authority to bring charges and the courts cannot conduct the judicial proceedings that this type of violation calls for.”<sup>334</sup>

---

<sup>329</sup> IACHR, “Second Report on the Situation of Human Rights Defenders in the Americas,” 2011. OEA/Ser.L/V/II. Doc.66, para. 124.

<sup>330</sup> IACHR, *The Inter-American Legal Framework regarding the Right to Freedom of Expression*, OEA/Ser.L/V/IIIACHR/RELE/INF.2/09/, December 30, 2009, para. 203.

<sup>331</sup> IACHR, Annual Report of the Inter-American Commission on Human Rights 2013, Volume II, *Report of the Office of the Special Rapporteur for Freedom of Expression*, OEA/ser.L/V.II/Doc.50, December 31, 2013, para. 911.

<sup>332</sup> I/A Court H.R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 131.

<sup>333</sup> I/A Court H.R., *Case of Cantoral Huamani and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 133.

<sup>334</sup> I/A Court H.R., *Case of Cantoral Huamani and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 133.



**CHAPTER V**

**OBLIGATION TO GUARANTEE  
RIGHTS**



## V. THE OBLIGATION TO GUARANTEE RIGHTS

245. The need to implement oversight and accountability mechanisms over the actions of State agents in protest contexts is derived from the general obligation to guarantee rights, established in Articles 1.1 of the American Convention; the right to due process of law, provided for in Article 8 of the ACHR and in Article XXVI of the American Declaration; and the right to access to justice for violations of fundamental rights, provided for in Article 25 of the American Convention on Human Rights, as well as in Article XVIII of the Declaration.
246. This obligation entails first and foremost the duty to investigate and punish any violation that occurs within the framework of a public demonstration. In these contexts, the absence of an exhaustive investigation when rights such as life and physical integrity have been violated has an intimidating effect that is particularly serious because of the impact it has on the exercise of the rights to assembly, freedom of expression, and association. Consequently, there is a compelling need for investigations to be carried out with due diligence and within a reasonable period of time.
247. Oversight mechanisms are also a democratic mode of security governance, which should create the real expectation of accountability and the assignment of various types of responsibility. By creating an expectation of accountability, the oversight tools make it possible to model the actions of the security forces on democratic standards consistent with international human rights law. In this respect, they play an important role among the positive measures aimed at ensuring the right to protest, since in addition to constituting a guarantee of non-repetition of violations of rights, they function as an instrument for public policy assessment and improvement. The State's obligation to supervise the performance of security forces in protest situations has different dimensions.
248. First, accountability creates responsibilities for governments. Executive branch officials should design operations in such a way that they can be monitored and responsibility can be assigned for decisions and actions taken, particularly in the event of violations of rights. *A posteriori*, they are responsible for promoting and supporting administrative investigations and cooperating with judicial investigations, facilitating access to all relevant documentation and information, such as regulations, internal protocols, and the identification of witnesses and evidence.
249. A second dimension has to do with the institutional design of the security system, whose rules and structures must function subject to administrative monitoring and investigation. To this end, it should have a disciplinary code defining infractions and punishing practices that violate rights, as well as an administrative procedure that provides the appropriate guarantees for victims and the public servants under investigation. There should be bodies and mechanisms for the filing and referral of complaints, both by members of the security forces and private individuals. With regard to the former, guarantees must be provided so that the public servants can comply with their obligation to report any violation of human rights, whether perpetrated by a member of the same security force or another.

250. A third dimension concerns the conditions for the design of police operations to allow day-to-day oversight and the development of effective judicial and administrative investigations and penalties. Some of the measures implemented in this regard are: detailed inventories of the weapons and ammunition assigned to personnel and their post-operational review; identification of those responsible for issuing orders for the use of force; keeping and maintaining records of wireless and all other means of communication used by personnel during operations.

## 1. The duty to investigate, prosecute, and punish

251. States have a duty to investigate violations committed within their jurisdiction in order to identify and, where appropriate, punish those responsible.<sup>335</sup> The duty to investigate is one of the positive measures that the State has to comply with in order to guarantee the human rights recognized in the ACHR,<sup>336</sup> together with restoring the violated right, if possible, and, if appropriate, repairing the harm that the human rights violations caused to the victim.<sup>337</sup>
252. The IACHR and the Inter-American Court have repeatedly established that States have a legal duty to prevent, in a reasonable manner, violations of human rights<sup>338</sup> and to create the conditions for individuals to express their ideas without fear of reprisals or threats to their life or safety.<sup>339</sup>
253. The consistent jurisprudence of the IACHR and the Inter-American Court has affirmed that the State's obligation to investigate human rights violations must be undertaken diligently in order to prevent impunity and the repetition of such acts,<sup>340</sup> given that, as the Inter-American Court has held, "impunity encourages the repetition of human rights violations."<sup>341</sup> It is also imperative that the State, when considering a possible human rights violation, prevent all officials involved, including police or judicial personnel, from also being in charge of or having any connection with the investigation against them.<sup>342</sup>

<sup>335</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 174.

<sup>336</sup> Cfr. I/A Court H.R., *Case of Luna López v. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, para. 153. *Case of Gonzalez Medina and family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 127.

<sup>337</sup> Cfr. I/A Court H.R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 214. *Case of Véliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, para. 183.

<sup>338</sup> Cfr. I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 174.

<sup>339</sup> Cfr. IACHR, Office of the Special Rapporteur for Freedom of Expression, The Inter-American Legal Framework regarding the Right to Freedom of Expression. OEA/Ser.L/V/II, IACHR/RELE/INF. 2/09, December 30, 2009, para. 180.

<sup>340</sup> Cfr. I/A Court H.R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 216.

<sup>341</sup> I/A Court H.R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 216. Cfr. I/A Court H.R., *Case of the Ituango Massacres v. Colombia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 1, 2006. Series C No. 148, para. 319.

<sup>342</sup> Cfr. IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 201(h); IACHR, Report on the Situation of Human Rights Defenders in the Americas, para. 68.

254. It has been held repeatedly that, “impunity has a strong chilling effect on the exercise of freedom of expression, and its consequences for democracy—which depends on the free, open and dynamic exchange of ideas and information—are particularly serious.”<sup>343</sup> “it is particularly important for the State to adopt measures to investigate the events that may have arisen during the social protest as a result of an abusive use of force by State agents, or else acts of aggression by third parties to the demonstration or among participants themselves, so as to punish those responsible and provide adequate recourse to anyone whose rights may have been violated.”<sup>344</sup>
255. The case law of the inter-American system establishes that, when a public servant in charge of using public force commits a human rights violation, his or her actions should be investigated before the ordinary courts, and an administrative or disciplinary investigation should be carried out to establish his or her responsibility. The disciplinary or administrative courts must determine the circumstances in which the public official committed a “disciplinary offense when the infraction relates directly and inseparably to a violation of international human rights law.”<sup>345</sup>

**a) Judicial investigation and penalties**

256. When acts of violence committed against people in a protest—whether they are covering the event as journalists or directly participating in it—go unpunished, this can lead to silence and self-censorship for future protesters.<sup>346</sup>
257. The State’s obligation to investigate means that, once its authorities have knowledge of the occurrence of human rights violations, they must initiate *ex officio* and without delay, an investigation that is serious, impartial, effective,<sup>347</sup> prompt, exhaustive, and complete, within a reasonable period of time,<sup>348</sup> by all available legal means and aimed at the establishment of the truth and the prosecution, capture, trial, and eventual punishment of all perpetrators of the alleged acts,<sup>349</sup> especially when State officials are or may be involved.<sup>350</sup> The right to know the truth is a form of reparation<sup>351</sup> and

<sup>343</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators. OEA/Ser.L/V/II., IACHR/RELE/INF. 12/13, December 31, 2013, para. 2.

<sup>344</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II. Doc. 66, December 31, 2011, para. 149.

<sup>345</sup> Cfr. I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 207. I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 374.

<sup>346</sup> Cfr. I/A Court H.R., *Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*. Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 30.

<sup>347</sup> Cfr. *Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No. 270, para. 371.

<sup>348</sup> Cfr. IACHR, Criminalization of the Work of Human Rights Defenders. OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 13. I/A Court H.R., *Case of Godínez Cruz v. Honduras*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 3, para. 20.

<sup>349</sup> Cfr. I/A Court H.R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 216. I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 177.

<sup>350</sup> Cfr. I/A Court H.R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 216. I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 156.

<sup>351</sup> Cfr. I/A Court H.R., *Case of Garibaldi v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 23, 2009. Series C No. 203, para. 167; I/A Court H.R., *Case of Escué Zapata v. Colombia*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, para. 165.

gives rise to an expectation on the part of the victims that the State must satisfy.<sup>352</sup> In addition, the State has an obligation to bring criminal proceedings *ex officio* when prosecutable offenses are committed.<sup>353</sup>

258. The Commission and the Inter-American Court have repeatedly stated that the duty to investigate is an obligation that “is an obligation of means and not of results, which must be assumed by the State as an inherent legal obligation and not as a mere formality preordained to be illusory or as a mere effort on the part of private individuals that depends upon the initiative of the victim or his family or upon their offer of proof.”<sup>354</sup>
259. The State therefore has the duty to identify and, where appropriate, punish all persons responsible for the acts, including direct perpetrators, masterminds,<sup>355</sup> participants, and accessories.<sup>356</sup> The obligation to investigate remains, “whosoever the agent who may eventually be [deemed responsible for] the violation, even private individuals, because, if their acts are not investigated seriously, they would, to a certain extent, be aided by the public authorities, which would involve the international responsibility of the State.”<sup>357</sup>
260. As part of the State's duty to direct the process of ascertaining human rights violations, it has an obligation to provide effective judicial remedies to victims of human rights violations, pursuant to Article 25 of the ACHR.<sup>358</sup> These remedies must be litigated in accordance with the rules of due process<sup>359</sup> established in Article 8.1 of the Convention. This obligation is part of the State's duty to ensure the protection of the “the free and full exercise of the rights recognized by the Convention for all people under their jurisdiction,”<sup>360</sup> under Article 1.1 thereof.

<sup>352</sup> Cfr. I/A Court H.R., *Case of Garibaldi v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 23, 2009. Series C No. 203, para. 167; I/A Court H.R., *Case of Castillo Páez v. Peru*. Merits. Judgment of November 3, 1997. Series C No. 34, para. 90.

<sup>353</sup> Cfr. IACHR, Criminalization of the Work of Human Rights Defenders. OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 13; IACHR, Report No. 52/97, Case 11.218, Admissibility, Arges Sequeira Mangas, Nicaragua, February 18, 1998, para. 99; IACHR, Annual Report 1997, OEA/Ser.L/V/II.98, February 17, 1998, paras. 96-97.

<sup>354</sup> IACHR, Situation of Human Rights in Guatemala. OEA/Ser.L/V/II. Doc. 43/15, December 31, 2015, para. 145; IACHR, Report No. 7/16, Case 12.213. Merits (Publication). Aristeu Guida da Silva and family. Brazil. April 13, 2016, para. 187.

<sup>355</sup> Cfr. IACHR, Situation of Human Rights in Guatemala. OEA/Ser.L/V/II. Doc. 43/15, December 31, 2015, para. 145; I/A Court H.R., *Case of the Gómez Paquiyauri Brothers v. Peru*. Merits, Reparations and Costs. Judgment of July 8, 2004. Series C No. 110.

<sup>356</sup> Cfr. I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 217.

<sup>357</sup> I/A Court H.R., *Case of Gutiérrez and family v. Argentina*. Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 271, para. 98; I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 177.

<sup>358</sup> Cfr. IACHR, Report No. 7/16, Case 12.213. Merits (Publication). Aristeu Guida da Silva and family. Brazil. April 13, 2016, para. 178; I/A Court H.R., *Case of Luna López v. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, para. 154.

<sup>359</sup> Cfr. I/A Court H.R., *Case of Luna López v. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, para. 154; *Case of Lysias Fleury et al. v. Haiti*. Merits and Reparations. Judgment of November 23, 2011. Series C No. 236, para. 105.

<sup>360</sup> I/A Court H.R., *Case of Luna López v. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, para. 154; Cfr. I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 91.

261. The State must ensure “full access and capacity to act to the victims or their next of kin at all stages of the investigation and prosecution of those responsible, in accordance with domestic law and the provisions of the American Convention.”<sup>361</sup>
262. Effective judicial protection requires judges to direct the proceedings in a way that avoids undue delays and hindrances that could result in impunity <sup>362</sup> “thus thwarting the due judicial protection of human rights.”<sup>363</sup> In this connection, “judges, as conductors of the proceedings, are obliged to direct and guide the judicial proceeding so as not to sacrifice justice and due process of law to formalism and impunity.”<sup>364</sup>
263. As part of access to justice for victims of human rights violations—in addition to the duty to undertake an investigation with due diligence—the State has a duty to carry out an investigation to ascertain the truth about what happened and to punish the perpetrators within a reasonable period of time.<sup>365</sup> Therefore, it has been held that the reasonableness of the time limit must be assessed in relation to the total duration of the proceedings until a final judgement is reached.<sup>366</sup> The Inter-American Court has stated that “proceedings followed through up until their conclusion and that fulfill their purpose are the clearest sign of zero tolerance for human rights violations, contribute to the reparation of the victims, and show society that justice has been done.”<sup>367</sup>
264. To ensure proper investigation, States have a duty to provide all relevant means to offer the necessary protection to justice authorities, investigators, witnesses, and the victims’ next of kin from harassment and threats aimed at obstructing the proceedings and preventing the establishment of the facts and the identity the perpetrators,<sup>368</sup> “because, to the contrary, this would have an intimidating effect on

<sup>361</sup> I/A Court H.R., *Case of Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 14, 2014. Series C No. 287, para. 559.

<sup>362</sup> Cfr. I/A Court H.R., *Case of Gutiérrez and family v. Argentina*. Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 271, para. 99; I/A Court H.R., *Case of Suárez Peralta v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 21, 2013. Series C No. 261, para. 93.

<sup>363</sup> I/A Court H.R., *Case of Gutiérrez and family v. Argentina*. Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 271, para. 99; I/A Court H.R., *Case of Suárez Peralta v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 21, 2013. Series C No. 261, para. 93.

<sup>364</sup> I/A Court H.R., *Case of Gutiérrez and family v. Argentina*. Merits, Reparations and Costs. Judgment of November 25, 2013. Series C No. 271, para. 99; I/A Court H.R., *Case of Bulacio v. Argentina*. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 115, y *Case of Suárez Peralta v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 21, 2013. Series C No. 261, para. 93.

<sup>365</sup> Cfr. I/A Court H.R., *Case of Luna López v. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, para. 188; Cfr. *Case of the 19 Merchants v. Colombia*. Merits, Reparations and Costs. Judgment of July 5, 2004. Series C No. 109, para. 188. The concept of reasonable time is established in Article 8 of the ACHR and is closely linked to the effective, simple, and prompt remedy enshrined in Article 25. The jurisprudence of the Inter-American Commission and Court has established four aspects to examine compliance with reasonableness: the complexity of the matter; the conduct of the authorities; the procedural activity of the interested party; and the impact on the legal situation of the person involved in the process.

<sup>366</sup> Cfr. I/A Court H.R., *Case of Luna López v. Honduras*. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, para. 188; *Case of García Lucero et al. v. Chile*. Preliminary Objection, Merits and Reparations. Judgment of August 28, 2013. Series C No. 267, para. 121.

<sup>367</sup> I/A Court H.R., *Case of Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 153; Cfr. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of January 27, 2009, para. 21.

<sup>368</sup> Cfr. I/A Court H.R., *Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No. 270, para. 376; Cfr. *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101, para. 199.

those who could be witnesses, seriously impairing the effectiveness of the investigation.”<sup>369</sup>

265. The results of the investigation must be publicly disclosed in order for society to know the truth of the facts.<sup>370</sup> The authorities responsible for undertaking investigations into human rights violations must have the necessary and sufficient human and material resources,<sup>371</sup> and it is crucial that an adequate institutional and regulatory framework is in place to investigate human rights violations.<sup>372</sup>
266. When it comes to violations of the right to life due to the excessive use of force, the State has the duty to initiate—*ex officio* and immediately—an investigation aimed at finding all those responsible for the arbitrary deprivation of life, as well as to guarantee and protect the physical integrity and safety of persons participating in demonstrations.<sup>373</sup>
267. The investigation of violations of life or integrity committed in the context of protests must be carried out with the strictest adherence to due diligence and must be completed within a reasonable period of time, given the seriousness of the crimes and the nature of the rights violated in connection with freedom of expression,<sup>374</sup> association, and assembly. The failure to properly investigate sends a clear message of intimidation and inhibition<sup>375</sup> to those who wish to exercise the right to social protest in the future.
268. In its Report on Citizen Security and Human Rights, the IACHR recommended three specific measures to States in relation to investigating perpetrators of crimes against life.<sup>376</sup> In addition, the Inter-American Commission and the Court have established some necessary guidelines to follow in death investigations. Cases of deaths in social

<sup>369</sup> I/A Court H.R., *Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No. 270, para. 376; Cfr. I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 106.

<sup>370</sup> I/A Court H.R., *Case of Tibi v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, para. 258.

<sup>371</sup> Cfr. IACHR, Office of the Special Rapporteur for Freedom of Expression, Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators. OEA/Ser.L/V/II., IACHR/RELE/INF. 12/13, December 31, 2013, para. 175.

<sup>372</sup> Cfr. IACHR, Office of the Special Rapporteur for Freedom of Expression, Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators. OEA/Ser.L/V/II., IACHR/RELE/INF. 12/13, December 31, 2013, para. 175.

<sup>373</sup> *Inter alia*, IACHR Expresses Concern over Detentions and Attacks on Demonstrators and Journalists in the Context of Protests in Venezuela, Press Release No. 073/16, June 9, 2016; IACHR Expresses Concern Regarding Restrictions in the Exercise of Fundamental Rights in Venezuela, Press Release No. 132/16, September 14, 2016; IACHR Laments the Death of a Student during Protests in Venezuela, Press Release No. 022/15, March 3, 2015; IACHR Condemns Violence in Oaxaca, Mexico, Press Release No. 083/16, June 22, 2016; IACHR expresses deep concern over the situation with respect to the right to peaceful protest, freedom of association and freedom of expression in Venezuela, Press Release No. 17/14, February 21, 2014.

<sup>374</sup> Cfr. IACHR, Report No. 7/16, Case 12.213. Merits (Publication). Aristeu Guida da Silva and family. Brazil. April 13, 2016, para. 203

<sup>375</sup> Cfr. IACHR, Report No. 7/16, Case 12.213. Merits (Publication). Aristeu Guida da Silva and family. Brazil. April 13, 2016, para. 203

<sup>376</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, Specific recommendation No. 12.

protests should endeavor: “a) to identify the victim; b) to gather and preserve evidence pertaining to the death so as to aid in the possible criminal investigation of the perpetrators; c) to identify potential witness and obtain their statements regarding the death under investigation; d) to determine the cause, manner, place and time of death, as well as any pattern or practice that might have caused the death.”<sup>377</sup>

269. In addition to the duty to have full knowledge of the scene and the material circumstances of the crime, it is essential to “to analyze the awareness of the power structures that allowed, designed and executed it, both intellectually and directly.”<sup>378</sup> There is also a duty to examine all the individuals who took part in the said violations in different ways, together with their respective responsibilities.<sup>379</sup> In this way, the crime is placed within a context that provides the necessary elements to understand the complexity of the event,<sup>380</sup> such as a death that occurred during a social protest.
270. In addition, whenever a person has failed to return from a protest and there are reasonable grounds to suspect that an individual has been subjected to forced disappearance,<sup>381</sup> it is essential that the prosecution and judicial authorities take prompt and immediate action, ordering timely and necessary measures to determine the whereabouts of the missing person.<sup>382</sup> Any State authority, public official, or private individual who has received information of acts aimed at the forced disappearance of persons, must report it immediately.<sup>383</sup>
271. In cases of excessive use of police force resulting in injuries to persons participating in social protests, the State must initiate, *ex officio* and immediately, an impartial, independent and meticulous investigation that allows the nature and origin of the injuries observed to be determined, those responsible to be identified, and their prosecution to commence.<sup>384</sup> Similarly, where a person arrested at a demonstration alleges that he or she has been tortured or subjected to cruel, inhuman, or degrading treatment, the State must provide a satisfactory and convincing explanation,<sup>385</sup> backed

<sup>377</sup> IACHR, Report No. 7/16, Case 12.213. Merits (Publication). Aristeu Guida da Silva and family. Brazil. April 13, 2016, para. 204; IACHR Report No. 25/09, Case 12.310 Merits, Sebastião Camargo Filho, Brazil, March 19, 2009, paras. 111-112; Cfr. United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Doc. E/ST/CSDHA/12 (1991).

<sup>378</sup> I/A Court H.R., *Case of Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 119.

<sup>379</sup> Cfr. I/A Court H.R., *Case of Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 119; I/A Court H.R., *Case of the Mapiropan Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, para. 219.

<sup>380</sup> Cfr. I/A Court H.R., *Case of Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 119.

<sup>381</sup> Cfr. I/A Court H.R., *Case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala*. Merits, Reparations and Costs. Judgment of November 20, 2012. Series C No. 253, para. 241; I/A Court H.R., *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations and costs. Judgment of September 22, 2009. Series C No. 202, para. 65.

<sup>382</sup> Cfr. I/A Court H.R., *Case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala*. Merits, Reparations and Costs. Judgment of November 20, 2012. Series C No. 253, para. 241; I/A Court H.R., *Case of Gonzalez Medina and family v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 218.

<sup>383</sup> Cfr. I/A Court H.R., *Case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala*. Merits, Reparations and Costs. Judgment of November 20, 2012. Series C No. 253, para. 241; Cfr. *Case of Anzualdo Castro v. Peru*, para. 65; *Case of the Río Negro Massacres v. Guatemala*, para. 223.

<sup>384</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 130.

<sup>385</sup> I/A Court H.R., *Case of Espinoza Gonzáles v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 289, para. 177; Cfr. I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, paras. 99-100.

by appropriate evidence.<sup>386</sup> There is a presumption “that the State is responsible for ill-treatment exhibited by a person who has been in the custody of State agents,”<sup>387</sup> and it is up to the State to prove otherwise.

272. In cases where it is suspected that a State agent has perpetrated gender-based or sexual violence against a person in the context of a demonstration, the investigation must comply with a number of provisions in order to identify, prosecute, and punish those responsible. Such an investigation must: “i) document and coordinate the investigation procedures and process the evidence diligently, taking sufficient specimens, performing tests to determine the possible perpetrator of the act, preserving other evidence such as the victim’s clothes, inspecting the scene of the incident immediately, and ensuring the proper chain of custody; ii) provide free legal assistance to the victim during all stages of the proceedings, and iii) provide both emergency and, if necessary, continuing medical, prophylactic and psychological care to the victim, using a treatment protocol aimed at lessening the consequences of the offense.”<sup>388</sup> In cases of alleged acts of violence against women, the criminal investigation should include a gender perspective and be conducted by officials with experience in similar cases and in providing attention to victims of discrimination and gender-based violence.<sup>389</sup>
273. The duty to investigate and punish also covers unlawful and arbitrary arrests. The Inter-American Court has established that any improper action on the part of State agents in their interaction with the persons they must protect, “represents one of the main threats to the right to personal liberty, which, when violated, generates a risk of violation to other rights, such as humane treatment and, in some cases, life.”<sup>390</sup> When the person is detained illegally or arbitrarily, he or she is in a state of total helplessness, which can lead to the violation of other rights, such as the right to be treated with dignity.<sup>391</sup>
274. The IACHR has expressed its deep concern about the numerous mass arrests of people in social protests. It has demanded that the right to humane treatment be respected and that, in the event that the arrests were not carried out in keeping with inter-American standards, a diligent investigation be undertaken within a reasonable period of time in order to avoid impunity, thereby encouraging this practice in future

<sup>386</sup> Cfr. I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, para. 111; I/A Court H.R., *Case of J. v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 343.

<sup>387</sup> Cfr. I/A Court H.R., *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala*. Merits. Judgment of November 19, 1999. Series C No. 63, paras. 95 & 170; I/A Court H.R., *Case of J. v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 343.

<sup>388</sup> I/A Court H.R., *Case of Espinoza Gonzáles v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 289, para. 242; Cfr. I/A Court H.R., *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 30, 2010. Series C No. 215, para. 194.

<sup>389</sup> I/A Court H.R., *Case of Espinoza Gonzáles v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 289, para. 242; I/A Court H.R., *Case of Véliz Franco et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, para. 188.

<sup>390</sup> I/A Court H.R., *Case of Servellón García et al. v. Honduras*. Merits, Reparations and Costs. Judgment of September 21, 2006. Series C No. 152, para. 87.

<sup>391</sup> I/A Court H.R., *Case of Bulacio v. Argentina*. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, para. 127; Cfr., I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Judgment of June 7, 2003. Series C No. 99, para. 96; I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala*. Merits. Judgment of November 25, 2000. Series C No. 70, para. 90.

protests and mass demonstrations.<sup>392</sup> Specifically in cases of mass arrests at protests, States should seek to determine who was responsible for the decision to authorize multiple police officers to make a number of simultaneous arrests.

## b) Administrative investigation and penalties

275. The Inter-American Court has stated that disciplinary justice proceedings “can be assessed to the extent that [they contribute] to clarifying the facts and that [their] decisions are relevant as regards the symbolic value of the message of censure that this type of sanction can signify for public officials and members of the armed forces.”<sup>393</sup> While a disciplinary investigation may complement a criminal investigation, it does not replace it in cases of human rights violations;<sup>394</sup> rather, it serves as an additional accountability mechanism.<sup>395</sup>
276. In its Report on Citizen Security and Human Rights, this Commission recommended that States put in place internal control mechanisms that complement external oversight bodies, whether political or parliamentary, judicial or quasi-judicial,<sup>396</sup> to ensure that all responsible authorities are held accountable. The IACHR recently stated that these mechanisms are “autonomous mechanisms for states to supervise their officials’ discharge of the public duties assigned to them.”<sup>397</sup>
277. The Inter-American Court has stressed the importance of disciplinary proceedings as a means of overseeing the actions of public officials.<sup>398</sup> As such, administrative penalties play “an important role in creating the appropriate type of capability and institutional culture deal with” highly complex situations of violence.<sup>399</sup> Allowing those responsible for serious offenses to remain in office or hold positions of authority can create a climate of impunity, and “conditions that allow the factors that produce the context of violence to persist or deteriorate.”<sup>400</sup> Internal control mechanisms to monitor the performance of the police force “may result in a change

<sup>392</sup> IACHR Annual Report 2015. Chapter IV A – Use of Force, para. 123; “IACHR Expresses Concern Regarding Restrictions in the Exercise of Fundamental Rights in Venezuela,” Press Release No. 132/16, September 14, 2016. “IACHR Condemns Violence in Oaxaca, Mexico,” Press Release No. 083/16, June 22, 2016. “IACHR expresses deep concern over the situation with respect to the right to peaceful protest, freedom of association and freedom of expression in Venezuela,” Press Release No. 17/14, February 21, 2014. Joint Declaration of the United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights, “Joint Declaration on Violence Against Journalists and Media Workers in the Context of Protests,” September 13, 2013.

<sup>393</sup> I/A Court H.R., *Case of Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 133; Cfr. I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of September 15, 2005. Series C No. 134, para. 215.

<sup>394</sup> IACHR, Annual Report 2015, Chapter IV. A, The Use of Force, para. 228; Cfr. I/A Court H.R., *Case of Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 26, 2010. Series C No. 213, para. 133; Cfr. I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 203.

<sup>395</sup> Cfr. IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 163; IACHR, Report on the Situation of Human Rights Defenders in the Americas, 2006, para. 68.

<sup>396</sup> Cfr. IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 132.

<sup>397</sup> IACHR, Annual Report 2015, Chapter IV. A, The Use of Force, para. 228.

<sup>398</sup> I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 206; I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 373.

<sup>399</sup> I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 377.

<sup>400</sup> I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 377.

or cessation of the function of the agents involved in the violation of a human right, [and therefore are in the] public interest.”<sup>401</sup> Along these same lines, the Inter-American Court has in various cases ordered States to conduct administrative or disciplinary investigations in addition to criminal investigations in the regular justice system.<sup>402</sup> The obligations of oversight and accountability should also be included in the design of police operations.

278. The rules and structures of security agencies and bodies must lend themselves to administrative oversight and investigation. First, security institutions must have a disciplinary code that defines infractions and punishes practices that violate rights. There should also be bodies and mechanisms for the filing and referral of complaints, both by members of the security forces and private individuals.
279. For an administrative or disciplinary investigation to be effective, the persons in charge of it must be independent both hierarchically and institutionally from the persons and agencies involved in the facts under investigation.<sup>403</sup> The latter should not participate in the investigation of the case.<sup>404</sup> Victims should be able to participate, if they so wish, in cases where their rights under the Convention have been violated.<sup>405</sup>
280. The IACHR has noted that, “In some countries, [administrative and disciplinary accountability mechanisms] are exclusively employed to investigate disciplinary matters and are not considered a remedy for inadequate policing. In such jurisdictions, victims are excluded from the proceedings on the grounds that their interests are irrelevant to the institutional interests of the police force. The Commission considers that even in those cases States must ensure the participation of the victims whenever these proceedings involve accountability for abuse of force, arbitrary detentions or other conduct that may compromise the enjoyment of the rights protected in the American Convention.”<sup>406</sup>
281. In order for the State’s obligation to investigate to be regarded as consistent with the American Convention, it must be carried out with due diligence,<sup>407</sup> which entails the obligation of the fact-finding body to perform all actions and investigations necessary to

<sup>401</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 163.

<sup>402</sup> I/A Court H.R., *Case of Herrera Espinoza et al. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 1, 2016. Series C No. 316, para. 225; I/A Court H.R., *Case of Tenorio Roca et al. v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 22, 2016. Series C No. 314, para. 275; Cfr. I/A Court H.R., *Case of Uzcátegui et al. v. Venezuela*. Merits and reparations. Judgment of September 3, 2012. Series C No. 249, para. 250; Cfr. *Case of the Las Dos Erres Massacre v. Guatemala*, para. 233(d).

<sup>403</sup> Cfr. IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 163; Cfr. *Case of Baldeón García v. Peru*. Merits, Reparations and Costs. Judgment of April 6, 2006. Series C No. 147, para. 95.

<sup>404</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 163

<sup>405</sup> Cfr. IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 163; IACHR, Report on the Situation of Human Rights Defenders in the Americas, 2006, para. 68.

<sup>406</sup> IACHR, Report on the Situation of Human Rights Defenders in the Americas, 2006, para. 68; IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 163.

<sup>407</sup> Cfr. I/A Court H.R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 217.

achieve the result sought.<sup>408</sup> This duty includes all State institutions, both judicial and non-judicial.<sup>409</sup> In this connection, due diligence also extends to non-judicial bodies whose purview includes pretrial investigations to determine whether there is sufficient evidence to bring criminal proceedings.<sup>410</sup> In the absence of these requirements, “the State cannot subsequently exercise effectively and efficiently its authority to bring charges and the courts cannot conduct the judicial proceedings that this type of violation calls for.”<sup>411</sup>

282. This Commission considers that police institutions should require all members of the security forces to report and cooperate with the investigation of any human rights violations committed in the context of a protest of that comes to their attention.<sup>412</sup> Otherwise, a culture of impunity and secrecy among officials is created. Guarantees must be provided so that officials can comply with their duty to report, whether it is an act perpetrated by a member of the same force or another.
283. Faster and stricter mechanisms for the triggering of disciplinary and administrative proceedings must be in place for cases involving the use of lethal weapons. The IACHR recommended in its Report on Citizen Security and Human Rights that, in relation to the use of lethal force by State agents, States should “establish independent internal and external control systems to give effect to the State’s obligation to investigate any cases in which law enforcement uses lethal means and methods.”<sup>413</sup>
284. It similarly recommended that they “create the internal and external systems and procedures that will allow for an independent investigation of facts that may constitute torture or cruel, inhuman or degrading treatment or punishment.”<sup>414</sup> In cases of detention in connection with protests, the effective investigation of alleged or suspected assaults is essential to prevent torture and other cruel, inhuman, or degrading treatment,<sup>415</sup> most of which occurs when the victims are in the custody of the State. The authorities should diligently investigate any case in which an act of torture is alleged to have been committed, securing any evidence.<sup>416</sup> This includes the right to medical review and access to operational records and video footage. In particular, the State must guarantee the independence of the medical and health

<sup>408</sup> Cfr. I/A Court H.R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 217; Cfr. *Case of Serrano Cruz Sisters v. El Salvador*. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120, para. 83.

<sup>409</sup> Cfr. IACHR, Situation of Human Rights in Guatemala. OEA/Ser.L/V/II. Doc. 43/15, December 31, 2015, para. 145; I/A Court H.R., *Case of Castillo González et al. v. Venezuela*. Merits. Judgment of November 27, 2012. Series C No. 256, para. 110.

<sup>410</sup> Cfr. I/A Court H.R., *Case of Landaeta Mejías Brothers et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 217.

<sup>411</sup> *Case of Cantoral Huamani and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para.133.

<sup>412</sup> In reference to acts of torture, see: IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, General recommendation No. 14.b.vi.

<sup>413</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, General recommendation 13(d).

<sup>414</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, General recommendation 14(b)(iii).

<sup>415</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 130.

<sup>416</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 130.

personnel responsible for examining and treating injured persons arrested during protests, so that they can freely perform the relevant medical evaluations.<sup>417</sup>

285. The disciplinary codes must also respect the concept established by the IACHR that the “officials responsible for the use of force may not allege that they obeyed orders from superiors if they were aware that the order to use force—resulting in the death of a person or serious injuries to a person—was manifestly illicit and they had a reasonable chance to refuse to obey it.”<sup>418</sup>

## 2. Response from the authorities

286. The political actors who are ultimately responsible for ensuring that a demonstration takes place without violence on the part of security forces must also respond when demonstrators’ rights are not respected, when security forces exceed the limits on the use of force, or when demonstrators are attacked by third parties.
287. Political leaders should refrain from expressing notions that detract from or stigmatize a protest or the people who participate in or organize it, as it may place certain sectors of the population in a situation of greater vulnerability and risk of further attacks.<sup>419</sup> The same is true when the authorities minimize the seriousness of violations committed during social protests or find that there is no State responsibility for violations committed against demonstrators as a result of the acts or omissions of State agents whose duty is to protect.
288. Along these same lines, the Office of the Special Rapporteur for Freedom of Expression has stated that it is essential that the authorities vigorously condemn attacks committed against media workers and encourage the competent authorities to act with due diligence and speed to investigate such events and punish those responsible,<sup>420</sup> including when political authorities express ideas that jeopardize or stigmatize the work of journalists.<sup>421</sup> “Public officials have a duty to ensure that their statements are not damaging the rights of those who contribute to the public debate through the expression and circulation of their thoughts, such as journalists, media outlets, and human rights organizations, and must pay attention to the context in which they express themselves in order to ensure that their expressions do not constitute ‘forms of direct or indirect interference or harmful pressure on the rights

<sup>417</sup> IACHR, Report on Citizen Security and Human Rights, December 31, 2011, OEA/Ser.L/V/II. Doc 57, para. 130; I/A Court H.R., *Case of Bayarri v. Argentina*. Judgment of October 30, 2008. Series C No. 187, para. 92.

<sup>418</sup> IACHR, Annual Report 2015, Chapter IV. A, The Use of Force, para. 233; Basic Principles on the Use of Force, Principle No. 26.

<sup>419</sup> The IACHR has expressed the same view with regard to journalists and media workers. See, e.g., “IACHR Expresses Deep Concern over Acts of Violence in Venezuela and Urges the State to Ensure Democratic Citizen Security,” Press Release No. 13/14, February 14, 2014.

<sup>420</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators. OEA/Ser.L/V/II. IACHR/RELE/INF. 12/13, December 31, 2013, para. 37; IACHR, Annual Report 2010. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II: Mexico: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011, para. 713.

<sup>421</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators. OEA/Ser.L/V/II. IACHR/RELE/INF. 12/13, December 31, 2013, paras. 37-44.

of those who seek to contribute [to] public deliberation through the expression and [dissemination] of their thoughts.”<sup>422</sup>

### 3. Monitoring and observation of protests

289. Offices of the people’s ombudsperson, public defender services, offices for the defense of indigenous and peasant rights, and other state agencies specialized in the promotion and defense of rights also play an important role in protecting demonstrators, building channels for dialogue, and monitoring and supervising the actions of other public servants.
290. Organizations should be able to lodge complaints about crimes committed during social protests, even when close relatives are unwilling or unable to do so, and to intervene in criminal proceedings.<sup>423</sup> As a civil party or non-party intervenor in the criminal case, they can present evidence, propose lines of investigation, refute theories and, in general and depending on each legal system, be actively involved in the prosecution and punishment of those responsible for human rights violations.
291. Civil society organizations play a vital role in documenting and compiling statistics and information on various acts of violence against journalists.<sup>424</sup> They are also instrumental in monitoring the measures taken by States with regard to their duties to prevent crimes against journalists, protect journalists, investigate these crimes, and punish those responsible.<sup>425</sup>
292. The media themselves play a fundamental role in the accountability process regarding acts of violence committed during social protests. They do this by condemning attacks, following up on the facts, and monitoring the status of investigations into human rights violations as a means of exerting pressure to combat impunity.<sup>426</sup>
293. Although the State should generally refrain from using force in public demonstrations, it should formulate specific policies to prevent, investigate, and punish violence against journalists, media workers, activists, social movements, representatives, and social leaders in the context of protests, based on the role these stakeholders have played in the prevention, monitoring, and oversight of State action.

<sup>422</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators. OEA/Ser.L/V/II. IACHR/RELE/INF. 12/13, December 31, 2013, para. 39. IACHR. Annual Report 2012. Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013, paras. 198-215.

<sup>423</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators. OEA/Ser.L/V/II. IACHR/RELE/INF. 12/13, December 31, 2013, para. 225.

<sup>424</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators. OEA/Ser.L/V/II. IACHR/RELE/INF. 12/13, December 31, 2013, paras. 256 & 257.

<sup>425</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators. OEA/Ser.L/V/II. IACHR/RELE/INF. 12/13, December 31, 2013, para. 284.

<sup>426</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Violence against Journalists and Media Workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators. OEA/Ser.L/V/II. IACHR/RELE/INF. 12/13, December 31, 2013, para. 278.



## **CHAPTER VI**

# **PROTESTS AND THE INTERNET**



## VI. PROTESTS AND THE INTERNET

294. The Internet is now a fundamental communication tool that enables people to link up and connect in an adaptable, fast, and effective manner, and is considered a tool with unique potential for the exercise of freedom of expression. Among the new powers enabled by the Internet are the ability to associate and assemble that people have acquired in the digital age, which in turn enhances the full realization and enjoyment of other civil, political, economic, social, and cultural rights. Meetings and associations in the digital age can be organized and held without prior notice, on short notice, and at low cost. The Internet is also now a fundamental tool for monitoring and reporting human rights violations during demonstrations and meetings.
295. The Internet can be seen and analyzed as a means of organization or as an enabling platform for protests.<sup>427</sup> In practice, it works as a means of disseminating, convening, and publicizing meetings and physical gatherings (using social networks, blogs, or forums, for instance) to be carried out in a tangible public place, expanding the boundaries of participation. The Internet also offers the possibility of organizing an online protest, providing a common meeting space, shortening distances and times, and simplifying formalities and agendas.<sup>428</sup> Both settings must be protected and promoted to the extent that they contribute to the full exercise of human rights.<sup>429</sup>
296. The international standards developed within the inter-American system and the universal system on the rights to freedom of expression, association, and peaceful assembly are fully applicable to the Internet.<sup>430</sup>
297. In recent years there have been various instances of protest on the Internet that include email chains, petitions, demonstrations, and campaigns developed on social networks, etc. In the same way that States must ensure access to public spaces—such as streets, roads, and public squares—for the holding of gatherings, they must also ensure that the Internet is available and accessible to all citizens in order to provide a space for the organization of associations and assemblies for purposes of taking part in the political life of the country.<sup>431</sup>

---

<sup>427</sup> Naciones Unidas, Consejo de Derechos Humanos, *Informe del Relator Especial sobre los derechos a la libertad de reunión pacífica y de asociación*, Maina Kiai, UN Doc. A/HRC/23/39 (24 de abril de 2013), disponible en: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/133/87/PDF/G1313387.pdf?OpenElement>. Asociación para el Progreso de las Comunicaciones (APC), *The Rights to Freedom of Peaceful Assembly and Association and the Internet, Submission to the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association*, párrafo 14, disponible en: <https://www.apc.org/en/system/files/APC%20-%20Freedom%20of%20peaceful%20assembly%20and%20association.pdf>. Instituto Nacional de Derechos Humanos (INDH), *Internet y Derechos Humanos*, Serie de Cuadernillos de Temas Emergentes (Diciembre 2013), pág. 29, disponible en: [www.indh.cl](http://www.indh.cl). (La importancia de internet radica en su capacidad de “[a]umentar las oportunidades y capacidades de la ciudadanía en general y de la ciudadanía de la red para formar asociaciones, mejorar la administración y organización de asociaciones, y ampliar la membresía y alcance de las asociaciones.”).

298. Limitations on access to the Internet before or after peaceful gatherings, including total or partial disconnections, the slowdown of Internet service, and the temporary or permanent blocking of different sites and applications, constitute unlawful restrictions on the rights of association and assembly.<sup>432</sup> The United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has stressed the need to ensure access to the Internet at all times, including during periods of political unrest.<sup>433</sup>
299. In no case can mere participation in protests, or in their announcement or organization, justify the violation of the right to privacy with respect to private communications made by a person, whether in writing, by voice or images, and regardless of the platform used. The right to privacy encompasses not only individual communications, but also communications that take place in closed groups to which only members have access.
300. There have been reports in the region of police and military officers infiltrating social networks or using false identities in order to obtain information about social movements and the organization of demonstrations and protests. Such a practice may be considered a serious violation of the rights of assembly and freedom of association, and even of the right to privacy. Under no circumstances are online intelligence actions allowed to monitor people who organize or take part in social protests.
301. States should permit and encourage the open and free use of the Internet, as well as all other forms of communication, and exceptions to such access must be clearly established in law and satisfy the three-part test established in the inter-American system. The laws regulating so-called "cybercrime" must be clearly and specifically drafted to ensure the principle of legality, have a legitimate purpose, be necessary in a democratic society, and be proportionate; under no circumstances can they be used to prohibit, obstruct, or hinder a peaceful assembly, demonstration, or protest.<sup>434</sup>
302. The guarantee of privacy and anonymity are also part of the rights of association and assembly.<sup>435</sup> Without prejudice to the foregoing, it does not cover all types of expressions or associations. On the contrary, *"the anonymity of the sender would in no way protect anyone who disseminates child pornography, war propaganda, or hate speech that constitutes incitement to violence or publicly and directly incites genocide."*<sup>436</sup> States should guarantee the full protection of anonymous speech and regulate specific cases and conditions when such anonymity must be lifted. This requires sufficient judicial oversight and the full application of the principle of proportionality with respect to measures aimed at identifying the person in question.<sup>437</sup>

---

433 A/HRC/41/41

## **CHAPTER VII**

# **ACCESS TO INFORMATION**



## VII. ACCESS TO INFORMATION

303. Social protest is an essentially public event and constitutes the exercise of the rights to freedom of expression and political participation, among other things. This results in broad criteria for access to information and the subsequent obligation of the State to produce information and records. Broad access to information is not only related to accountability and the way in which the State facilitates protest, but is also crucial to helping channel, display, and disseminate the speech and actions of demonstrators.
304. Recording information and ensuring access to it are fundamental both for guaranteeing the right to protest and for preventing violations of fundamental rights such as life, physical integrity, and freedom, as well as for purposes of accountability. The production of, and access to, information in connection with social protest is an essential component of positioning the exercise of the right to protest and demonstrate as a core activity of political participation and democratic coexistence.
305. Access to information applies to both pre-protest matters and other matters arising during the protest, as well as subsequent requests for information. This information has several dimensions, some of which are discussed in this section, but the list is not intended to be exhaustive.
306. First and foremost, and as a general principle, the State must guarantee and facilitate the right of all persons “to observe, and by extension monitor, assemblies. (...) The concept of monitoring encapsulates not only the act of observing an assembly, but also the active collection, verification and immediate use of information to address human rights problems.”<sup>438</sup>
307. This duty of the State has special characteristics when it comes to “to protect the rights of assembly monitors. This includes respecting and facilitating the right to observe and monitor all aspects of an assembly, subject to the narrow permissible restrictions outlined in article 19(3) of the International Covenant on Civil and Political Rights,”<sup>439</sup> and States should “fully investigate any human rights violation or abuse against monitors, and should pursue prosecution and provide adequate remedy. The protections afforded to monitors apply irrespective of whether an assembly is peaceful.”<sup>440</sup>
308. The right to access information includes the right to “to record the law enforcement operation. This also includes the right to record an interaction in which he or she is being recorded by a State agent —sometimes referred to as the right to ‘record back.’

<sup>438</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 68.

<sup>439</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 70.

<sup>440</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 70.

The State should protect this right. Confiscation, seizure and/or destruction of notes and visual or audio recording equipment without due process should be prohibited and punished.”<sup>441</sup>

309. The State also has the duty to document and record the actions of its agents, in order to allow for the review and improvement of their actions, as indicated in the previous chapter. The accessibility and conservation of these records also facilitate the necessary oversight of any reported irregularities.
310. All regulations governing social protest must be accessible and published. These regulations include not only laws, decrees, and ordinances, but also general protocols, procedural manuals, and specific orders on how to conduct operations.<sup>442</sup> The knowledge and disclosure of these protocols and ethical norms reduce the arbitrary margins of decisions and actions of State agents in relation to social protests. The knowledge and dissemination of these rules and orders is essential not only to guide police operations but also to allow monitoring and control by civil society organizations, journalists, and oversight institutions.
311. The open disclosure of these regulations is necessary for democratic institutions and civil society to monitor whether these orders are consistent with the constitutional and human rights principles referred to in this report. There is a need to develop and publish manuals for equipment training and use—both deterrent and defensive—as well as to make available the respective training plans prepared by the responsible officials.
312. It is the duty of the State to keep a detailed record of assigned weapons and ammunition. It is essential to establish procedures and forms of supervision so that, in the context of demonstrations, only authorized officials are assigned the weapons permitted for potential use. This is done by individually assigning weapons and ammunition, as well as identifying the officers responsible for supervising and documenting proper and effective compliance with these provisions. Detailed inventories of weapons and ammunition, as well as their proper storage, are basic conditions for appropriately maintaining these records on the allocation of material, weapons, and ammunition in the context of social protests.<sup>443</sup>
313. Records should also include communications equipment and its assignment. These records and access to them are essential elements for the reconstruction and clarification of events and those responsible for them. The Commission has previously stated that in the context of protests the State should implement “a communications records system to monitor operational orders, those responsible for

<sup>441</sup> Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 71.

<sup>442</sup> European Code of Police Ethics. Recommendation Rec(2001)10 of the Committee of Ministers to member states. on the European Code of Police Ethics. II 4) “Legislation guiding the police shall be accessible to the public and sufficiently clear and precise, and, if need be, supported by clear regulations equally accessible to the public and clear.”

<sup>443</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 11; IACHR, Report on Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia, OEA/Ser.L/V/II.Doc. 34, June 28, 2007 Chapter I, Introduction, para. 45 b).

them, and those carrying them out.”<sup>444</sup> This obligation includes preserving these records for any further investigation and prohibiting communication between officials by means that are not capable of being recorded.

314. The Commission has also noted the need for “the identification of political officials responsible for law enforcement operations during marches, particularly in the case of scheduled marches or prolonged social conflicts or circumstances in which potential risks to the rights of the demonstrators or others are anticipated, so that such officials are tasked with supervising the field operation and ensuring strict compliance with norms governing the use of force and police conduct.”<sup>445</sup> In addition, there should be a record of the instructions given by these officials. This measure is fundamental for establishing an appropriate line of responsibility for State action.
315. It is also important that the operational planning instructions identify the senior command officers responsible for the operation and the participating units. The main orders and instructions given during the operation must also be recorded and substantiated. Protocols should clearly set out the levels of responsibility for different orders.<sup>446</sup>
316. The names and positions of the judicial and supervisory authorities involved in or with jurisdiction over the matter should be made public. Police officers being investigated for irregularities in operations carried out in the context of social protests may not participate in security operations during demonstrations until their respective administrative or criminal responsibilities are ascertained. The State should take steps to document and allow monitoring of compliance with this provision.
317. Where permitted by law, any measure of cooperation or technical or financial support that private companies provide to security institutions must be documented and publicly accessible, in order to supervise and avoid conflicts, as well as to establish any potential civil or criminal liability of the private actor.<sup>447</sup>
318. Beyond the regulations and information to be published, access to the documents of public authorities—including police forces—should only be restricted where there is a compelling reason for withholding information, which is established by law and which overrides the public interest in having access to information.<sup>448</sup> Such

<sup>444</sup> IACHR, Report on Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia, OEA/Ser.L/V/II.Doc. 34, June 28, 2007 Chapter I, Introduction, para. 45 c); See also: IACHR. Report on the Situation of Human Rights Defenders in the Americas, para. 68.

<sup>445</sup> IACHR, Report on Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia, OEA/Ser.L/V/II.Doc. 34, June 28, 2007 Chapter I, Introduction, para. 45 f). See also: IACHR. Report on the Situation of Human Rights Defenders in the Americas, para. 68.

<sup>446</sup> The Human Rights Handbook on Policing Assemblies, OSCE/ODIHR 2016, p. 103, states, “When a decision is made to use force to disperse a violent assembly, the authorization must come from the operational commander. The decision must be fully documented, giving a full rationale for the options chosen.”

<sup>447</sup> See: Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, paras. 83-87.

<sup>448</sup> United Nations Human Rights Committee, General Comment No. 34 (2011) on Freedoms of opinion and expression, para. 18; Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, 4 February 2016, para. 81; Joint Declaration by the United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the OSCE

restrictions should not jeopardize the enjoyment of a right and restrictions should not be used to conceal human rights violations or to promote any other improper purpose.<sup>449</sup>

---

Representative on Freedom of the Media, and the OAS Special Rapporteur for Freedom of Expression (December 6, 2004).

<sup>449</sup> See: OSJI Guidelines.

**CHAPTER VIII**

**STATES OF EMERGENCY**



## VIII. STATES OF EMERGENCY

319. The Inter-American Commission has documented that the dispersal and repression of social protest often occurs under states of emergency that include the suspension of fundamental guarantees. Faced with manifestations of social unrest or internal conflict, States tend to resort to the suspension of guarantees in order to authorize the deployment of military forces to quickly repress the threat to order.
320. The inter-American human rights system has taken particular care to set out the strict conditions under which the temporary suspension of some of the rights and guarantees enshrined in international treaties may be admissible. The legal framework governing states of emergency in the inter-American human rights system is contained in Article 27 of the Convention.<sup>450</sup> The European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>451</sup> and the International Covenant on Civil and Political Rights<sup>452</sup> provide standards similar to those of the ACHR.<sup>453</sup>

<sup>450</sup> ACHR, Article 27: “1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.

2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.

3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organization of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.”

<sup>451</sup> Article 15 of the European Convention provides: 1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law. 2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision. 3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

<sup>452</sup> Article 4 of the International Covenant on Civil and Political Rights states: 1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. 2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision. 3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

<sup>453</sup> Although the American Declaration of the Rights and Duties of Man does not explicitly provide for the possibility of restricting or suspending the rights it prescribes, the IACHR has considered that the criteria for suspension derived from the American Convention and the general principles of law are duly considered and applied in the context of the Declaration. Cfr. IACHR, *Towards the Closure of Guantánamo*, OEA/Ser.L/V/II. Doc. 20/15, June 3, 2015, para. 91.

321. In Advisory Opinion No. 8, the Inter-American Court addressed the requirements set out in Article 27 of the ACHR, and it established some general guidelines for the imposition of states of emergency: 1) the emergency must be invoked in order to preserve democracy; and 2) the need for declaring a state of emergency must be objectively justifiable.<sup>454</sup>
322. Similarly, this Commission has maintained that states of emergency should be reserved exclusively for truly exceptional cases—extremely serious situations—that endanger the life of the nation. In all other situations, routine administrative measures should be taken.<sup>455</sup>
323. In the region, the suspension of guarantees has been ordered in various cases that severely limited public demonstrations and the rights of its participants, based on emergency grounds that do not conform to inter-American standards. Some States tend to declare a state of emergency in the jurisdictions or areas in which demonstrations take place, allowing for the suspension of rights, changes in the way rights are guaranteed, or the intervention of the armed forces under their domestic law.
324. This Commission considers that public protests and demonstrations, as legitimate and protected forms of the exercise of various rights and a fundamental instrument of democratic coexistence—even when they express social unrest—cannot be used as a justification for declaring states of emergency or for suspending rights in other ways. Many of the nuisances caused by these events are inherent to the exercise of the rights involved in protest, and any violent events that may occur in the context of demonstrations should be prevented, investigated, and punished as they normally would, without the need to resort to the suspension of rights.
325. Controlling disturbances that may be produced internally by social protest demonstrations is up to the police, whose function is geared toward public security and not the security of the State.<sup>456</sup> The declaration of states of emergency should not be used to circumvent the domestic proscription against using the armed forces in the context of demonstrations.<sup>457</sup>
326. The Commission has emphasized just how inadequate and dangerous it can be to decree a state of emergency to address tense social conflicts or to fight crime in view

---

<sup>454</sup> Cfr. IACHR, Report No. 48/00, Case 11.166, *Walter Humberto Vásquez Vejarano – Peru*, April 13, 2000, para. 24.

<sup>455</sup> Cfr. IACHR, *Second Report on the Situation of Human Rights in Colombia 1993*. Recommendation 2; See also: IACHR, *Annual Report 2015, Chapter IV. B Venezuela*, para. 66.

<sup>456</sup> Cfr. IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011. Inter-American Commission on Human Rights, para. 148.

<sup>457</sup> The Inter-American Court has had occasion to establish a violation of Article 27.1 because the State used measures that were not necessary to control the alleged emergency situation. The Court emphasized the extreme care that States should exercise when using the armed forces as a means of controlling social protest, holding that States should limit to the greatest extent possible the use of the armed forces for the control of domestic disturbances, since their training is aimed at defeating the enemy rather than at protecting and controlling civilians, which is what the police are trained to do.

<sup>457</sup> I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 51; *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Judgment of July 5, 2006. Series C No. 150, para. 78.

of the numerous human rights violations that consistently occur as a result, and considering that these are not sustainable or effective responses for taking on and resolving such challenges.<sup>458</sup>

327. Although the rights of assembly and association are among those that can be suspended under the states of emergency authorized by the Convention<sup>459</sup> if the conditions accepted by international law for the temporary suspension of certain rights are met, this does not mean the automatic and/or unlimited interruption of protests and public demonstrations. Even in this context, States must respect the restrictions that accompany the exceptional suspension of rights, including: the strict protection of rights that cannot be suspended, as well as the necessity, proportionality, and limited duration of each temporary impairment of rights that can be suspended.<sup>460</sup>

<sup>458</sup> Cfr. IACHR, Annual Report 2015, chapter 4.A, Use of Force, para. 139. In its *Follow-Up Report on Compliance by the Republic of Ecuador with the Recommendations Offered by the Inter-American Commission on Human Rights in its 1997 Report on the Situation of Human Rights in Ecuador*, the IACHR stated that, while it was aware of the difficult economic situation facing the State of Ecuador and the social unrest that this had produced, the State had an obligation to take the necessary measures to guarantee citizen security through methods that respected human rights standards within the framework of a democratic society. The IACHR was of the opinion that alleviating the social unrest arising from the economic situation and fighting crime through the suspension of individual guarantees under the state of emergency did not meet the requirements of the American Convention for the declaration of an emergency; the State has—and is required to have—other mechanisms for channeling social unrest and fighting crime that do not involve suspending the population’s fundamental guarantees. Although, as has been mentioned in this Report, some forms of public demonstrations may create inconveniences or disturbances, or even situations of violence that must be prevented and investigated, in a democracy these cannot be considered exceptional situations that allow States to suspend guarantees. IACHR, *Follow-Up Report on Compliance by the Republic of Ecuador with the Recommendations Offered by the Inter-American Commission on Human Rights in its 1997 Report on the Situation of Human Rights in Ecuador*, paras. 44 *et seq.*

<sup>459</sup> Most of the rights that the State cannot suspend, however serious the emergency, are mentioned in Article 27.2 of the ACHR. Along with this enumeration the IACHR considers that there are other rights that are not subject to suspension, such as freedom of opinion. Cfr. IACHR, Annual Report 2015, Chapter IV.B Venezuela, paras. 216-217; similarly, see: UN Human Rights Committee. International Covenant on Civil and Political Rights. General Comment No. 34. 12 September 2011.

<sup>460</sup> The Human Rights Committee established that if States intend to invoke the right to suspend obligations assumed under the Covenant during, for example, a natural disaster, they must be able to show that a large-scale demonstration with incidents of violence not only constitutes a danger to the life of the nation, but also that all provisions derogating from the provisions of the Covenant are strictly necessary according to the exigencies of the situation. “In the opinion of the Committee, the possibility of restricting certain Covenant rights under the terms of, for instance, (...) freedom of assembly (art. 21) is generally sufficient during such situations and no derogation from the provisions in question would be justified by the exigencies of the situation.” UN Human Rights Committee, CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency. CCPR/C/21/Rev.1/Add.11 31 August 2001 para. 5. See also Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, A/HRC/20/27, 21 May 2012, para. 19. The Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai recalled that, “The legitimate combat against terrorism, and other security considerations, has been used as a justification for the adoption of a state of emergency or other stricter rules to void the rights to freedom of peaceful assembly and of association, (...) and noted that, “On different occasions, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has stressed in a report to the General Assembly that ‘States should not need to resort to derogation measures in the area of freedom of assembly and association. Instead, limitation measures, as provided for in ICCPR, are sufficient in an effective fight against terrorism’ (A/61/267, para. 53),” UN, Report of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association, A/HRC/20/27, 21 May 2012, para. 21. Within the framework of the domestic judicial oversight of provisions governing states of emergency in Colombia, the Constitutional Court has held in evaluating Article 44 of Law 137 of 1994 that not even in states of emergency can the Government establish formulas that generally limit the rights involved in social protest. In this regard, it held that, “In the exercise of the powers deriving from the declaration of a state of internal unrest, the Government cannot criminalize legitimate acts of social protest.” Constitutional Court, Judgment C-179 of 1994, J. Carlos Gaviria Díaz.

328. The measures that may be taken in any of these emergencies must be tailored to “the exigencies of the situation,” and what is permissible in one context may not be permissible in another. The lawfulness of the measures taken to deal with each of the special situations referred to in Article 27.1 will depend, moreover, upon the character, intensity, pervasiveness, and particular context of the emergency and upon the corresponding proportionality and reasonableness of the measures.<sup>461</sup>
329. The Commission underscores that Article 27.2 of the ACHR also establishes that “the judicial guarantees essential for the protection of such rights” cannot be suspended.<sup>462</sup> According to the case law developed by the Inter-American Court, the judicial guarantees that cannot be suspended during states of emergency are essentially: the writ of habeas corpus, the writ of *amparo* [petition for a constitutional remedy], remedies for the preservation of the rule of law and, in general, other judicial procedures that are ordinarily suitable for guaranteeing the full exercise of the non-derogable rights referred to in Article 27.2 of the Convention, which, even under a state of emergency, must always be adjudicated.<sup>463</sup> The guarantees must be not only essential but also judicial; that is, they require the active involvement of an independent and impartial judicial body having the power to pass on the lawfulness of measures adopted in a state of emergency.<sup>464</sup>

---

<sup>461</sup> Cfr. I/A Court H.R., *Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*. Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 22; *Case of J. v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013. Series C No. 275, para. 139; *Case of Espinoza González v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 289, para. 117.

<sup>462</sup> Cfr. I/A Court H.R., *Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*. Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 23.

<sup>463</sup> Cfr. I/A Court H.R., *Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*. Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 38. See also: IACHR, Report No. 48/00, *Case 11.166, Walter Humberto Vásquez Vejarano – Peru*, April 13, 2000, para. 51.

<sup>464</sup> Cfr. I/A Court H.R., *Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)*. Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 30.

## **CHAPTER IX**

# **CONCLUSIONS AND RECOMMENDATIONS**



## IX. CONCLUSIONS AND RECOMMENDATIONS

330. The right to free demonstration and peaceful protest is an essential element of the functioning and very existence of the democratic system, as well as a channel that allows individuals and different groups in society to express their demands, dissent, and complain about the government or their particular situation, as well as to demand access to and compliance with political rights and economic, social, cultural, and environmental rights.
331. States must ensure the enjoyment of the rights to freedom of expression, assembly, and association to all persons and to all types of organizations and associations without the need for prior authorization. They should establish by law, clearly and explicitly, the presumption in favor of the lawfulness of demonstrations and peaceful protest, which means that security forces should not act under the assumption that protest constitutes a threat to public order.
332. In particular, States should take positive measures to guarantee this enjoyment to women; children and adolescents; people of African descent; victims of discrimination based on their gender identity or sexual orientation; migrants and non-nationals; indigenous peoples; and groups demanding access to economic, social, and cultural rights.

### a. General recommendations

333. It is essential that all levels and agencies of the State respect and ensure that no one will be criminalized for exercising the rights to freedom of expression, assembly, and association in the context of demonstrations and protests, nor be subjected to threats, harassment, violence, persecution, or retaliation for participating in protests.
334. Any restrictions on the rights involved in demonstrations and protests may only be stipulated by law, based on one of the legitimate interests recognized by the American Convention, and must be necessary and proportionate to protect that interest, in accordance with the inter-American human rights instruments.
335. Ensure that security forces intervening to protect and control the conduct of demonstrations and protests prioritize the defense of individual life and safety by refraining from cruel, inhuman, or degrading treatment of demonstrators, from arbitrarily depriving them of their liberty, or from otherwise violating their rights.
336. Ensure that individuals and groups who are victims of violations and abuses of their fundamental rights in the exercise of protest have effective access to justice and that any violations of their fundamental rights will be redressed.
337. Investigate, identify, and punish the perpetrators of attacks, violence, threats, harassment, and the excessive use of force in the context of protest, whether they are State or non-state actors.

338. Respect and guarantee the exercise of freedom of expression, freedom of assembly, and the right of association through the Internet, applying the same guarantees as in offline spaces.

## **b. Recommendations to the Executive Branch and political authorities**

339. The authorities should facilitate the exercise of the right to demonstrate and protest as the general rule and should not regard them as a threat to public order or domestic security.
340. The armed forces should not participate in activities related to the protection of public demonstrations or the control of any form of protest, occupation of land or housing, prison riots, etc.
341. The authorities should give priority to dialogue and negotiation in the management of any form of protest, and not resort to the use of force during demonstrations, occupations, or protests, except when absolutely necessary. In no case should force be used indiscriminately in the context of protests.
342. The holding of demonstrations and protests must not be subject to prior authorization by the authorities. Where prior notification is required by law, it must be simple, accessible, nondiscriminatory, and not onerous; where a restriction is established, it must be in writing, and a timely and expedited appeal to an independent tribunal must be available.
343. Spontaneous demonstrations and protests must not be prohibited by law and must be exempt from any notification requirements.
344. Simultaneous counter-demonstrations and protests cannot be prohibited simply because they are held at the same time, and the State must take reasonable and timely positive measures to protect participants in all of them. The State must ensure that they do not interfere with each other so that demonstrators will not have cause to fear violence from their opponents.
345. Individuals, groups, and social or political movements participating in demonstrations and protests must be protected from undue interference in their right to privacy.
346. Intelligence activities in the context of protests are in principle contrary to inter-American standards. Any intelligence activity related to the political freedoms and rights involved in a protest must have a warrant and external oversight.
347. States must ensure the free and unrestricted operation of organizations and associations without discrimination of any kind, even in the absence of registration or legal personality.

## **c. Recommendations to security bodies and agencies acting in the context of demonstrations and protests**

348. The design of police operations that are ordered in connection with demonstrations and protests must take into account the variety of aspects related to the protection of the rights of demonstrators, third parties, and the safety of police officers.
349. States must, in any event, provide all means to protect the life and physical integrity of persons in the context of protests, be it from acts committed by public officials or by third parties.
350. The use of force must adhere to strict principles of exceptionality, necessity, progressivity, and proportionality. Under these principles, the use of firearms with lethal ammunition has almost never been justified in the context of demonstrations, and it is therefore recommended that the carrying of firearms by security officers be restricted in these operations.
351. The use of less lethal weapons should be strictly regulated. Any incident involving the use of any type of weapon by the security forces must be documented, whether or not the physical integrity of any person is affected.
352. A detailed record should be kept of the orders given, the officers involved, and their levels and areas of responsibility in the operation, and the actions taken should be subsequently evaluated.
353. Security operations must take into account the protection of security agents and provide the police with adequate protective equipment. A record must be kept of the weapons and equipment assigned to law enforcement officers, and officers should receive ongoing training in their proper use.
354. State security operations and interventions should pay attention to the special protection that should be afforded to certain individuals or groups such as women,<sup>465</sup> children, adolescents,<sup>466</sup> people with disabilities, or older adults, as well as groups that defend the rights of LGBTI persons, in order to guarantee their rights in the context of demonstrations.
355. It should be especially borne in mind that it is the job of journalists, film crews, photojournalists, and media workers covering protests to gather and disseminate information on what happens in demonstrations and protests, including the actions of security forces; freedom of expression protects the right to record and disseminate any incident.
356. Journalists should not be detained for their work, or harassed or attacked by law enforcement; on the contrary, the State has a duty to protect them when they are the victims of acts of violence by third parties. Their equipment and materials cannot be retained, confiscated, or destroyed.

---

<sup>465</sup> In its resolution on the promotion and protection of human rights in the context of peaceful protests, the UN Human Rights Council “Urges States to pay particular attention to the safety and protection of women and women human rights defenders from acts of intimidation and harassment, as well as gender-based violence, including sexual assault, in the context of peaceful protests” (A/HRC/25/L.20).

<sup>466</sup> In its resolution on the promotion and protection of human rights in the context of peaceful protests, the UN Human Rights Council “Reaffirms that States must take all necessary measures to ensure the safety and protection of children, including while they exercise their rights to freedom of peaceful assembly, expression and association, including in the context of peaceful protests” (A/HRC/25/L.20).

357. Prompt and effective medical attention must be guaranteed in cases where persons are injured or become ill during a demonstration, whatever the cause and whoever is responsible.
358. Mass, collective, or indiscriminate arrests should not be made. Arrests based on the mere fact of participating in a public demonstration or protest does not meet the standards of reasonableness and proportionality.
359. When the use of force by law enforcement officers causes death or injury, an investigation should be opened *ex officio* by independent and impartial authorities that have the necessary tools to determine the facts within a reasonable period of time, and to identify the individuals involved and their degrees of responsibility, in order to ensure accountability, prosecution, punishment, and appropriate reparation for the victims' next of kin.
360. Regularly and consistently gather disaggregated data to generate official statistics on investigations opened and proceedings brought against law enforcement officers who have used force, specifying the authority that took cognizance of the case, the charges brought, and the results obtained.
361. Take the necessary measures to ensure that law enforcement officers who are prosecuted—whether administratively or judicially—for acts allegedly committed by the abusive or disproportionate use of force are removed from public contact while their case is pending.

#### **d. Recommendations to the federal or national legislature and local legislative councils.**

362. Legislative bodies should bear in mind that it is in principle inadmissible to penalize street demonstrations *per se* when they are carried out within the framework of the right to freedom of expression and the freedom of assembly.
363. Laws on demonstrations and protests must comply with the three-part test established in the inter-American human rights instruments: the provisions must be provided for by law, justified by one of the legitimate interests recognized in the Convention, and must be necessary and proportionate to protect that interest.
364. Organizations and organizers of a demonstration or protest should not be held responsible in their capacity as such for any acts of violence that may be committed by participants and third parties.
365. Legislative bodies should refrain from creating vague criminal offenses or offenses that criminalize conduct that is part of a social protest, such as criminal penalties for lack of authorization or contempt (*desacato*), or for disrupting traffic. Such criminal definitions violate the principle of legality and inter-American standards.
366. Any criminal law that may affect the right to hold demonstrations and protests must strictly comply with the principle of legality. Policies against terrorism or organized crime should not be legislated in such a way as to restrict human rights or create a

widespread chilling effect on the exercise of the rights of assembly, association, freedom of expression, and political rights in the contexts mentioned in this report.

367. Regulate by law and in a detailed and precise manner the use of lethal and less lethal force by law enforcement officials, in accordance with inter-American standards, the Principles on the Use of Force, the International Code of Conduct for Public Officials, and other relevant international instruments. Legal regulations should include the scope of operation of private security companies, proscribing their involvement in citizen security tasks.
368. Adapt existing legislation to regulate situations in which states of emergency are declared, specifying that they may be invoked only in the event of war, public danger, or other emergency that threatens the independence or security of the State party. Specify expressly which rights would be restricted—excluding those non-derogable rights and guarantees—and when and where the state of emergency would be in force to address the identified threat. Make it clear that the State has the obligation to immediately notify the General Secretariat of the Organization of American States of the adoption of such a measure.

#### **e. Recommendations to justice institutions**

369. Appropriately and effectively investigate and punish the arbitrary use of force by law enforcement officers during protests, applying the aggravating circumstances prescribed by law when the force has been directed against vulnerable groups that have been subjected to historical discrimination on the basis of ethnicity, race, sex, sexual orientation, thought and expression, among other grounds.
370. Train justice authorities at all levels in the interpretation of the content and scope of the rights to freedom of expression, peaceful assembly, and association in the context of demonstrations and protests, in accordance with international human rights standards.
371. In general, justice authorities have a duty to refrain from applying criminal provisions that ambiguously protect public order, such as “incitement to rebellion,” “terrorism,” “sabotage,” “advocacy of crime,” and “attack or resistance to public authority,” “obstruction of traffic routes,” and other criminal offenses that tend to be applied arbitrarily by authorities to criminalize protesters.
372. The Commission stresses that when justice authorities find themselves faced with manifestly unfounded criminal accusations and complaints and the protection of the right to protest is involved, they have an obligation to investigate the source or sources of this type of arbitrary complaint and impose the appropriate penalties.

#### **f. Recommendations to national human rights institutions**

373. National human rights institutions should play a fundamental role in the promotion and implementation of the rights to freedom of expression, assembly, and association in connection with protest.

374. These institutions should track and establish spaces to monitor demonstrations and protests as they occur, as well as mechanisms to receive complaints of possible abuses and violations of human rights in this type of context.